

**AYN RAND AND ROBERT NOZICK : A
STUDY OF LIBERTARIAN POLITICAL PHILOSOPHY**

689

Dissertation submitted to the Jawaharlal Nehru University
in partial fulfilment of the requirements
for the award of the Degree of
MASTER OF PHILOSOPHY

ANURAG SAHAY

**CENTRE FOR POLITICAL STUDIES
SCHOOL OF SOCIAL SCIENCES
JAWAHARLAL NEHRU UNIVERSITY
NEW DELHI—110067**

1990



जवाहरलाल नेहरू विश्वविद्यालय
JAWAHARLAL NEHRU UNIVERSITY
NEW DELHI - 110067

CERTIFICATE

Centre for Political Studies
School of Social Sciences
Jawaharlal Nehru University

11 May 1990

Certified that the dissertation entitled, "AYN RAND AND ROBERT NOZICK : A STUDY OF LIBERTARIAN POLITICAL PHILOSOPHY" submitted by Mr. Anurag Sahay in partial fulfilment of the requirements for the award of the degree of MASTER OF PHILOSOPHY has not been previously submitted for any other degree of this or any other university. To the best of our knowledge this is a bonafide work.

We recommend that this dissertation be placed before the examiners for evaluation.

MS. NIRAJA GOPAL JAYAL

(Supervisor)

PROF. BALVEER ARORA

(Chairperson)

Chairperson
Centre for Political Studies
School of Social Sciences
Jawaharlal Nehru University
New Delhi - 110067

PREFACE

I got interested in libertarian political philosophy while doing an M.A. course on the contemporary liberal theory. Coincidentally, I happened to read Ayn Rand's novel The Fountainhead at the same time. The connection between libertarian political philosophy, and Ayn Rand's thought became obvious to me, and while going through the literature, I came to know that Ayn Rand is considered to be one of the important writers on the subject. What puzzled me most was the question why a viewpoint so out of joint with the spirit of the age should be accorded a popular reception? I took Robert Nozick's philosophy together with Ayn Rand to be the most representative of the work in the area and tried to find answers to my questions in the present study.

I am very grateful to my supervisor Ms. Niraja Gopal Jayal, who took time off from her very busy schedule, to read and re-read my drafts and guide me throughout the course of the study. This is not just a customary thank you - her encouragement and support has meant so much to me since I joined the University for my M.A. in 1986. I am also greatly indebted to all my

teachers at the Centre for Political Studies who have enabled me to think 'politically' - Prof. Balveer Arora, Prof. C.P. Bhambhri, Prof. Kuldeep Mathur, Prof. R. Khan, Prof. Rakesh Gupta, Dr. Zoya Hasan, and Dr. Gurpreet Mahajan have all been very kind and considerate to me. I would also like to thank Dr. Ram Bhatnagar, and Dr. A. Ganguly, Department of Political Science, Zakir Husain College, and Ms. Rashmi Govind, Department of English, Zakir Husain College, University of Delhi for the guidance they have offered at various stages of my academic career.

On the purely personal front, I would thank my Ma, Baba, and kid brother Amit who have always loved me despite my shortcomings. To Ranjita who has willingly shared my thoughts, and enabled me to become a better human being. And all my friends - Rashmi, Ramesh, R.K. Reddy, Srinivas, Ajay, Satyapal, Vinayak, Sarvanan, Ashok, Sainath, Rajen - a big thanks for the pleasant diversions they have been from the academic work. Last, but not the least, to Mr. Sanjay Jain for the neat work on the wordprocessor.

New Delhi
May 11, 1990


(ANURAG SAHAY)

CONTENTS

CHAPTER		PAGE NO.
	PREFACE	(i)
	INTRODUCTION	1
CHAPTER 1 :	THE HISTORICAL ROOTS OF LIBERTARIANISM	36
CHAPTER 2 :	EGOISM AND INDIVIDUAL RIGHTS	61
CHAPTER 3 :	LAISSEZ - FAIRE REVISITED	95
CHAPTER 4 :	JUSTICE OF 'ENTITLEMENTS'	126
	CONCLUSION	154
	BIBLIOGRAPHY	164

INTRODUCTION

INTRODUCTION

The radical right, libertarianism, the taxpayers' revolt, the new right - these are some of the labels given to the body of arguments offered in recent years as a challenge to the post war consensus on welfarism and redistribution. Keynesian demand management and egalitarian redistribution have been questioned by an alternative individualist view in which property is the right of every individual. The assumption that radicals should automatically look to the state as the chief instrument of reform has been challenged by a new found faith in self-help and the power of voluntary associations.

The challenge of the "New Right" has been issued across the social sciences : economics, sociology and political science. There is no unified "new right" view, although the new right (libertarian) thinkers lie in the common tradition of western classical liberalism.

The words "liberty" and "liberalism" have a common root, (the Latin liber) reflecting the commitment of the original or classical liberals to a free society.

Over the last century, the latter term has come to represent a political position that is willing to sacrifice untrammelled liberty in the economic realm for the sake of equality and/or collective welfare. As a consequence, those who wish to reaffirm the classical version of liberalism - those who advocate liberty in economic as well as personal and intellectual matters - have invented a new word from the old root; they call themselves libertarians. Both in doctrine and etymology, then, partisans of this view define themselves by their allegiance to liberty.¹

The foundational claim of libertarianism is the thesis of self-ownership which says that each human being is the morally rightful owner of his own person and powers. He is, consequently free, (morally speaking) to use those powers as he wishes, provided that he does not deploy them aggressively against others. He may not harm others, and he may, if necessary, be forced not to harm them as people are, according to libertarians, in fact forced to help others by the supposedly redistributive taxation which sustains the welfare state. That state is, in the libertarian view, entirely wanting in moral justification. Libertarians believe, moreover, not only

that people own themselves, but also that they can become, with equally strong moral right, sovereign owners of the potentially indefinite unequal amounts of worldly resources, which they can gather themselves as a result of proper exercises of their own and/or other's self owned personal powers. When, therefore private property in natural resources has been rightfully generated, its morally privileged origin insulates it against expropriation or limitation.²

The question which immediately comes to mind is why there was a resurgence of radical right thinking in the post-second world war period. In the immediate post-war period a consensus had emerged around certain social values such as welfarism and social democracy, which were vigorously championed by writers like Harold J. Laski. Even Daniel Bell, in his influential work The End of Ideology³ stressed that this consensus had rendered the traditional ideological debate meaningless, as there was no need for ideological battles. Rather the attempt would be to consolidate the existing agreed compromise. The construction of a new world - view was not necessary. But in the last decade or so, there has been a resurgence of individualist

thinking, or the social and economic theory of classical liberalism. How do we account for this? Norman P. Barry, an important writer on the subject, holds what he calls, "the breakdown of consensus" responsible for the resurgence.⁴ To Barry, the collapse of consensus is self-evident as we now live in an ideologically as well as politically insecure world. He also points to the failure of social democracy and the disillusionment with it of a stream of intellectuals, who gave a call for a return to the old order of things. To this one may add that the experiment of welfare democracy in most of the third world countries was a failure. Due to varying reasons, these newly independent states saw a series of military dictatorships, coups, and economic domination by the developed countries. All these reasons led to a serious rethinking about the welfare state.

Secondly, not only has the intellectual justification of political value systems become a respectable enterprise again but certain traditional conceptions in political philosophy, such as natural law and natural rights and the social contract, have been disinterred from the grave to which the Logical Positivists and Behaviouralists had consigned them, and

are used once more to support divergent viewpoints. Thus, the recent works of John Rawls, Brian Barry, Robert Nozick and Ronald Dworkin, to name only the most eminent, have come out strongly against the value - neutrality of post-war political science. Barry's Political Argument, Rawl's A Theory of Justice (and Barry's rejoinder The Liberal Theory of Justice) and Nozick's Anarchy, State and Utopia together represent a return to political theory in a grand manner. They are all attempts to do what the great men of the tradition did, to write constitutions, derive institutional designs, on the basis of presuppositions about man's basic nature and his, or their, values. Of course they are not value free, though they are equally obviously not unempirical. They reject both the idea that recommendatory normative analysis is taboo, and the notion that political philosophy can be no more than a handmaiden to other sciences.⁵

In a sense, classical or 'old' liberalism never died, it was temporarily submerged by the 'new liberal' or 'social democratic' thought and also quietly absorbed in some parts of neo-classical economics, to the point at which its identity was lost. Twentieth

century economic and social theorists such as Ludwig von Mises, Wilhelm Ropke, F.A. Hayek, and the Chicago school of free market represented in differing ways by Frank Knight, Henry Simons, Milton Friedman and George Steigler, continued to develop their doctrines so that a body of knowledge was available for the understanding of social processes on the return of more propitious times. The recent failures of 'new' liberalism and social democracy, however, have not been countered with merely restatements or even variations of some familiar classical themes. Rather, libertarianism has emerged which encompasses not just the economic theory of resource allocation by free markets but also a variety of ethical foundations and concepts of man which have been offered as substantial intellectual supports for traditional individualistic values.⁶

The admission that a completed social and political philosophy demands a special account of man and an appropriate ethical framework highlights one of the difficulties in libertarianism. For whereas the doctrines of free market economics, individual liberty, the theory of the limited state, the belief in sound money and the rule of law have secured considerable scientific (and polemical) success, a philosophical

framework in which these ideas can be located has been infrequently articulated (and even when it has been attempted it has attracted, until recently, little attention). One of the most famous libertarian tracts of the twentieth century is Milton Friedman's Capitalism and Freedom (1962), and although this is a brilliant and sustained attack on the errors of statism and an exposition of the co-ordinating mechanism of the free market, it contains very little philosophical discussion of freedom, the ethical basis of capitalism, or of that entity man - who is the agent of the exchange process. The same might be said of Hayek's Road to Serfdom (1944) which appears to be no more than a penetrating exploration of the totalitarian tendencies implicit in even the mild interventionist and welfarist measures that were then being proposed for the post - war reconstruction of western democracies.

Fortunately, the philosophical terrain of libertarianism is not entirely barren, for in the last twenty years, writers in the tradition of classical liberalism have begun to probe a little more deeply into the theoretical foundations of a free society. Two

things are immediately obvious while considering the various intellectual trends. First, there appears to be a great variety of foundations for libertarianism. Although the polemical and policy - oriented version of the doctrine seems to unite all contemporary theorists around a number of common themes, a closer examination of their work reveals that similar policy conclusions rest on quite different philosophical premises. That monolithic unity in libertarian political thought is in fact illusory.

Second, the different philosophical foundations that have been offered for libertarianism are not, on the whole, original contemporary creations but have their origins deep in the history of political and economic thought. This is not to say that new and exciting ideas have not emerged in the last decade or so, but only to suggest that these have come in response to some familiar and abiding questions in the history of ideas.

However, before these issues can be explored, a general picture of the libertarian ideas is required. Largely for reasons of manageability, this study would be restricted to an in-depth analysis and comparison of

the two influential libertarian thinkers Ayn Rand and Robert Nozick. But, as an introductory exercise, it would be prudent on our part to familiarise ourselves with various shades of libertarian arguments.

If a broad categorisation can be made, libertarians may be classified into two groups : Consequentialists and Rights theorists. Consequentialists⁷ normally come from the wert frei social sciences and wish to construct a theory of free society with little reference to the moral value of liberty. In their doctrines, liberty has a crucially important instrumental value in promoting the happiness of a community. The Rights theorists tend to come from the philosophical and humane studies and stress the value that liberty has for individual self-fulfilment. In their opinion, coercive action by the state which abridges this liberty is immoral, irrespective of any economic consequentialist considerations. In this doctrine, law and morality precedes organised society, so that any coercive power exercised by political authorities must not exceed that which an objective morality entitles individuals to use.

The burden of the consequentialist libertarian argument rests on free markets and limited government, constrained by fixed rules. These are mandatory instruments for the furtherance of those goals that individuals happen to have. The consequentialist libertarians refrain from commenting on the intrinsic values of the goals themselves. The word consequentialist is used in its economic sense, rather than utilitarian, because in libertarian consequentialism, it is maintained that the benefits to society at large come spontaneously from the pursuit of individual satisfactions and not from the deliberate prosecution of the public good.

CONSEQUENTIALIST LIBERTARIANISM

Three versions of consequentialist libertarianism will be considered:

- i) the well known 'Chicago' school of free market economics associated mainly, but by no means exclusively with Milton Friedman and his followers.
- ii) the 'Austrian' school which began with Carl Menger (1840-1921) and continued under Wieser, Bohm-Bawerk, Mises, and Hayek.

iii) the 'Virginia' school of public choice theory, which was pioneered by James Buchanan and Gordon Tullock.

As we shall see, these three versions of libertarianism differ in important respects but they have all contributed greatly to the libertarian science of society. While Chicago and Austrian writers have been concerned mainly with economics, it is the Virginia school that has perhaps made the most important contribution to political science, since its adherents have applied the individualistic method of micro-economic analysis to the behaviour of public officials and organisations. They have severely undermined the idea of government as some exogenous, neutral and omniscient body concerned only with maximising the public good, by showing that government officials are themselves rational maximisers whose ends are likely to diverge from those of an anonymous public.

The Chicago School

The new liberals undoubtedly believe that society exhibits some kinds of regularities and is therefore

governed by some kinds of causal laws. Despite the constant change and uncertainty that appears to characterise economies and societies, social reality is not chaotic. Again, while the future cannot be predicted in the sense of it being possible to predict future events in some temporal sense, social relationships do involve predictability. We can explain this causally as long as causality is not interpreted in a rigid, mechanical and determinist sense.

The Chicago school of economics is systematically positivist⁸. Its followers not only accept the distinction between fact and value but also implicitly accept the highly dubious metaphysical proposition that, apart from the tautologies of mathematics and formal logic, the only meaningful statements are observational statements⁹. In their understanding of social science the alleged insecurity and subjectivism of a priori reasoning and introspection is replaced by the idea of hard 'objective' facts as the arbiter of disputes. Any theoretical proposition not derived from experience must be purely tautologous and therefore incapable of conveying empirical knowledge. The regularities in society must exist in reality and cannot be a product of mind ordering reality.

Milton Freidman's theory of the role and scientific status of economics arises from his wider commitment to liberty. If we are to live together in peace then we need ways of settling our differences without fighting each other. In his view, economic science or positive economics can help to make this possible. Freidman distinguishes between 'positive' economics and 'normative' economics. Positive economics is 'in principle independent of any particular ethical position'. It deals with 'what is,' not with 'what ought to be'. The task of positive economics is to "provide a system of generalisations that can be used to make correct predictions about the consequences of any change in circumstances".¹⁰

Freidman's view lies firmly within the Popperian tradition which rejects the contention that the natural and social sciences are fundamentally different and holds that they share a common method. Friedman concedes that the economist, like all social scientists, is part of the situation he is investigating and that this presents special difficulties. But it does not represent a 'fundamental distinction' between the social and physical sciences, nor does it reduce economics to the status of mere

opinion.¹¹

The Chicago case against collectivism is to argue from experience that the familiar acts of intervention have so far always failed to achieve their objectives : socialism founders on the well established general laws of human behaviour. However, since these laws are derived inductively the failures are always contingent, not necessary, failures. Familiar examples include - minimum wage laws which, by fixing the price of labour above its market price always cause unemployment.

Chicago economists are also positivists, either explicitly or implicitly in ethics. They believe that moral statements, if not exactly nonsense, are not of themselves capable of being rationally argued about, and are inherently subjective. Thus objections to government intervention must take the form of dissolving policy disputes into disagreements which can be settled by the method of empirical science.¹²

In direct contrast to above, the following statement by John Hospers conveys nicely the ethical flavour of libertarian philosophy, which is absent from the Chicago approach. It is to be noted that while

Hospers endorses all the policy proposals of the Chicago economic liberalism, he underlines the intrinsic value of liberty per se. To Hospers, libertarianism entails.'

"The liberty of each person to live according to his own choices, provided that he does not attempt to coerce others, and prevent them from living according to their choices, Libertarians hold this to be an inalienable right of man; thus libertarianism represents a total commitment to the concept of individual rights."¹³

The Austrian School

In the version of libertarianism produced by Austrian economists¹⁴ the underlying methodology is precisely the opposite of Chicago. Instead of starting from observation the Austrians start from 'introspection' and instead of regarding man as some automaton that can be predicted (empirically) to respond to external stimuli, the human mind is regarded as the originating source of social phenomena. It is by the method of deductive reasoning from certain true postulates about man plus a small number of uncontroversial empirical observations about the social world, that the Austrians have consistently maintained

that various forms of interventionism must necessarily fail.

One of the most basic postulates of the Hayekian system is contained in his endorsement of the Austrian thesis of autonomy of the human mind. What does this entail? In the first place Hayek maintains that there is an ineradicable indeterminacy and unpredictability in human knowledge and valuation. Men's preferences, expectations and beliefs are liable to sudden changes which for all practical purposes and perhaps in principle are unknowable in advance of their actual occurrence. Hayek's insistence on the unpredictability of such basic shifts in human thought and practice figures centrally in his argument for liberty.¹⁵

Austrian economists are rigorous methodological individualists. Fictitious entities such as 'classes', 'states' or 'societies' do not act, think, save, consume or invest; only individuals can do these things. Since it is individuals that choose, such choices must necessarily be subjective and cannot be made the basis of prediction by an external observer. The laws of economic behaviour are therefore not generalisations of past behaviour.

Liberalism. is merely applied economics, for it describes (theoretically) those institutional arrangements which are necessarily required for man to cope with those constraints which govern human action. The 'impossibility' of socialism is therefore not a well confirmed contingency but a theoretical inference from the socialist method. To the extent that it abolishes private ownership, attenuates the market order and money nexus, retards the growth of the division of labour and prevents the calculation of value, socialism destroys the means which are essential to the ends of happiness and prosperity. By replacing economic liberty with political direction, and granting favours to coalitions or groups, including trade unions it must disrupt those mechanisms which lead to the harmonisation of individual actions for the benefit of an anonymous public.

The instrumental value of the system of liberty lies in the fact that it copes best with ignorance and unpredictable growth of knowledge especially economic knowlege. Only a market can coordinate such knowelge so as to produce an efficient, but unintended, outcome.

However, important though this type of analysis is, it illustrates rather too nicely an endemic feature of much of the social thought of Austrian economists - its almost entirely instrumental and consequentialist form. In talking of free speech, Sowell makes the following statement :

"The right of free speech is not an opaque sacred right of an individual, any more than other rights such as property rights are 'sacred' individual possessions. All are justified (or not) by the litmus test of social expediency."¹⁶

The Virginia School

A crucially important aspect of libertarian social science is its analysis of public institutions. This analysis has both a scientific and a normative aspect. The scientific aspect consists in the application of the individualistic tool of micro-economic analysis to the behaviour of public officials. The normative payoff of this approach is that it suggests ways in which those public institutions that we must have may be re-designed so as to reflect more accurately the preferences of individuals. Most of the important work in this area has been done by James Buchanan and Gordon

Tullock and other members of the Public Choice School based at the Virginia Polytechnic Institute.¹⁷

The essence of public choice theory has been summed up by Professor Buchanan :

"In one sense, all of public choice or economic theory of politics may be summarised as the 'discovery' or 'rediscovery' that people should be treated as rational utility - maximisers in all of their behavioural capacities. This central insight, in all its elaborations, does not lead to the conclusion that all collective action, all government action is necessarily undesirable. It leads instead, to the conclusion that because people will tend to maximise their own utilities, institutions must be designed so that individual behaviour will further the interests of the group, small or large, local or national. The challenge to us is one of constructing, or reconstructing, a political order that will channel the self-serving behaviour of participants towards the common good in a manner that comes as close as possible to that described for us by Adam Smith with respect to the economic order".¹⁸

The libertarianism of the Virginia School consists basically in its deeply individualistic approach to social affairs. Thus private property, the market economy and the capitalist order are acceptable if they result from the necessarily subjective choices of individuals. 'Goods' and 'bads' are the subjective

experiences of individuals and there is no collective organic entity called 'society' or 'public' which is not reducible to individual experiences.¹⁹

The specific political philosophy of the school is found in Buchanan's writings²⁰ (in addition to the work jointly authored with Tullock). In these he has been concerned with design of institutions which reflect individual preferences more accurately than orthodox democracy does. Buchanan explicitly eschews any appeal to moral principles in the validation of property titles. In fact his whole procedure is designed to avoid that "retreat into empty arguments about personal values which spells the end of rational discourse."²¹

Thus, in The Limits of Liberty Buchanan produces an interesting abstract model, Hobbesian in method, of how self-interested maximizers would create a set of property rights and agree to a 'constitutional contract' which would authorise a 'Protective State', to enforce those rights and contracts and a 'Productive State' to produce public goods. While the contract itself is unanimous, the Productive state could operate with a decision procedure of less than unanimity.

Property rights would emerge as people fought over scarce resources; there is, in fact, a 'natural distribution' of property. However, since investment in defence under anarchy is costly, there are always gains to be made from trade by a mutual disarmament pact: hence the state. The delicate task is to construct a form of government that reduces the high costs of private defence yet which does not at the same time turns into a Hobbesian state that annihilates the preferences of individuals.

TH-3400
However, Buchanan's imaginary contractors are not guided by any objective morality in their deliberations. This comes out alarmingly in his discussion of the entitlement to property holdings. He is insistent that economics is only meaningful as a science when property entitlements have been established. But instead of leasing entitlement on some Lockean natural law ground, Buchanan produces a purely Hobbesian argument: the 'natural distribution that occurs at the contractual stage is leased ultimately on fear'.

While the scientific contributions of the Virginia school comprise a large part of the libertarian social



theory, the attempt to generate an ethics of government, law and property out of agreement has been treated with some scepticism by a particular group of thinkers who base their philosophy of liberty on natural law and natural rights. The main objection to the contractarian method is that it may lead to a process by which men are driven by fear to trade away property titles to which they might be morally entitled by a substantive natural law doctrine.

RIGHTS - THEORISTS

Although these three versions of consequentialist libertarianism are significant, it would be true to say that libertarianism did not get a conventional academic hearing until the propagation of its ethical and humanistic side. The three Rights-theorists who were mainly responsible for bringing libertarianism into the mainstream of academic discourse are :

- (1) Ayn Rand
- (2) Robert Nozick
- (3) Murray Rothbard.

Ayn Rand²²

Whereas most of the familiar names in contemporary liberal thought have come from the social science faculties of universities, Ayn Rand never held a formal university post, making her living as a Hollywood scriptwriter, novelist, essayist and journalist. She never wrote a formal treatise on political philosophy and her views, while constituting a coherent whole, have to be reconstructed from her essays and occasional pieces. An emigre from the Soviet Union, she showed a fierce commitment to original American values (on a number of occasions she expressed the view that America was at one time the only 'rational' society) and a contempt for what for her was a decadent European civilization.

Rand expressed her philosophical, political, ethical and economic view through her periodical The Objectivist. Her most important essays have been published in book form. The Objectivist Epistemology contains the main elements of her metaphysics and Capitalism: The Unknown Ideal, The Virtue of Selfishness, The New Left: The Anti-Industrial Revolution and For The New Intellectual consist of

essays which not only express her strident and vitriolic commentaries on contemporary issues and events, but also set these in a coherent theoretical framework.

Rand is most noted for her efforts to expound an ethical basis for 'laissez-faire capitalism'. She called her theory 'Objectivism' because it was an attempt to provide an 'Objective' answer to the question 'Why do men need a code of values'? Her starting point is her dislike of the morality which prevailed at the time she was writing. She saw the prevailing orthodoxy as a narrowly conceived altruism which lumped together two moral questions in a single 'package deal' : (a) What values should be held?; and (b) Who benefits from these values? 'Altruism, she says, substitutes the second question for the first. It declares that actions taken for the benefit of others are good : and that actions for one's own benefit are bad. In so doing, it evades the task of defining 'a code of moral values, thus leaving man ... without moral guidance'.²³

In the Randian system there is an objective reality which reason is capable of understanding. The

rational faculty which distinguishes man from other sentient beings, enables us to construct a code of ethics that is based on egoism : the idea that rational life consists of the pursuit of purely self-regarding ends. An egoistic moral philosophy recognises the right of each individual to pursue his ends unhindered by others. Capitalism follows as the only rational economic order since it allows men to pursue their ends through productive work and voluntary exchange. In effect, Rand divides mankind into 'traders' who live by mutual exchange and 'warriors' who live parasitically off the efforts of others. Egoism is not a doctrine of unconstrained self interest but a prescriptive theory of how men ought to behave according to absolute moral principles. It is not a means to an end but a necessary feature of rational life. The rights that individuals have are axiomatised necessities from the concept of life; to deny a person's right is to pursue the philosophy of death. Though an unrestricted laissez faire is the only rational form of economic organization, for Rand, this does not preclude some form of government. A government for Rand, is the means of placing the retaliatory use of physical force under objective control i.e. under objectively defined

laws. But no government can have more power than that prescribed by objectivist rational ethics i.e. that authorised by the concept of rights. In her scheme, government would be financed by voluntary payment of fees: any redistributive tax system involves the use of individual's values for the advancement of others.

Ayn Rand's novels may be considered an integral part of her personal weltanschauung; they illustrate graphically many of her leading ideas and philosophical theories. The most important are The Fountainhead, the story of an architect who refused to sacrifice his individualistic principles to prevailing orthodoxies, and Atlas Shrugged, a massive novel set during a fictional account of the breakdown of a government regulated capitalist economy in which the capitalists ('the men of the mind') go on strike, and, indeed set up an utopian capitalist community dedicated to Randian principles.

Robert Nozick²⁴

The importance of Robert Nozick's Anarchy, State and Utopia was precisely that it shifted attention away from the defence of liberal individualism in terms of the allocative efficiency of the free market (in

comparison with collectivist systems) towards a consideration and critique of the 'violence' that collectivist intervention does to a postulated set of natural and human rights. Moral arguments for libertarianism have been urged before Nozick, but none with such subtlety and sophistication. But further, Nozick tackles head-on the fundamental question of libertarian ethical and political theory: the problem of the legitimacy of the state itself. For if a libertarian natural law prescribes those constraints on human action which make freedom possible, how is it that one institution, the state, defined conventionally in terms of possessing a monopoly of coercive power, is above such constraints? If the right to self-defence is universal what libertarian morality can licence the surrender of that right which the existence of a state necessitates? How can political agents possess rights not possessed by moral agents? Although Nozick has been severely criticised by ethical libertarians especially 'anarcho-capitalists', his book is specifically concerned with exploring the implications of the basic libertarian (and Kantian) principle that no person's values and interests may be used or sacrificed for others or for some collective goal.

Both Nozick and Rand may be described as 'minimal staters' in that they argue that an organisation with a monopoly of coercive power is required to protect individual rights. However an important strand of ethical libertarianism holds that the state is in principle illegitimate and that an individual cannot alienate the right to self defence. Therefore, while discussing the ethical libertarians it is imperative for us to discuss Murray Rothbard's theory of anarcho-capitalism. Rothbard's views are particularly significant in that he combines a sophisticated consequentialist and laissez-faire objection to the state with a natural law and natural rights anarchism.

Murray Rothbard

The most uncompromising version of contemporary libertarianism is that of anarcho-capitalism, associated mainly with Murray Rothbard and his followers.²⁵ Rothbard maintains that an ethical theory of the legitimacy of property titles must underlie an exchange philosophy and that the validations of claims to property must be independent of government decree. Only the complete dissolution of the state is consistent with the demands of efficiency and the

restraints that ethics imposes on human conduct. Although the libertarian programme is consistent with utility it is most emphatically not derived from a utilitarian ethics.

To bring out the radical nature of Rothbard's ethics of liberty it is worth contrasting it with the more conservative versions of libertarianism. These latter tend to make the legitimacy of social decision procedures turn upon formalistic criteria, such as those contained in the 'rule of law' doctrine. In this, for example, a tax rule is legitimate if it satisfies criteria of 'fairness'. Thus progressive income tax is said to be unjust because it unfairly discriminates against high earners. But for Rothbard the difference between progressive and proportional tax cannot be a moral one. It is the institution of taxation itself which is immoral because it is no more than the acquisition by force of individuals' property holdings.

The legitimacy of property holdings must derive from an objective natural law ethic which is ultimately validated by reference to the nature of man special entity with an appropriate nature: he is

'free'. Animals and objects in the physical world are defined in terms of the mechanical laws that govern their behaviour while man can only be understood as a thinking, acting and rational entity able to choose ends and employ means for their realisation. While all his choices are subjective, objective features of the entity man determine the way individuals should treat each other. To interfere with man's freedom is to undermine that which is necessary to life, knowledge and prosperity, because without liberty man cannot develop his faculties. Moreover, if men are by nature free, they must also be unequal because the use of liberty must of necessity lead to differences of outcome (mainly in terms of material goods). If men were natural their behaviour would be like that of insects, which is uniform because it is the product of deterministic laws; therefore any attempt to impose equality by force is immoral because it negates man's natural liberty.

Rothbard defines self-ownership as 'the right of each man, by virtue of being a human being, to "own" his body.'²⁶ It follows from this that an individual necessarily owns what he produces with his own body. As a necessary consequence of the right to self-

ownership follows the right to 'homestead'. To realise their natures men must transform raw materials into objects and the application of labour to previously unowned objects, including land, establishes an unqualified right to property. Following from the axiom of self-ownership property titles may be acquired by gift and exchange of things legitimately owned.

Rothbard has to show that his absolutist natural law commitment to liberty does not logically lead to liberty being maximised to the point at which nobody is prevented from doing anything. At the same time he must ensure that the rationale that excludes this does not itself justify the whittling away of liberty. In fact Rothbard offers a special definition of liberty which, although broadly negative is certainly not neutral, i.e. freedom is used to describe favourably those situations in which persons are not restrained from doing that which natural law permits them to do. Thus freedom is defined normatively in terms of the right to self-ownership.

While these three rights theories are all anti-utilitarian, they differ in subtle ways. Despite their differences over the role of state, Rothbard and Rand

share a not dissimilar conception of the person. Both reject interventionism on the ground that man's nature defines his rights, so that the violation of a right through state compulsion denies a human being the opportunity of self-fulfilment. In this sense both their moral philosophies are teleological and therefore, in a special ethical sense, consequentialist: on the other hand, Nozick's morality takes the form of the constraints (normally defined by rights) on action and makes immoral certain actions, such as rights violation, irrespective of the consequences to an individual's nature and purpose that follow from them.

Thus, it may be said that within the broad stream of libertarianism, there are divergent views. This study would take up the arguments of Ayn Rand and Robert Nozick and examine the case of ethical libertarianism. The arguments of Murray Rothbard though largely within the ambit of ethical libertarianism, will not form a part of the present study, as the focal concern of the present study is to analyse that libertarian viewpoint which advocates a minimal state and defends it both against ultra minimalists as well as collectivists.

NOTES

1. D. Kelley, "Life, Liberty and Property" in Human Rights (eds) Paul, Miller & Paul, P. 108.
2. G.A. Cohen, "Nozick on Appropriation" in New Left Review, March/April 1985, p.89.
3. Ideologists, said Daniel Bell, were "terrible simplifiers" Ideology makes it unnecessary for people to confront individual issues on their merits. One simply turns to the ideological vending machine and out comes the prepared formulae. Ideology was seen as a form of "secular religion", and associated with fanaticism. See Daniel Bell The End of Ideology P. 400-405.
4. See Norman P. Barry On classical Liberalism and Libertarianism, especially the Introduction. Barry says that the breakdown of consensus was initially followed by the resurgence of primarily collectivist political thinking, either from the Marxist Left or the traditionalist, anti-rationalist Right. However, in the last decade also there has been a recrudescence of individualistic thinking.
5. Michael Freeman and David Robertson (ed.) The Frontiers of Political Theory : Essays in a Revitalised Discipline p. 11.
6. Barry, op. cit. P. 2-8.
7. Consequentialism is the view that the merit of an action is determined by its consequences, and not, for example, by the motive which compels it, or the character from which it springs.
8. The clearest and simplest application of the Chicago approach to normative social questions can be found in Milton freidaman's Capitalism and Freedom.
9. Milton Freidman, "The Methodology of Positive Economics" in his Essays in Positive Economics P.3-43.

10. Ibid P.4 .
11. Ibid P.5
12. Milton Freidman, 'Value Judgement in Economics' in S. Hook (ed.) Human values and Economic Policy P. 86. Also quoted in N.P. Barry 'The New Liberalism' British Journal of Political Science, 1983. P. 96.
13. John Hospers, Libertarianism, P.4-5.
14. The major statements of Austrian Social Science can be found in L. von Mises, Human Action, Theory and History, Socialism and F.A. Hayek, The Counter Revolution of Science, Studies in Philosophy, Politics, and Economics.
15. John N. Gray, "F.A. Hayek on Liberty And Tradion" in Journal of Libertarian Studies, Spring, 1980, P.120.
16. Thomas Sowell, Knowledge and Decisions P. 238.
17. The major works of Virginia School are : James Buchanan Fiscal Theory and Political Economy, Cost and Choice, The Limits of Liberty; Gordon Tullock, The Vote Motive, Buchanan & Tullock The Calculus of Consent.
18. James Buchanan et.al. The Economics of Poltics, P.17.
19. See D.G. Green, The New Right" P.92-108.
20. Buchanan's major expression of his poltical philosophy is The Limits of Liberty : Between Anarchy and Leviathan.
21. Buchanan, Freedom in Constitutional Contract, P.82.
22. The arguments of Ayn Rand and Robert Nozick are dealt in very breifly here, as they would be elaborated and analysed later.
23. Rand, The Virtue of Selfishness, P. VIII

24. Robert Nozick's arguments are based on his expositions in his Anarchy, State and Utopia.
25. The important works of Rothbard include, Economy and State, Power and Market and For A New Liberty. He is also the editor of The Journal of Libertarian Studies.
26. Rothbard, For A New Liberty, P.28.

CHAPTER 1

THE HISTORICAL ROOTS OF LIBERTARIANISM

Any study of contemporary libertarian philosophy would be seriously incomplete without an analysis of classical liberalism. In the present study, the attempt in analysing classical liberalism is not to deal with a historical analysis of the major thinkers of the period, but to identify and examine those features of libertarian philosophy whose origin can be traced back to classical liberalism. The following analysis does not suggest that new ideas have not come in the last decade or so, but only that these have come in response to some familiar and abiding questions in the history of ideas.

The significant issues raised in the libertarian political philosophy whose origins can be traced back to classical liberal sources include :

1. Individual and society ;
2. Liberty ;
3. Rights ;
4. Property ; and,
5. The State.

Individual and Society

For Bentham, the community is a 'fictitious' body, and therefore the interest of the community is no more

than the interests of the several members who compose it. If the community is a fiction, except in so far as it is conceived of as the mere arithmetical sum of its individual members, it follows that no rational person could elevate the supposed interests of a fiction above the real individual people: "A people cannot be punished, a people cannot be free, a people does not exist except as an abstract conception; the only realities are the individuals who actually make up the people"¹. The solid and palpable existence of individuals provides grounds for preferring their rights and interests above the claims of fictitious entities such as 'the community', 'society', 'the state', 'the nation', 'the party' and all the other social institutions which sometimes claim moral and political precedence over individuals.

The precedence of the individual over society or any other collectivity for that matter, is a recurring theme in liberalism. It was reflected in Bentham's denigration of community and in Mill's 'self-regarding sphere'. In the 1940s and 1950s it was revived by F.A. Hayek, Karl Popper and others in the form of 'methodological individualism'. Hayek argued that such

collectives as "the society or the economic system", "capitalism" or "imperialism" are no more than provisional theories, popular abstractions which the social scientist 'must not mistake for facts'.²

In modern libertarian philosophy the precedence of the individual is strongly highlighted. Robert Nozick declares, "Individuals have rights, and there are things no person or group may do to them (without violating their rights)".³ Ayn Rand goes a step further when she says, "But there are, in fact, no "economic rights", The term "individual rights" is a redundancy, there is no other kind of rights and no one else to possess them".⁴

Within traditional political theory the habit of thinking about individuals as primary and society as secondary found expression in the pseudo-historical scenario of man's supposed progress from the state of nature via some form of social contract into society. This scheme is presented with the greatest clarity by Hobbes who portrays individuals in the state of nature as already equipped with their animating passions and desires, then coming together in a rational way to set up society and authority, but each acting solely for

his own benefit and non one else's. Though Locke's state of nature is not Hobbes's 'war of all against all', it is unfortunately a state in which peace is not secure, being constantly upset by the corruption and viciousness of degenerate men. It leaves unsatisfied three important wants : the want of an established, settled, known law; the want of a known and indifferent judge; and the want of an executive power to enforce first decisions. To get out of the state of nature, Locke says, men make a contract to enter into civil society.

Such an approach to the relation between man and society could be, and was, liberating in profoundly important ways. To think of society as in principle controllable, as existing for the use of all men rather than for the inscrutable purposes of God, or the not-to-be questioned policies of kings and emperors, was a great, potentially democratic advance.

Nozick goes back to the traditional business of justifying the state from the ground up, the ground being provided by an imaginary set of circumstances in which there is no state. This is called by Nozick, as by tradition, the State of Nature. This, in his

presentation, helps us to understand what the state is being justified against - drawing on some elements in the anarchist tradition, he spends much more time and ingenuity than anyone else has done in spelling out how things might go wrong in a partly moralised state of nature, where "private protective associations" do the job, for a fee, of protecting people's rights to life, property and so on against force and fraud.

In taking the partly moralised state of nature as his starting point, Nozick is in line with Locke. But he differs sharply in his exclusion of any idea of contract : this is a state - of - nature theory without the social contract. In its place he aims to derive the state from the starting point of the model by a chain of events which involve no intentional intervention by what he calls an 'invisible hand mechanism', adopting in this the language of classical economics.⁵⁾

Another important facet of liberal individualism which is reflected in libertarianism is its tendency to stress the inherently anti-social, or at least non-social, character of the human being. Human beings are anti-social not because they are mutually separate, self-moving and self-interested. Hobbes's dourly anti-

social characterisation of human nature is an extreme version of the liberal concept of the individual rather than something qualitatively different.

Many liberals, from Locke to Mill, rejected both the pessimism of Hobbes and the authoritarian political consequences that followed from it. But they did not renounce the belief that man is naturally self-interested.⁶ They simply denied that self-interest necessarily ruled out either individual benevolence or the possibility of social harmony. Just as Hobbes argues that the results of unrestrained individualism justify, and indeed require strong government, so the far more popular hypotheses of a natural harmony between the interests of individuals became the basis of the liberal case against government interference with the spontaneously beneficial working of society and the economy. Liberal hostility to the state, and the liberal case in favour of limited government, were not based exclusively on abstract constitutionalism or the theory of natural rights, contrary to what the liberals themselves sometimes like to suggest. It was also supported by this popular and optimistic account of the relation of the individual to the society. But the currently relevant point is that the difference

between, let us say, Hobbes and Adam Smith is not over the essential characterisation of human nature. They are agreed in thinking of man as naturally nonsocial and egoistic; they disagree over the social consequences of this characterisation.⁷

Liberty

Liberty is the most cherished of libertarian values. The self-ownership theory, which gives to each individual the moral right over his person and powers is held by libertarians in great esteem. Whatever be the ideological differences between the consequentialist and ethical brands of libertarianism, they agree on 'liberty' as of the utmost importance. While in the consequentialist version, liberty has an instrumental value, the ethical libertarians hold liberty to be an end in itself. The emphasis on liberty is not a recent phenomenon, but has a long tradition in the history of liberal theory.

As already pointed out, there has never been much disagreement as to what the principal 'official' values of liberalism are. Pre-eminent among them is freedom or liberty. And with freedom are connected certain other

values, such as tolerance and privacy, which are in essence deductions from, or extensions of, the idea of freedom; while the liberal commitments to constitutionalism and the rule of law are seen as the practical and institutional principles by which the freedom of the individual or citizen is protected and guaranteed.

Liberalism distinguishes itself from other political doctrines by the supreme importance it attaches to freedom or liberty, so much so, that it is even possible for liberalism to be 'narrowly defined' by sympathetic commentators in terms of this one principle alone. The idea of freedom does not feature very prominently in European political thinking of either the classical or the medieval eras. Even in the modern period it has had to compete with other principles to which many have attached greater importance: happiness, equality, social justice, democracy, or the maintenance of continuity or social order and stability. But within liberalism none of these principles rivals the commitment to freedom. 'Liberty is not a means to a higher political end. It is itself the highest political end'.⁸ This opinion of

Lord Acton was echoed more recently by Stuart Hampshire: " I believe that the extension and safeguarding of every individuals' equal freedom to choose his own manner of life for himself is the end of political action".⁹ Not one end among others, be it noted, but 'the' end.

The liberal definition of liberty is normally couched in terms of 'freedom from' rather than 'freedom to'. It usually defines freedom negatively, as a condition in which one is not compelled, restricted, interfered with or pressurised. Hobbes offers a definition of this kind : "By Liberty is understood, according to the proper signification of the word, the absence of externall Impediments, which Impediments, may opt take away part of a man's power to do what he would".¹⁰ According to Isaiah Berlin,

"I am normally said to be free to the degree to which no man or body of men interferes with my activity. Political liberty in this sense is simply the area within which a man can act unobstructed by others. If I am prevented by others from doing what I could otherwise do, I am to that degree unfree... coercion implies the deliberate interference of other human beings within the area in which I could otherwise act".¹¹

This is freedom defined as an 'area of non-interference'. According to this view, as Berlin says, 'the wider the area of non-interference the wider my freedom'¹². And the threats, or 'impediments', to freedom must be both external and manmade. Berlin goes even further by stipulating that coercion must involve deliberate human interference.

Thus, this conception of freedom which is broadly incorporated in the libertarian philosophy, is essentially negative, in that it is usually couched in terms of the absence of external hindrances or obstacles. But freedom from what? What does liberalism point to as the sources of those restraints and obstacles which menace or restrict freedom? According to Cranston, "The answer of the English liberal is unequivocal, By "freedom" he means freedom from the constraints of the state".¹³

As noted earlier, individualism and the individualistic analysis of society generate a suspicion of the state and of the claims made in its name. The liberal way of thinking about freedom enhances this suspicion. Liberal thought is characteristically political, rather than social and

economic. When it thinks of power or authority it thinks of political power or authority. It thinks of laws and the state apparatus, rather than of the economic power of employers, monopolies and cartels, or of the social power of the owners of land, or of the means of communication. Even Mill 'the man who ... founded modern liberalism'.¹⁴ who in On Liberty is as concerned with the restrictive pressure of society as with the power of the state, did not really succeed in deflecting liberalism from its obsession with the state as the primary enemy of the freedom of the individual. Liberals continue to cite their hostility to the increase of state power as a critical difference between them and the socialists. So freedom for liberals continues to mean, above all, freedom from control, compulsion, restriction and interference by the state. As to the question of whose freedom, the short answer is that it is the freedom of the individual with which liberals are principally concerned. By the freedom of the individual is normally meant personal freedom. And, as with the concept of the individual itself, the emphasis is on the single human person on his own. Different freedoms and rights do not necessarily harmonise with each other. When they

clash, the instinct of the liberal is to be on the side of the single individual rather than the collective organisation or institution.

Rights

To the libertarians there are certain basic, stringent and inviolable rights of mutually exclusive individuals -rights which cannot be curtailed or taken away on any pretext. The foundations of such rights are traced either to the Kantian moral imperative as done by Nozick, or to the rationality and productivity of human beings, as is the case with Rand.

Natural Rights theory, which was given a classic formulation by John Locke, is an obvious source of inspiration for the libertarian concept of rights. Natural rights have generally been seen in relation to the concept of natural law. The proponents of natural law hold that there is a moral order over and above the positive law, which actually provides a backdrop against which the latter can be tested. Basing their arguments on this assumption, the proponents of this view assert that individuals have rights against political authorities which are sanctioned by natural

law.¹⁵ In John Locke's formulation, men in the State of Nature are equal and free to act 'as they think fit, within the bounds of the Law of Nature. But it is not a state of licence, for though in it man is free from any superior power on earth, nevertheless in it he has the Law of Nature for his rule. From this Natural Law he derives certain natural rights : rights to life, liberty and property. His right to liberty is his right to do whatever he wants so long as that is not incompatible with the Law of Nature. His right to property is his right to anything with which he has mixed his labour, provided he makes good use of it since 'nothing was made by God for man to spoil or destroy'.¹⁶ Further, the state created out of the contract is limited, not absolute. It is limited because it derives power from the people and because it holds power in trust for the people. It is limited moreover, by the Natural Law in general, and the right to property in particular. Thus, we see that the individualist liberal theory of Locke is built largely on the assertion of the natural rights (of life, liberty and property) of the individual.

Property

The right to property is the nucleus of the libertarian notion of rights. Robert Nozick provides us with a theory of property founded on the conception of natural rights. Nozick does not take the utilitarian standpoint in his defence of private property, nor does he overemphasise the desirable consequences of private property. Rather, he defends the right to property strictly on moral grounds. Ayn Rand similarly does not justify capitalism because self-interest happens to produce a benign social order, but because it is the only system which advocates individual values.

It is customary for the students of theories of property to spend much time in the company of Locke. His Two Treatises On Civil Government provide, so he told his nephew, the best account of property that he know of. They defend the proposition that the sole purpose for which the government exists is to defend the property of its subjects; and their account of how men acquire that property has been enormously influential.¹⁷

In the Second Treatise Locke argues that the reason that men set up government is 'the preservation

of their property'. Exactly what Locke means by property is a complex matter. In so far as he means land and goods, he devotes an important chapter to discussing what gives an individual the right to claim a piece of land. This is a problem, for Locke begins by accepting the traditional biblical view that God gave the world 'to Mankind in common'. He then argues that the right to self-preservation, and the implied need to consume or use the fruits of the earth, lead inevitably to individual ownership. He even argues that cultivation and use necessarily depend upon individual possession as if common ownership was synonymous with neglect - 'God gave the World to Men in Common; but... it cannot be supposed he meant it should always remain common and uncultivated. He gave it to the use of the Industrious and Rational, (and Labour was to be his Title to it)"¹⁸. Self preservation, the need to consume, and finally labour, are what create the right to property. A man who works his patch of earth is thereby entitled to its product. A man owns his labour, because 'every Man has a Property in his own Person', and so, 'The Labour of his Body, and the Work of his Hands we may say, are properly his'¹⁹.

The right to property derived from labour implies, however, a corresponding limitation: a man may not own more than he can cultivate. This limitation is reinforced by a second and similar one: we may not own anything that we allow to waste. Finally, the equal right of all to self-preservation implies that there must be enough and as good left in common for others.²⁰ Such a justificatory theory of ownership is strongly egalitarian in principle, and the assertion that labour in itself confers a right to ownership is particularly radical in its implications.

But Locke immediately shies away from these radical implications of what he has written. The limitation on property ownership which he has set out, he negates, principally by the device of money: 'the Invention of Money.... introduced (by consent) larger Possessions, and a Right to them'.²¹ For money enables an owner to sell off such products as he cannot himself consume; in this way he evades (or fulfils) the limitations imposed by the criteria of use and non-spoilage. Money does not spoil, and is always useful. As for the labour limitation, it vanishes almost as soon as it is introduced. Discussing the rights conferred by labour, he says: 'Thus the Grass my horse

has bit; the Turf my Servant has cut; and the Ore I have digg'd in any place where I have right to them in common with others, become my property, without the assignation or consent of anybody'.²²

The third requirement, that there should be 'enough, and as good' left for others, imposes no restraint on accumulation, since the increased productivity of privately - owned or 'inclosed' land is of greater benefit to mankind than if it were left 'lyeing wast in common'.²³ Locke assumed a natural identity between individual profit and the general welfare. It turns out, too, that unequal property ownership, like government itself, developed by consent. For since money only has value by consent, 'it is plain, that Men have agreed to disproportionate and unequal possession of the Earth'.²⁴ In this way, in the course of a few paragraphs, Locke moves from equalitarian premises to anti-equalitarian conclusions.

Moreover, there seems to be an echo of Locke's labour theory of the origins of property in Adam Smith's famous announcement that : 'The property which every man has in his labour, as it is the original foundation of all the other property, so it is the most

sacred and inviolable',²⁵. Does not Smith argue, as Locke is said to have done, that 'Civil government, so far as it is instituted for the security of property, is in reality instituted for the defence of the right instituted for the defence of the rich against the poor, or for those who have some property against those who have none at all?'²⁶ For good measure it might be added that Marx himself regarded Locke's philosophy 'as the basis for all the ideas of the whole of subsequent English political economy',²⁷ Macpherson has maintained that the story of liberal political theory from Locke to Bentham and James Mill is one of 'increasing economic penetration,' where Hume and Smith are seen as crucial thinkers in the movement towards establishing not merely 'the centrality of economic relations, but the essentially exploitative class basis of market relations, and hence the need for a system of government that would preserve inequality of property by protecting the rich from the poor'.²⁸

The State

The state as conceived in libertarian political philosophy is the minimal nightwatchman state of

classical liberal political theory. Thus, the only virtue of social institutions is that they protect the basic rights of individuals and their only vice is their failure to do this. Robert Nozick writes,

"Our main conclusions about the state are that a minimal state, limited to the narrow functions of protection against force, theft, fraud, enforcement of contracts, and so on, is justified; that any more extensive state will violate person's right not to be forced to do certain things, and is unjustified and that the minimal state is inspiring as well as right. Two noteworthy implications are that the state may not use the coercive apparatus for the purpose of getting some citizens to aid others, or in order to prohibit activities to people for their 'own' good or protection"²⁹.

Adam Smith in the Wealth of Nations accepts that human beings are in fact motivated by the desire for self preservation, and beyond that by a more thoroughgoing self interest. In this respect he follows in the steps of Hobbes. But whereas for Hobbes it is this self-centredness which makes government and authority so necessary, Smith sees in this drive the root and source of the progress of human society, and in particular of economic growth :

"Every individual is continually exerting himself to find out the most

advantageous employment for whatever capital he can command. It is his own advantage, indeed, and not that of the society, which he has in view. But the study of his own advantage naturally, or rather necessarily leads him to prefer that employment which is most advantageous to the society".³⁰

The market which allows, indeed encourages, each individual to be as selfish and greedy as he/she pleases, by a remarkable paradox also ensures the welfare of all and a steady increase in general prosperity. The regulatory character of the market leads Smith to argue against governmental interference and regulation of such elements as the supply of labour and the level of wages. Such interference may be well intentioned but it will almost certainly harm the consumer, and hence the producer too : it is therefore selfdefeating.

In Locke's theory, the role of state is to enforce the duty of not harming another in his life, liberty or goods, or to put it the other way round, to secure our natural rights. Since these natural rights and natural duties bind all our subsequent conduct, it follows that we can only set up governments to secure our rights if they do so in ways which does not violate them. That is, the only sort of government which rational men

could ever intend to set up is limited constitutional government on the consent of rational men; arbitrary government can have no claim on them at all.

This idea finds echo in Ayn Rand, a strong advocate of the minimal state. Following the classical tradition she writes : "Those who advocate laissez-faire capitalism are the only advocates of man's rights".³¹ Not surprisingly, libertarians feel attracted to Locke rather than Marx, and believe that the Lockean state of nature with its timeless natural laws based upon the inalienable rights of the abstract individual, still has relevance for the modern world. While they are suspicious of the coercive powers of the state, they are not impressed by the argument that the state may also play a welfare role, since it is precisely in the expansion of a public sector that libertarians find the greatest threat to individual freedom. Here, they argue, property rights are continuously eroded in the name of public interest, and the incentive to hard work is undermined by high taxation. Expanding the service sector of the state is merely an underhand way of radically enhancing its monopoly of legitimate force.³² Thus, a state with

negative law and order functions is the only state which is not violative of individuals' rights.

In conclusion one may say that in all its major concerns libertarianism borrows heavily from classical liberalism. The two thinkers who are of overwhelming importance to the libertarians are, not surprisingly, John Locke and Adam Smith. In its emphasis on the notion of natural rights, especially inviolable property rights, the laissez faire state; and liberty, the libertarian viewpoint is largely reminiscent of classical liberalism. The difference may be said to lie in the degree of emphasis on various aspects, as also in the social context in which the theories emerged. To take up the second aspect first, the social context of classical liberalism and libertarianism are vastly different. John Locke and Adam Smith wrote in the age of the emergence and rise of bourgeoisie. They were the theorists of the rising class with all its optimism and enthusiasm about progress and development. On the other hand, contemporary libertarians are writing in an age when fully developed liberal democracy is going through a period of crisis. With all its promise of being the upholder of individual rights above everything else, contemporary liberal democracy is plagued with a series

of social and economic problems. The libertarians attribute these to the practice of welfarism and redistribution undertaken in western countries in the post second world war period. This is why their emphasis on the inviolability of rights, the minimal functions of the state, the isolation of individuals and the predominance of liberty tend to veer to an extreme.

NOTES

1. Dwight Macdonald, "On the Rightness of Mr. Berlin" in Encounter, April 1959, p.82.
2. F.A. Hayek, The Counter Revolution of Science, p.3738.
3. Robert Nozick, Anarchy, State Utopia, p. ix.
4. Ayn Rand, Capitalism : The Unknown Ideal, p. 328.
5. Bernard Williams, "The Minimal State", in J. Paul (ed) Reading Nozick p.29.
6. The virtue of selfinterest and selfishness is a recurring idea in Ayn Rand's writings. To her, all the evils of the present political systems are because of the dominance of the altruist collectivist ethic, See, Ayn Rand, The Virtue of Selfishness.
7. Anthony Arblaster The Rise & Decline of Western Liberalism p.42.
8. Lord Acton, quoted in Bullock and Shock (eds) The Liberal Tradition, p.121.
9. Stuart Hampshire "In Defence of Radicalism" in Encounter, Aug. 1955, p.37.
10. Thomas Hobbes, Leviathan, chs, 14 and 22.
11. Berlin, Four Essays on Liberty, p. 122123.
12. Ibid.
13. Maurice Cranston, Freedom : A New Analysis, p. 26-27.
14. Berlin op. cit. p. 172.
15. Norman Barry, An Introduction to Modern Political Analysis, p. 182.
16. John Locke, Two Treatises, p.332.

17. Alan Ryan, Property and Political Theory, p. 14.
18. Locke, op.cit, p. 333.
19. Ibid, p. 328329.
20. Ibid
21. Ibid p. 335.
22. Ibid p. 330.
23. Ibid p. 336.
24. Ibid p. 344.
25. Adam Smith, Wealth of Nations, quoted in Donald Winch, Adam Smith's Politics, p.18.
26. Ibid.
27. Karl Marx, Theories of Surplus Value, Part I, P.367, Also see G.A. J. Rogers "Locke, Law and the Laws of Nature" in Reinhard Brandt (ed) John Locke.
28. See C.B. Macpherson (ed) Political Economy and Political Theory.
29. Nozick, op.cit., p.ix.
30. Adam Smith, Welath of Nations, p. 398.
31. Ayn Rand, op.cit. p.328.
32. John Hoffman, State, Power and Democracy, p.57.

CHAPTER 2

EGOISM AND INDIVIDUAL RIGHTS

The idea that political morality and social choice are to be based wholly or partly on some account of the rights of individuals is a familiar theme in Western political theory. We find it explicitly in the liberal theory of John Locke, implicitly in the moral and political philosophy of Immanuel Kant, and at least problematically in the works of Jean Jacques Rousseau. At the level of practice, we see the idea not only in the rhetoric but in the constitutional innovations of the American and French Revolutions. While it is true that some systems of political philosophy make no use of human rights, and indeed may openly reject them, they feature prominently in all discussions concerning the individual and the state. In contemporary Western political theory the dispute is more likely to be about the purported content of various statements about rights than about the intelligibility of the concept of rights itself. This is aptly illustrated by the difference between two kinds of liberalism: an extreme individualistic liberal (or libertarian) believes that individuals have rights, whether recognised or not by the legal system, which political authorities ought not to transgress, and uses a natural rights argument to limit severely the role of the state. By contrast, the

liberal who recommends a more active role for government in society and the economy frequently justifies this by reference to a revised and more expansive conception of human rights.

The attempt in the present chapter would be to elaborate the libertarian conception of rights, the very base on which the entire edifice of libertarianism is constructed.

While discussing the libertarian conception of rights, it will be prudent on our part to examine some major viewpoints on rights. Three major streams can be identified, the abiding importance of which is that they set the agenda for much of the contemporary debate on rights :

1. The Natural Rights theory, which was given a classic formulation by John Locke.
2. The Utilitarian theory, which took up issues with the natural rights school, and in the process evolved its own distinctive theory of rights.
3. The Marxist theory of Rights.

In the history of political theory, natural rights have often been linked to the concept of natural law. Natural lawyers maintain that there is a moral order against which positive laws can be tested for their validity, and it is a short step from this to assert that individuals have rights against political authority which are sanctioned by natural law.¹ John Locke, perhaps the earliest modern exponent of rights, connected these to natural law, and the famous Eighteenth century political statements of the rights of man were rooted firmly in this tradition.² In Locke's account of the rationale and purpose of government, it is the idea of the law of nature which is fundamental. The doctrine of natural rights is derived from this idea and has little significance apart from it. Locke speaks of man being born 'with a title to perfect freedom and an uncontrolled enjoyment of all the rights and privileges of the law of nature'.³ The central thought is that under the law of nature every man is entitled to do anything not specifically forbidden by that law and to refrain from doing anything not specifically enjoined by it. The natural right to property is an extension of this natural right to freedom in the light of the special

provision of the law of nature, that the earth and its resources are equally available to all men⁴.

The doctrine of natural rights has never been without its critics and it has been rejected both on philosophical and political grounds. It has been suggested that statements about rights are incurably metaphysical. According to Margaret Macdonald :

"Propositions about natural law and natural rights are not generalisations from observed facts subsequently confirmed by experience... but are assertions about what ought to be as the result of human choice .. as being ethical assertions or expressions of value and these assertions or expressions include all those which result from human choice and preference in art and personal relations, as well as in morals and politics"⁵.

Politically, natural rights have been interpreted both as radical ideas potentially subversive of the social order and as reactionary obstacles that prevent the radical transformation of society based on 'scientific' principles. The basic point that underlies all collectivist criticism of human rights is that they are excessively individualistic and ahistorical. There are other important refutations of the doctrine but those provided by utilitarianism and the varieties of

marxism and socialism are perhaps of greatest interest to contemporary political theorists.)

In the course of an exposition and exposure of what he calls 'anarchical fallacies', Bentham says that "Natural rights are simple nonsense; natural imprescriptible rights of man are rhetorical nonsense; nonsense upon stilts."⁶ He had already rejected the law of nature as the standard of morality in his Introduction to the Principles of Morals and Legislation first published in 1789. He writes :

"A great multitude of people are continually talking about the law of nature, and then they go on giving you their sentiment about what is right and what is wrong and these sentiments, you are to understand are so many chapters and sections of the law of nature".

Bentham's political objection to natural rights was that they were in fact reactionary, and their alleged existence retarded the application of science to social reform. Armed with the felicific calculus the sovereign could derive a collective welfare judgment from the observable preferences of individuals, and policies could therefore be evaluated according to their conformity to social utility rather than abstract

principles of rights and justice, the validity of which depended on intuition and subjective opinion.

But utilitarianism fails to provide an objective morality because the derivation of a collective welfare judgement from individual preferences requires that utility can be measured, and that the legislator can make interpersonal comparisons of utility. Since these things cannot be done, statements about utility are logically no different from statements about natural rights in that they rest upon sentiments about natural rights, intuition and subjective judgement.⁸ D.G. Ritchie tries to rectify the mistakes of classical Benthamite utilitarianism. For the traditional doctrine of natural rights, Ritchie would substitute the idea of morally justified social rights, where moral justification is on the basis of social utility and where social utility is conceived not in terms of classical but in terms of Evolutionist Utilitarianism. According to Ritchie, if we make this substitution we can preserve what is of value in the traditional doctrine while avoiding its pitfalls.⁹

It is misleading to suggest that Marxists are as systematically hostile to the idea of natural rights as

some utilitarians have been. In fact, contemporary Marxists are ambivalent about human rights. On the one hand, for example, they are eager to wage revolutionary struggle against colonialism on behalf of the rights of man, but on the other they are extremely critical of the individualism of the traditional theory of rights, especially its commitment to personal liberty.

Marx, in On the Jewish Question¹⁰ saw the rise of human rights in a historical context. The liberation of man from the oppressive and restrictive feudal economic and social structure was a stupendous achievement which realised the major aims of the natural rights thinkers. However he was insistent that the so-called rights of man 'are nothing but the rights of the members of civil society i.e. egoistic man, man separated from other men and the community'. True to historical materialism, Marx rejected the claim to universalism made by the liberal theorists of rights. The emancipation of man in his view required the transcendence of all oppressive social and economic institutions, not merely those of feudalism; the bourgeois period of history, for all its many virtues, established mainly legal and political protection for the individual's right to appropriate property. The

liberal right to freedom separated the private world from the public and undermined those social and cooperative aspects of humanity which are essential for the realisation of the true nature of man. For Marx, such bourgeois rights were anti-social, individualistic and divisive.

Thus, the critics of the natural rights theory are appalled by what they take to be a celebration of the claims that the individuals might make on his own behalf, asserting his own exclusive interests against those of the community that had nurtured him and against the wider human community of which he inevitably is a part and in which alone his true fulfilment is to be found. The same idea and the same controversies have dominated the political practice and the philosophy of the twentieth century too. But the modern discussion of rights has at least two distinctive features.

First, there has been an attempt by philosophers and jurists to be much more precise in their use of the concept of right. Their predecessors have known of course that right was related logically to duty and obligation and also to the concept of law-like rules

and principles. But (with rare exceptions) there was no systematic attempt to draw out the details of these relationships. The radical critics had no interest in the analysis of the idea either; they were more interested in exploring other political virtues which the rights theorists in their view had so rudely pushed aside.

The second distinctive feature of the modern debate has been a preoccupation with foundations. Rights have not been immune from emotivist or relativist doubts about moral truth and objectivity in general. Indeed, sometimes the doctrine of the natural rights of man has seemed peculiarly vulnerable to ethical scepticism. The idea of natural rights is seen as a particularly glaring example of the 'Naturalistic Fallacy', purporting to derive certain norms or evaluations from descriptive premisses about human nature.

But it would be wrong to suggest that the discussion of human rights has been seriously impeded by these difficulties. Many rights-theorists simply repudiate ethical scepticism and moral relativism. Others persevere in the (quite plausible) belief that

theories in meta-ethics do not by themselves entail any view about what can or should be said at the level of first order moral judgements. Even if it is true, for example, that moral judgements are nothing but an expression of attitudes, it does not follow that it is mistaken or fallacious to express the attitudes we have, nor does it follow that it is wrong to give vent to an attitude which is categorical and implicitly universal in the scope of its application. To say that a statement like, 'all men have the right to equal liberty' is just an expression of emotion is not to make any recommendation about the desirability or otherwise of this sort of expression. According to Waldron,

".... Awareness of these epistemological difficulties has made a difference to the way people have written and thought about rights. If meta ethical realism is untenable, then rationally resolvable disputes in ethics become possible only between those who share certain fundamental values or principles in common".¹²

So it becomes important in the area of rights as elsewhere for philosophers to identify clearly the deep assumptions on which their theories depend.

II

RAND'S THEORY OF RIGHTS

1/40 recap, 78
(Rights are a major feature of Randian ethics : rights of an absolutist and infeasible kind. In this, Rand's position is no different from the standard non-utilitarian defence of capitalism which sees state intervention as necessarily involving the violation of the rights to property and exchange. The theoretical question is how such rights can be justified. The conventional libertarian tradition is Lockean. Often, however, individual rights are merely asserted, and the implications that follow from the existence of rights are ignored.

Thus rights are, for Rand, 'conditions of existence required by man's nature for his proper survival'.¹³ The existence of rights makes it possible for there to be obligations to refrain from certain courses of action. Such rights are entirely negative, they impose no positive duties on any one to perform any action. One cannot be obligated to help others except to the extent that their well being is incorporated into one's own value structure. Thus to help a friend would not be an act of altruism or self-

sacrifice, but would be to advance one's own happiness.¹⁴ For Ayn Rand,

'Rights are a moral concept - the concept that provides a logical transition from the principles guiding an individual's action to the principles guiding one's relationship with others - the concept that preserves and protects individual morality in a social context - the link between the moral code of a man and the legal code of a society, between ethics and politics. Individual rights are the means of subordinating society to the moral law'.¹⁵ (emphasis added)

The implication of such a negative view of rights is that there can be no such thing as 'welfare rights', where the claimant of a welfare right is said to be entitled to a benefit from another, via coercive government. A common objection to welfare rights is that they cannot be universalised. Negative rights are universalisable because they enjoin only abstention from certain actions.¹⁶

The theoretical question is, however, the ultimate grounding of such rights and it is here that the teleological features come to the fore. In Rand's philosophy, rights flow directly from her epistemology:

"The source of man's rights is not divine law or congressional law, but the law of identity. A is A- and Man is Man"²⁷.

Thus, in Rand's philosophy the justification for rights is completely dependent on a normative definition of man. But does it follow from this that individuals who do not exhibit the qualities of rationality and productivity do not thereby have rights? Does it mean that children and the insane do not have rights to forbearance from others? This clearly cannot be so for within Rand's philosophy, the only justification for the use of force is in retaliation for some act of rights - violation, i.e. individuals have a right to be left alone.¹⁸

Thus, Rand is located within the classical liberal tradition when she points out the circumstances in which force may be legitimately used, but appears to be in a different one when she tries to ground rights in a metaphysical concept of the person.

The paradox can easily be illustrated with an example from her own writings. In her essay "Appollo and Dionysus"¹⁹ she contrasts the attitudes and behaviour associated with America's moon-landing (in

1969), with those of the 'hippies' and 'flower people' attending the rock festival at Woodstock. America's space exploration is praised because it represents an amazing achievement of the human mind, while the Woodstock people are condemned for their ignorance and parasitism. Now, it is undoubtedly true that the latter depend on others the Woodstock affair did involve medical and other services which were not paid for by the recipients, and rock fans often violate the rights of others. But they do not necessarily do so; and attending a rock festival is surely not a morally condemnable act. Furthermore, and this is more germane to the argument, however virtuous the American space exploration was, it depended on something morally condemnable by Rand's ethics, i.e. taxation that goes beyond the requirements of national defence.

Capitalism is then justified not because self-interest happens to produce a benign social order, but because it is the only system that advocates individual values. The egoist, because he recognises the rights of others, eschews force in his dealings in favour of exchange. Government is permitted under egoism, but it is of a contractual kind (although it bears no relation to traditional social contract models of the state),

the kind that rational egoists would agree to in order to facilitate their transactions. In Rand's philosophy, although there is a government with a monopoly of coercion, this is a kind of voluntary association financed by fees paid by clients; for example, all contracts would include a charge to cover the cost of a generalised system of law.²⁰

It follows from this that claims to property rights cannot be violated by any social decision procedure which attenuates an individual's right to the produce of, in effect, his own mind or labour. As with other libertarian theorists, justice in property holdings is a function of a moral theory of how property is acquired; it is not a function of any social arrangement. In Rand's case, property rights are derived from the right to life; property is held to be a functional necessity for man's survival. Since a man creates property by his own labour, to alter that right by reference to some social end is to force the individual to sacrifice his values for others.²¹

This sentiment is proformally echoed in Rand's novelette titled Anthem. Its theme is the meaning of man's ego. It projects a society of the future, which

has accepted total collectivism with all its consequences : men have relapsed into primitive savagery and stagnation. The word "I" has vanished from the human language, there are no singular pronouns, a man refers to himself as "we" and to another man as "they". The story presents the gradual rediscovery of the word "I" by a man of intranigent mind. The following excerpt is from his statement about his discovery :

"What is my joy if all hands, even the unclean, can reach into it? what is my wisdom, if even the fools can dictate to me? What is my freedom, if all the creatures, even the botched and the impotent, are my masters? What is my life, if I am but to bow, to agree and to obey?

"But I am done with this creed of corruption.

"I am done with the monster of "We", the word of serfdom, of plunder, of misery, falsehood and shame.

"And now I see the face of god, and I see this god over the earth, this god who will grant them joy and peace and pride.

"This god, this one word : I".²²

The typical Randian argument is that conflicts of interest cannot normally arise in rational societies : that egoistic action subject to the constraints of

rights (themselves validated by egoism) can never be destructive of morality. Of course, there is, in a strict sense, a conflict of interests in competition since the point of participating is to secure a gain. But what Rand is claiming is that the loser has no entitlement to the charity of another and that this would be recognised by rational agents. However, this is only plausible in an idealised market society free of statist imperfections. In existing societies there is a myriad of conflicting obligations and interests to which Randian ethics provide no resolution.

Again, even in a purely individualistic society can it really be true that no person has a moral duty to relieve the sufferings of others? Could capitalism survive on such impoverished ethical foundations ?

According to Rand, the mark of a free, civilised and rational society is property : the existence of a right to acquire property by original productive work and through voluntary exchange with others. For Rand, the right to property is not the right to an object, but to the action and consequences of producing and owning that object.²³ Thus a person who does not own anything still has property rights; in the sense of it

being impermissible to interfere with his actions in the process of acquiring property. This is basically a Lockean view that traces all legitimate ownership to individual acts of appropriation and exchange.²⁴

What is not discussed by Rand, however, is the question of the justification of the ownership of those natural objects, such as land and natural resources, to which labour is applied. Yet ironically for her, the morality of property relationships seems to operate only after property has been acquired. This still leaves open the question of whether it is legitimate to appropriate something in nature which others require for their survival, a question discussed at great length by Robert Nozick.

III

NOZICK'S THEORY OF RIGHTS :

Robert Nozick's widely noted book Anarchy, State and Utopia purports to provide us with a theory of property founded on the venerated conception of natural right. Nozick does not argue that a system of private property is desirable in view of its effects - for

example, that it increases the social product by putting the means of production in the hands of those who can use them most efficiently or profitably, or that it encourages experimentation or protects future persons by leading some to hold back current consumption. Instead, Nozick defends the right to property strictly on moral grounds.

It is my contention that, even if we go along with Nozick in rejecting consequentialism and endorsing a moral theory grounded in the absolute and inviolable rights of individuals, we need not accept the unlimited scope that Nozick bestows over the right to property. Instead, giving precedence to property rights over other rights makes a mockery of the natural rights tradition in which Nozick situates himself.

Before asking how the state should be organised, political philosophers should, according to Nozick, examine whether the state is necessary and whether any state can exist without the violation of individual rights. Nozick sets out to provide a moral justification of the "minimal state" against the objections of the "individualist anarchist".²⁵ The minimal state is basically the nightwatchman state of

classical liberalism whose function is to enforce contracts, protect its citizens against violence, theft, fraud etc. It is characterised (as in any state) by its monopoly over force within its territory and by its protection of all its citizens, even those who cannot pay for its services.²⁶ The "individualist anarchist" objects that the very existence of the state violates the rights of individuals since it (1) monopolizes the use of force and punishes those who would use force to enforce their rights, and (2) forces some to purchase protection for others by means of coercive taxation.²⁷

Nozick begins his political philosophising from an anarchic situation that can reasonably be expected - the Lockean state of nature. Although this is a non-political starting point, it is far from being a non-moral one. For Nozick, a moral starting point is necessary to justify the political.²⁸ What then are the pre-political moral constraints that the state must satisfy ? Nozick does not pretend to give a satisfactory account of the fundamental moral data; instead, he seeks comfort in the "respectable tradition of Locke".²⁹

~~copy~~ Nozick believes that his moral assumptions are borrowed from Locke and Kant. Following Locke, he maintains that there is a line that circumscribes an area in moral space around an individual. This line is determined by an individual's natural rights and sets limits on the actions of others.³⁰ Others are forbidden to perform actions that transgress the boundary or encroach upon the circumscribed area, except by the consent of the one whose boundary is to be crossed. Nozick is aware that Locke would not fully accept this interpretation of his moral theory. He knows that for Locke there are things people cannot do to you even by your own permission namely, those things you have no right to do to yourself. For example, giving your permission cannot make it morally permissible to kill you, since you have no right to kill yourself.³¹ Nozick chooses to ignore this aspect of Locke's philosophy as an old vantage of "paternalism". After all, why should God tell you what to do with your rights? According to Nozick, one may 'choose (or permit another) to do himself anything'. These Lockean ideas are, according to Nozick, compatible with the Kantian principle that "individuals are ends and not merely means, they are not to be

sacrificed or used for the achieving of others' ends without their consent. Individuals are inviolable"³² These are the principles on which Nozick proposes to erect his philosophy.

Lockean rights, coupled with the Kantian moral imperative, lead Nozick to conclude that morality consists in refraining from "boundary crossings" (his metaphor for the violation of rights) and from treating individuals as means for the benefit of others without their consent. The inviolability of the individual means that he can never be sacrificed for the greater good of society, no matter how great the benefits to the latter or how small the disadvantages to the individual.

The question arises : "Can the rights of an individual be overridden to avoid a greater evil to others?" For Nozick, the answer is clearly No. But he is aware that this answer becomes barbarous in cases where the inconvenience to the individual is minute and the benefits to others enormous. In a footnote, Nozick writes :

"The question of whether these side constraints are absolute, or whether they may be violated to avoid

catastrophic moral horror, and if the latter, what the resulting structure might look like, is one I hope largely to avoid."³³

Leaving aside the problem of catastrophic moral horror, a theory that considers inviolable rights as fundamental moral phenomena must provide directives for resolving the inevitable clash of different but equally "inviolable" rights. For example, someone's right to life may conflict with another's right to property, in the case of a famine. Or, one may hold that the right to life makes it incumbent on the community to provide for the helpless, the crippled and old through some sort of redistributive mechanism. In such clashes of rights, Nozick clearly gives the right to property precedence over general rights. ~~Indeed, Nozick objects to Ayn Rand's contention that the right to life provides a foundation for the right to property and maintains that "one first needs a theory of property rights before one can apply any supposed right to life".³⁴~~ What then is Nozick's theory of property rights? And why is a theory of property rights fundamental for a rights based moral theory?

Nozick refers to his theory of property rights as the entitlement theory of justice in holdings. This

theory has three aspects : (1) the "principle of justice in acquisition or "the appropriation of unheld things", (2) the "principle of justice in transfer" that determines "the transfer of holdings from one person to another" (i.e. exchange, gifts, inheritance), and (3) the principle of "rectification of injustice in holdings", intended to rectify the violation of the first two principles.³⁵ According to entitlement theory, a distribution is just if it is the result of the just application of the first two principles. Needless to say, a thief is not entitled to his holdings. Nozick contends that his theory differs from other theories of distributive justice because it is historical³⁶. According to Nozick theories of distributive justice tend to rely on "end-result" or "end-state" principles. Such theories are completely ahistorical - they judge any given distribution by its profile, and not by how that distribution came about.³⁷ Welfare economics is, on Nozick's view, a "current time-slice" theory concerned with the "resulting pattern" of distribution, rather than with the underlying principle responsible for the distribution that emerges. For Nozick a utilitarian theory of distributive justice would necessarily be an end-state

theory, since it would favour a distribution that maximizes utility, regardless of how it came about. Nozick dismisses such theories as unjust for the following reasons :

"If some persons are in prison for murder or war crimes, we do not say that to assess the justice of the distribution in society we must look only at what this person has, and that person has... We think it relevant to ask whether someone did something so that he deserved to be punished, deserved to have a lower share".³⁸

Nozick is anxious to distinguish his entitlement theory not only from "current time-slice" and end-state" theories, but also from other historical theories which are "patterned". A patterned theory of distributive justice "specifies that a distribution is to vary along some natural dimension, weighted sum of natural dimensions, or lexicographic ordering of natural dimensions"³⁹. Examples of "natural dimensions" include moral merit, usefulness to society, need, effort etc. Almost every suggested principle of distributive justice according to Nozick is patterned. Most principles of distributive justice try to fill in the blank in the statement, "to each according to his ".

In contrast to patterned theories, the entitlement view does not treat production and distribution as separate or independent matters.⁴⁰ On Nozick's view whoever makes something is entitled to it. Unlike the patterned principles of distribution, the entitlement theory of justice in holdings requires no redistribution. This is the mark of its superiority for Nozick, while redistribution per se violates the rights of individuals. Taxation is a form of redistribution - it involves taking from some what they are entitled to and giving it to others in order to realise some desired pattern of distribution. Nozick denounces it as being on par with forced labour.⁴¹

Consider, however, a theory which says that distribution is just if it results from a process governed by rules that reflect (a) the suitability of certain patterns (b) the desirability of increasing certain good results and decreasing certain evils independently of any pattern, and (c) a respect for the individual rights of differing importance. Such a theory will be at bottom neither purely historical nor purely patterned. It will be formally historical, but the "historical" or process criterion will be partially determined by considerations of pattern and

considerations of total outcome. Therefore, Nozick's concentrated attack on patterned principles and non-historical principles provide no reason to think that his alternative is correct.⁴²

More specifically, his arguments against Rawls are seriously weakened by an attempt to portray Rawls's principle of distributive justice as a non-historical end-result principle. Rawls does not maintain that the justice of a distribution can be determined independently of how it was produced. He believes that its justice depends on the justice of the institutions, including legal institutions defining entitlement, which are involved in its production. These are assessed only partly on the basis of their tendency to promote a certain distributive end-state. Rawls, for example, gives priority to the preservation of individual liberty, and while he does not mean by this what Nozick means, it certainly restricts the procedures by which a distribution can be justly arrived at.⁴³

Apart from this defect the attack is still unsuccessful. Nozick asks us to imagine some patterned principle realised, and then argues that its

preservation would require interference with individual liberty: people would have to be prevented from using the allocation under the pattern they wish. For example. preservation of a reasonably equal distribution would require that individuals not be permitted to pay Wilt Chamberlain 25 cents for each basketball game they see him play with the understanding that he can keep it all, even if it amounts of \$ 250,000 a year. This is perfectly obvious, and it is part of what would be meant by a patterned principle of distribution: the adoption of a general system that tends to preserve a certain pattern.⁴⁴

It only seems a problem to Nozick, and a further violation of liberty, because he erroneously interprets the notion of a patterned principle as specifying a distribution of absolute entitlements to the wealth or property distributed. But absolute entitlement to property is not what would be allocated to people under a partially egalitarian distribution. Possession would confer the kind of qualified entitlement that exists in a system under which taxes and other conditions are arranged to preserve certain features of distribution while permitting choice, use and exchange of property compatible with it. What someone holds under such a

system will not be his property in the unqualified sense of Nozick's system of entitlement.⁴⁵

Moreover, Nozick's side constraints view of rights, which literally invokes the metaphor of a line or "hyperplane" in moral space surrounding an individual, wholly ignores the social and economic relationships that place people in the "moral space" they occupy. The libertarian tradition denies the possibility of interpersonal comparisons of utility for fear of the distributive consequences that may result. The effect of this postulate on Nozick's formulation is to make the isolation of individuals from one another absolute. This is the logical outcome of taking too seriously a view of social life as constituted by a scatter of unrelated entities (or entities whose relatedness extends no further than acknowledging their mutual separatedness), each spending its own time running up and down its utility function, impervious to the activities of others in so far as those activities might enhance or impede its own advancement.⁴⁶

After considering the theories of Ayn Rand and Robert Nozick, we are now in a position to enumerate the major features of the libertarian concept of

rights. Broadly speaking, the libertarian notion of rights revolves around the following aspects :

- i) Firstly, and most importantly, there are certain basic, stringent and inviolable rights of mutually exclusive individuals, rights which cannot be curtailed or taken away on any pretext. The foundations of such rights are traced to the Kantian moral imperative as done by Nozick, or to the rationality and productivity of human beings, as is the case with Rand.
- ii) Any scheme of redistribution involves the violation of individual rights. Taxation is robbery and the notion of general welfare is morally indefensible.
- iii) The state envisaged in these theories is the minimal nightwatchman state of classical liberal theory. Thus, the only virtue of social institutions is that they protect the few basic rights of individuals, and their only vice is their failure to do this. It is as if the model for libertarian rights were a legal one. Just as there can be no legal objection to the exercise of

a legal right, so in a libertarian morality empty of everything except rights there can be no moral objection to the exercise of moral rights.

NOTES

1. Norman Barry, An Introduction to Modern Political Analysis, p.182.
2. See Arblaster, The Rise and decline of Western Liberalism; and Gray, Liberalism.
3. Locke, Second Treatise on Civil Government., p.12.
4. Milne, Freedom and Rights, p.46-47.
5. Macdonald, "Natural Rights" in Philosophy, Politics and Society, p.39-48.
6. Bentham, "Anarchical Fallacies" in Bowring (ed) Collected Works, vol. 2, p.501.
7. Bentham, "Introduction to Principles of Morals and Legislation", p.18.
8. Barry, op.cit. p.193.
9. Ritchie, Natural Rights, p.78-98.
10. Marx, "On the Jewish Question" in David McLellan (ed) Early Texts, p. 85-114.
11. Waldron "Introduction" in his (ed) Theories of Rights, p.3.
12. Ibid, p.3-4.
13. Rand, Atlas Shrugged, p.949.
14. Ibid, p.953.
15. Rand, Capitalism : The Unknown Ideal, p.320.
16. Rand, The Objectivist Epistemology, p.29.32.
17. Rand The Virtue of Selfishness, p.94.
18. Barry, On classical Liberalism And Libertarianism, p.125.

19. Rand, The New Left : The Anti Industrial Revolution; p.57-80.
20. Branden, Who is Ayn Rand ? p.57-58.
21. Barry, "The New Liberalism" in British Journal of Political Science, 1983, p.105-110.
22. Rand, Anthem, p.74-75.
23. Rand, The Virtue of Selfishness, p.94.
24. Rand, Capitalism : The Unknown Ideal, p.18.
25. B. Williams, "The Minimal State" in J. Paul (ed) Reading Nozick, p.27-36.
26. R.E. Barnett "Whither Anarchy? Has Robert Nozick Justified the State", in Journal of Libertarian Studies, 1977, p.15-24.
27. Nozick, Anarchy, State and Utopia, p.51.
28. Ibid. p.6.
29. Ibid. p.9.
30. Ibid. p.57.
31. Ibid. p.58.
32. Ibid. p.31.
33. Ibid. p.30, footnote.
34. Ibid. p.179.
35. Ibid. p. 158-62.
36. Ibid. p.152.
37. Ibid. p.154.
38. Ibid. p.155.
39. Ibid. p.156.
40. Ibid. p.160.

41. Kearl, "Do Entitlements Imply that Taxation is Theft" in Philosophy and Public Affairs, 1977. Ayn Rand also shares Nozick's strong view against taxation and redistribution. In her novel, Atlas Shrugged, Hank Rearden, the main character says : "I refuse to accept as guilt the fact that I am able to do it better than most people - the fact that my work of greater value than the work of my neighbours and that more men are willing to pay me. I refuse to apologise for my ability - I refuse to apologise for my success - I refuse to apologise for my money. If this is evil, make the most of it. If this is what the public finds harmful to its interests let the public destroy me. This is my code - and I will accept no other. I could say to you that I have done more good for my fellow men than you can ever hope to accomplish - but I will not say it, because I do not seek the good of others as a sanction for my right to exist, nor do I recognise the good of others as a justification for their seizure of my property or their destruction of my life. I will not say that the good of others was the purpose of my work - my own good was my purpose, and I despise the man who surrenders his" p.725.
42. T.Nagel, "Libertarianism Without Foundations" in J. Paul (ed) Reading Nozick, p.201.
43. See John Rawls, A Theory of Justice.
44. Nozick, op. cit. p.161-64.
45. Nagel op. cit.20.
46. Ian Shapiro, The Evolution of Rights in Liberal Theory, p.200.

CHAPTER 3

LAISSEZ - FAIRE REVISITED

The State appears to be everywhere, regulating the conditions of our lives from birth registration to death certification. Yet, the nature of the state is hard to grasp. This may seem peculiar for something so pervasive in public and private life, but it is precisely this pervasiveness which makes it difficult to understand. There is nothing more central to political and social theory than the nature of the state, and nothing more contested¹.

In the post - Second World War period a broad consensus had emerged on the notion of a 'welfare' state - a state not just limited to nightwatchman functions, but having a more pervasive say in the life of the citizens. It undertook various social welfare functions, promulgated progressive taxation, and was endowed with a variety of positive functions. But four decades later, in varying degrees and forms, the welfare state throughout the industrialised West is in disarray. To Ramesh Mishra, the outward signs of trouble are all too familiar. First, the end of economic growth - not only has the resource base for social expenditure ceased to grow but, more ominously, the welfare state is being seen as a barrier to economic recovery. Second, the end of full employment

and the beginning of large - scale unemployment in some countries. Third, the fiscal crisis of the state : partly as a result of the economic recession, governments in many countries face a yawning gap between the resources necessary to finance public expenditure and the revenue actually raised. While the recession has reduced government revenue it has added to public expenditure, e.g. through the higher costs of unemployment benefits. Fourth, a decline in the resources available to the social services followed, recently, by a deliberate policy of cutback in services in a number of countries. Fifth, a general loss of confidence in the social system of the welfare state. The state's ability to manage the mixed economy, of which the social welfare sector is an integral part, is in serious doubt². In many ways it is this loss of confidence that is at the heart of the crisis. The techniques of state intervention in the market economy developed in the post-War years - conveniently labelled as Keynesianism - seem to work no longer. Indeed Keynesian forms of intervention in the economy increasingly appear as a part of the problem rather than the solution. More generally, the effectiveness of state action and therefore also its scope is in

question. In short, both the practice and the rationale of the welfare state is in jeopardy.

As already pointed out, this is a new challenge to the post - war welfare state. For, despite differences among political parties and sharp polemics among social scientists and others on the question of social welfare, the success of the welfare state was widely recognised. Grudgingly or otherwise, it was acknowledged as a system that had successfully combined private enterprise and economic growth with social protection and political stability. Few people thought seriously in terms of an alternative path of development for the West. This is no longer the case.

Despite a broad consensus over the welfare state there was also, since its inception, a small but strident right which rejected the market-state mix represented by the post war settlement.³ Instead it proclaimed its faith in the classical doctrines of the market and individualism and deplored the compromise between capitalism and socialism represented by the new middle course. Economists such as Hayek and Friedman, for example, have espoused these views for many years. The basic arguments and value premises of the anti-

collectivists hardly need rehearsing⁴. The doctrine of economic and social laissez - faire has, after all, been the reigning orthodoxy in the Anglo-Saxon World for the best part of its modern history.

In the wake of the Great Depression and the miseries it inflicted on the populace, the successful management of the economy during the war years by the government, and the rise of Keynesian doctrines which legitimised state intervention and mixed economy, extreme anti-collectivism seemed increasingly like a voice from the past, irrelevant and anachronistic in the conditions of the post-war world. True, many of the values and beliefs held by the anti - collectivists resonated well with what was essentially a capitalist society. But in its pristine form it found few followers. Moreover, the social policy entailed by the anti-collectivist doctrine was not considered practical by even the most conservative of politicians. These conditions offered little scope for the doctrines of the Right to attain a sympathetic hearing let alone a widespread following.

The 1970s changed all that. In the face of persistent problems, Keynesianism has virtually

collapsed as a theory and as a guide to action, and the resulting vacuum has promptly been filled by the theories of the Rights (and, in a different sense, of the Left). After waiting for years in the wings they have suddenly moved into the limelight. At last, notes an exultant Friedman, 'The tide is turning away from Fabian Socialism and New Deal liberalism' towards greater freedom and limited government. The collectivist trend which :

"has now lasted three - quarter - of a century in Britain, half a century in the United States is cresting. Its intellectual basis has been eroded as experience has repeatedly contradicted expectations. Its supporters are on the defensive. They have no solutions to offer to present - day evils except more of the same. They can no longer arouse enthusiasm among the young who now find the ideas of Adam Smith or Karl Marx far more exciting than Fabian Socialism or New Deal liberalism."⁵

This is no mere rhetoric. Within the last decade or so a neo-conservative movement in social thought has emerged that goes well beyond the confines of economic laissez - faire, namely, faith in monetarism and the free play of market forces. Indeed it is no exaggeration to speak of a neo-conservative counter-revolution in social thought, even if it is largely centred in the United States.⁶

This Rightist revival is not simply an assertion of the old doctrines in circumstances more congenial to their reception. Naturally there is a great deal of continuity with the classical doctrine of individualism and laissez - faire which can be traced back to Adam Smith and in social philosophy to Herbert Spencer. But there is also a good deal that is new, and most notably the ethical foundations now provided for laissez-faire individualism. Laissez-faire is now not propagated on an exclusively economic basis ; but the ethical libertarians have put forward philosophical justifications for laissez-faire. It is to these justifications that we must now turn our attention.

II

RAND'S THEORY OF THE STATE :

The ethical thrust of Ayn Rand's libertarianism aims precisely at formulating a moral philosophy in which individuality is not made to serve an alleged social and economic end. This culminates in a sophisticated reformulation of the doctrine of egoism, and the emergence of the not dissimilar concept of 'self ownership' as the foundation stone of a genuine

individualistic ethic. It is through the doctrine of egoism, and the knowledge of rights and nature of man that Ayn Rand concludes that laissez - faire capitalism is the only system in tune with human nature. We find a classic example of the rejection of a purely economic approach to the justification of capitalism in Ayn Rand's Capitalism : The Unknown Ideal :

"The moral justification of capitalism does not lie in the altruist claim that it represents the best way to achieve 'the common good'. It is true that capitalism does - if that catchphrase has any meaning - but this is merely a secondary consequence. The moral justification of capitalism lies in the fact that it is the only system consonant with man's rational nature, that it protects man's survival qua man, and that its ruling principle is : justice"⁷.

Ayn Rand traces the requirement of state and government to man's basic nature. Since man's mind is his basic tool of survival, his means of gaining knowledge to guide his actions - the basic condition he requires is the freedom to think and to act according to his rational judgement. This does not mean that a man must live alone or that a desert island is the environment best suited for dealing with one another. 'A social environment is most conducive to their

successful survival'⁸. The two great values to be gained from social existence are : knowledge and trade. Man is the only species that can transmit and expand knowledge. The second great benefit is the division of labour : it enables a man to devote his effort to a particular field of work and to trade with others who specialise in other fields. "But these very benefits indicate , delimit and define what kind of men can be of value to one another and in what kind of society : only rational, productive, independent men in a rational, productive, free society".⁹

According to Ayn Rand, a society that robs an individual of the product of his effort, or enslaves him, or attempts to limit the freedom of his mind, or compels him to act against his own rational judgement - a society that sets up a conflict between its edicts and the requirements of man's nature - is not, strictly speaking, a society, but a mob held together by institutionalised gang - rule. If men are to live together in a peaceful, productive and rational society and deal with one another to mutual benefit, they must accept the basic social principle without which no moral or civilised society is possible :- the principle

of individual rights¹⁰. Man's rights can be violated only by the use of physical force. The precondition of a civilised society, for Rand, is the barring of physical force from social relationships - thus establishing the principle that if men wish to deal with one another, they may do so only by means of reason : by discussion, persuasion and voluntary, uncoerced agreement.

If physical force is to be barred from social relationships, men need an institution charged with the task of protecting their rights under an objective code of rules. This is the task of a government, its basic task, its only moral justification and the reason why men do need a government : "A government is the means of placing the retaliatory use of force under objective control - i.e., under objectively defined laws".¹¹ As regards the functions of a government, Rand says :

"The proper functions of a government fall into three broad categories, all of them involving the issue of physical force and the protection of men's rights : the police, to protect men from criminals - the armed services, to protect men from foreign invaders - the law courts, to settle disputes among men according to objective laws".¹²

Beyond the above-mentioned functions, political authority has no say in an individual's life. Life is the standard value and that which is conducive to life is a good, but it is the individual's own life that is that standard. There are two ways in which an individual can survive : by way of productive work (which ultimately finds its source in the mind) and by way of 'parasitism' (which is living off the productive work of others and is ultimately destructive of man's nature). Howard Roark in Ayn Rand's The Fountainhead says :

"The man who attempts to live for others is a dependent. He is a parasite in motive and makes parasite of those he serves. The relationship produces nothing but mutual corruption. It is impossible in concept. The nearest approach to it in reality - the man who lives to serve others - is the slave. If physical slavery is repulsive, how much more repulsive is the concept of servility of the spirit? The conquered slave has a vestige of honor. He has the merit of having resisted and of considering his condition evil. But the man who enslaves himself voluntarily in the name of love is the basest of creatures. He degrades the dignity of man and he degrades the conception of love.¹³ But his is the essence of altruism.

All versions of socialism and statism, according to Rand, involve parasitism since in these doctrines

the income created by individuals is regarded as a lump to be distributed according to some 'social' purpose i.e. 'given' to the non-productive. What is fatal to the interests of humainty is the welfarist concept of need : this simply establishes a bogus 'entitlement' for some to live off the productive activity of others.¹⁴ The theme of Ayn Rand's novel, We The Living is the individual against the state, the supreme value of a human life and the evil of the totalitarian state that claims the right to sacrifice.it. The story takes place in Soviet Russia. As Ayn Rand has clarified in the Foreword, We The Living is not a novel "about Soviet Russia". It is a novel about Man against the State. Its basic theme is the sanctity of human life - using the word "sanctity" not in a mystical sense, but in the sense of "supreme value". The essence of the theme is contained in the words of Irina, a minor character of the story, a young girl who is sentenced to imprisonment in Siberia and knows that she will never return :

"There's something I would like to understand, And I don't think anyone can explain it... There's your life. You begin it, feeling that it's something so precious and rare, so beautiful that its like a sacred treasure. Now it's over,

and it doesn't make any difference to anyone, and it isn't that they are indifferent, it's just that they don't know what it means, that treasure of mine, and there's something about it that they should understand. I don't understand it myself, but there's something that should be understood by all of us".¹⁵

For Ayn Rand We the Living, then, is not a story about Soviet Russia. It is a story about Dictatorship, any dictatorship, anywhere, at any time, whether it be Soviet Russia, Nazi Germany, or - "which this novel might do its share in helping to prevent - a socialist America"¹⁶.

However, while analysing Rand's minimal statism one may say that her arguments for reconciling the need for government with the principles of individual freedom were no more successful than those of other libertarians. She certainly favoured an institution with a monopoly of force and specifically argued against the anarcho-capitalists, who were beginning to receive something of a hearing in the 1960s. She maintained that anarchy 'as a political concept, is a naive floating abstraction' and that 'a society without an organised government would be at the mercy of the first criminal who came along and who would precipitate

it into the chaos of gang warfare,¹⁷. However, she often argues that government itself is the major cause of that looting and parasitism which she sees as characteristic of modern society. This is, of course, a perennial problem for all classical liberals : if government is the main rights - violator, how can it be entrusted with the task of rights - protection?

Rand's recommendation is a little different from that of others in the tradition - government should be limited to internal and external defence and the provision of a court system for the settlement of disputes. It would be financed by a kind of 'voluntary' tax consisting of fees attached to legal transactions.¹⁸ What is not made clear is how a government with a monopoly of coercive power is to be prevented from degenerating into a totalitarian state if government action has, intrinsically, those features which she so condemns. What is lacking in her work is any serious analysis of political rules and constitutionalism.

III

NOZICK'S THEORY OF THE STATE

Robert Nozick's Anarchy, State and Utopia falls into three sections, as its title indicates. Part I tries to show that a minimal type of state - the "nightwatchman" state of classical liberal theory' limited to protecting its citizens against force and fraud - can arise legitimately, without violating anyone's rights. In the second part Nozick argues that the minimal state is the most extensive state that can be justified and that any more extensive state does violate people's rights. The book ends, with a section contending that the minimal state is an ideal worth fighting for.

The arguments of Part I are directed mainly against the anarchist who objects to any state at all. Nozick does not say that a state is a good thing and we are all better off with a state than we would be without one. This obvious procedure for dealing with the anarchist would be foreign to Nozick's entire approach and would set a precedent subversive of his aim in the second part,¹⁹ Instead he maintains that we can get from a state of nature to a minimal state

without violating anyone's rights, so that there is no point at which anyone can claim that the state has assumed authority illegitimately. Nozick begins his story in a state of nature modelled on that of John Locke, but he leaves this natural condition by another route, avoiding the need for the agreement or social contract that has been a source of so much criticism for Locke and his followers.

Nozick's minimal state, or "state-like entity" as he sometimes calls it, is a kind of protection agency to which people in the state of nature pay a fee for protection from assault, robbery, and so on. Nozick argues plausibly that clients of the agency would give up to the agency their rights to punish violations of their rights, and that one protective association would become dominant in each geographical territory. So without any express agreements or overall intention on anyone's part, people in the state of nature would find themselves with a body that satisfies two fundamental conditions for being a state : it has a monopoly of force in its territory, and it protects the rights of everyone within the territory. Nozick's derivation of the minimal state may be structurally represented as follows :

STATE OF NATURE (SN)

**INVISIBLE
HAND
MECHANISM**

Some persons in SN do not act morally and violate other people's rights. This leads to the formation of -

MUTUAL PROTECTIVE ASSOCIATIONS (MPA)

In MPAs individuals purchase protection against others like a market governed economic good. In the course of time, MPAs evolve.

A DOMINANT PROTECTIVE ASSOCIATION (DPA)

DPA is an MPA of preeminent power in a territory.

ULTRA MINIMAL STATE (UMS)

A DPA in which protection is purchased as an economic good, but which in addition has a monopoly of force.

MINIMAL STATE

Nozick makes the point that it is possible to move from anarchy to state of nature to minimal state. Men have absolute freedom. They have control over property. In the state of nature peoples' rights are invaded by others. They then try to punish the others for bringing about redistribution according to their reason and conscience. The punishment would be just about enough to compensate and prevent similar acts in future. Such private solution of conflicts can in the long term lead to feuds, to which a solution will be attempted through mutual protective associations. But these cannot provide a complete or long term solution. Some people can be hired to perform these protective functions. Initially several different protective associations will offer their services in a particular area. In case of conflict between these associations there may emerge among them one dominant association. But that is not a state, because it does not have the necessary condition of monopoly over the use of force, to decide who may use force and under what conditions, and to punish those who violate this claim. Protective agencies do not make such claims individually or collectively nor do they have a moral right to do so. This system is not a state in so far as only those who pay for its

services are given protection. Under the usual conception of the state however all individuals within its boundaries are entitled to its services.

Between this minimal state and the protective agencies, there is another kind of social organisation, the ultra minimal state. This ultraminimal state has monopoly over use of force, and excludes the possibility of private agencies retaliating against others for wrong doing. The Ultraminimal state provides services of protection only to those who pay for them. The minimal state not only has the monopoly of force but also protection for all without payment. In other words, it undertakes redistribution so far as protection is concerned, but not beyond that limit.

An advocate of the ultraminimal state would claim that the only function of the state would be protection of the rights of individuals against their violation by others. All other functions are illegitimate because in the performance of other functions, it would be involved in the violation of other's rights. But how can a proponent of ultraminimal state accept this when the state leaves the right of many of its citizens unprotected ?

This leads Nozick to another argument : the moral concern about the violation of individual's rights and protection against their violation, functions as a moral goal, a moral end-state towards which the activities and functions of a state is geared. This kind of argument is like a utilitarianism of rights. Nozick is constantly trying to ensure that no moral violation takes place in the movement from the ultraminimal to the minimal state. Just as utilitarianism is concerned with greatest happiness of the greatest number, such utilitarianism of rights would necessitate the violation of some peoples' right in order to minimise the violation of rights. So Nozick contends that instead of having rights as an end state, we place rights as side constraints. The rights of others form the constraints on one's own activities.

Can we not violate some side constraints for greater happiness? Some cost is borne by individuals for a later good. But Nozick says it cannot be intended for society as a whole. Society cannot experience anything - only individuals experience things. Therefore, sacrificing somebody for the overall social good is morally objectionable. For it does not take account of the fact that he is a morally

separate person. No one is entitled to force it upon him, least of all the state to which he gives allegiance. The moral side constraints simply reflect our separate existences. There cannot be moral balancing acts in a society. Each individual is morally separate, and no one can be sacrificed for the good of others or for the overall social good.

Nozick shares Locke's distaste for taxation and there is a tough-minded economic argument to represent it as a form of forced labour. From the same idea Nozick derives a defence of private medicine arguing that no doctor can be justly compelled to offer his services in accordance with an ideal distribution of medical benefits, and independently of his voluntary agreement. In order to define the contours of human rights which circumscribe the intrusive authority of the state, Nozick develops a conception of justice that he calls the entitlement theory. According to it, economic goods arise already encumbered with rightful claims to their ownership. Any social philosophy which argues that they emerge unaccompanied by such claims and can be distributed to society without transgressing any antecedent moral boundaries is, according to

Nozick, therefore mistaken. In rejecting distributionist notions of social and economic justice, Nozick has then defined a radically different normative paradigm - within which philosophers, jurists and social scientists may work in future.

Nozick's theory has been subjected to severe criticisms. For Robert Paul Wolff, the most irritating weakness of Nozick's minimal statism is its complete failure to take account of the most obvious and well known facts of human motivation and social experience. For example, much of his discussion of the workings of a protective association seems to presuppose that the serious rights-violation against which one needs protection are committed, by and large, by the sort of citizens who will have joined a competing association, will be paid upon their premiums, and will have known addresses where they can be found. This may indeed be so in a small rural society, but in the context of big city crimes, Nozick's model is simply irrelevant.²⁰

Nozick's method of rebutting the anarchist claims includes an explication of the steps by which a state of nature becomes transformed into a minimally governed society and an alleged demonstration that each of the

steps is morally permissible, i.e. is rights-preserving. Nozick's narration of the transition begins with a state of nature in which a number of mutual protection instruments have arisen. How, Nozick asks, does one of these become a government without transgressing the libertarian principle? On the grounds, answers Nozick, that the means being employed by those other agencies are inappropriate to the end of rights-violation. And their very riskiness provides the justification for their forcible prevention.

But how can this be? Risky behaviour is certainly not the moral equivalent of rights-violating behaviour. And on the Nozickian view it is only examples of the latter that may be coercively prohibited. How can agencies whose behaviour is risky but not rights-violating have their operations forcibly, but justifiably curtailed?

Nozick's view seems to be that a procedure of rights protection which risks a rights-violation can be forcibly prevented, provided that the individual whose rights were being defended via the risky procedure is suitably compensated. But how does the compensation "erase" what ought to be considered on Nozick's own

principle a straightforward violation of rights? Either the risky activity of the agency constitutes a violation of rights, or it does not. If it does, then its prohibition is merely a legitimate defence of rights and no compensation ought to be due to the perpetrator of the violation who would be a criminal on Nozickian grounds. If the risky activity was no violation of rights, then its forcible prevention is a wrongful (rights-violating) act which deserves at least punishment and, perhaps compensation. But, to say that the act of "risk prevention" is not wrongful and yet requires the payment of compensation to its victims would appear to be, within Nozick's libertarian context, a contradiction.²¹

IV

So far we have seen that both Rand and Nozick agree that it is quite improper for the state to oblige citizens to help one another or to prevent activities which do not directly harm others. They strongly oppose a 'positive' or welfare role for the state. However, they shrink from anarchism proper, and argue merely for a 'minimal' state in which political coercion is strictly confined to the task of protecting property

and enforcing contracts. But this 'half way house' solution runs into a number of logical and practical snags (as more radical libertarians waste no time in pointing out), for once you actually have a state, how do you prevent it from continually expanding its scope and powers?

Assume a state with a narrowly defined 'law and order' role. It is not to regulate the economy or provide welfare services to its citizens. Yet such a state cannot fulfill even this limited role effectively in the modern world unless certain conditions obtain. It must, for example, have healthy recruits for its armed services, a reasonably literate police force, and a reliable source of supply of arms and ammunition. Where the 'private sector' fails to deliver on any of these fronts, state intervention is necessary simply in order to ensure that the state is really able to fulfil its 'limited' role. This is why whenever the state goes to war,²² for example, (an activity which minimal statist must surely allow) we invariably witness the drastic extension of its 'positive' activities if only to guarantee its negative functions.²³

The same difficulty arises out of the state's monopoly of legitimate coercion. This irksome infringement is justified by minimal statist like Nozick on the grounds that the provision of protection by rival agencies is too 'risky' for society. The state is entitled to its monopoly because it compensates potential competitors by providing its protection free i.e. through a general charge on the public purse. But it is not difficult to see that this is a principle capable of almost an infinite extension.

After all, the expansion of the state into a wide range of social activities - from the provision of low-cost housing to the nationalisation of essential but unprofitable industries - can be justified on precisely these grounds. These are also activities, it might be argued, which are too 'risky' and 'unproductive' for private entrepreneurs to invest in, and the involvement of the state, though monopolist in character, can be compensated for by providing free or subsidised services for those excluded. The question arises that once you have a state, how do you stop it expanding ?

Consider the classical liberal argument that the state must merely protect rather than support


individuals in society. Where does one draw the line ? The new liberals of the late 19th century showed just how painlessly the notion of 'protection' can be broadened : can people really feel secure if they have no job? Are contracts respected if the rich take advantage of the poor? Must not the state intervene when people are robbed of their land by speculators, or of their labour power through exploitation? If the state has the role of protecting individuals, then virtually every activity it undertakes can find justification. In short it seems impossible for a minimal state to be cabined, cribbed and confined in the way proposed by Nozick and Rand.

As far as the full-blooded libertarian is concerned²⁴, it is necessary therefore to dispense with the state altogether. Protection should be provided privately. People could insure themselves against bodily assault, for example, just as they currently insure their possessions against theft. Aggrieved parties would secure compensation for injury via 'informal' courts and tribunals. Even in statist societies, maximalist libertarians argue, an increasing number of citizens are already turning to private arbitrators to settle their insurance claims. These

arbitrations rely upon mutual agreements rather than courts of law to enforce them, and in a stateless world able to accurately disseminate data about a person's willingness to comply with commitments freely entered, ostracism and boycotts could be potent sanction against defaulters. Moreover, insurance companies could always hire private police to tackle those who refuse to fall into line.²⁵

TH-3400
This argument certainly avoids the problems faced by the minimal state, but at what cost! After all, it should not be forgotten that the whole point about Locke's state of nature is that at the end of the day rational individuals feel obliged to leave it. It is true that the 'inconveniences' suffered seem somewhat trivial in comparison with the turbulent chaos of a Hobbesian war of all against all, but they are real nevertheless. What is more to the point, they are an intrinsic part of the 'natural' order. Without a state to surmount them, Lockean 'inconveniences' become a source of paralysis and collapse.²⁶

Two problems in particular confront libertarians in their search for an alternative to the state. The first is the nature of the market. In libertarian eyes,



the market always decentralises and disperses power, it is only the state which concentrates it. Yet it is significant that in Locke's (and Nozick's) state of nature, the spontaneous activity of individuals generates inequality, and Nozick himself accepts that as individuals compete to provide themselves with protection, a dominant protection agency (the forerunner of the minimal state) will necessarily emerge. The tendency for competition to create informal concentrations of power is widely accepted by all but the most doctrinaire economists. Left to its own devices, the market inevitably strengthens the strong and weakens the weak. To present the market as an alternative to the state ignores the fact therefore (which the classical liberals readily acknowledged) that the very need for a state arises out of the divisive consequences of the market itself.

Libertarians can sustain their unreal view of the market only by abstracting individuals from all those social relationships through which they can exercise differential amounts of power. The libertarian scenario, with its arbitrators and private law-suits assumes a world, as one critic puts it, of 'shared

interests and common peers'.²⁷ But what of a situation in which, say, a large corporation pollutes the environment or sells defective products, thereby inflicting injury upon a large number of relatively defenceless and unorganised individuals? This is the activity of a private individual only in the sense that it is the activity of a private individual-institution, relatively state-like in its monopolistic exercise of power. The notion that the world is composed of discrete individuals all roughly equal in the amount of clout they wield is an illusion and it creates the second major problem for libertarian opponents of the state.

In other words, as critics have been quick to point out, a stateless society could operate along libertarian lines only if everyone were roughly equal as members of a common community. But this is surely an odd stipulation for a philosophy which sets itself against all forms of equalitarianism, and which sees in individual self-aggrandisement, the essence of real freedom.

A purely market rationality based upon individual self-interest turns out to be self-defeating.

NOTES

1. For various viewpoints on state see David Held "Central perspectives on the modern state" in McLennan, Hall & Held (ed.) The Idea of Modern State, pp. 29-79.
2. See Ramesh Mishra, The Welfare State in Crisis, pp. XIII-XIV.
3. As already pointed out in the Introduction, the various works of writers like F.A. Hayek, Milton Friedman and Ayn Rand among many others are reflective of this trend.
4. See Paul wilding & George Vic, Ideology and Social Welfare, ch.2.
5. M. Freidman & R. Freidman, Free to Choose, pp. 331.
6. Peter Steinnfels, The Neoconservatives, see especially ch.1.
7. Ayn Rand, Capitalism : The Unknown Ideal pp. 20.
8. See Ayn Rand "The Nature of Government" in Capitalism : The unknown Ideal pp. 329-337.
9. See Ayn Rand, "The Objectivist Ethics" in The Virtue of Selfishness.
10. Ibid.
11. Ayn Rand "The Nature of Government" op.cit. p.331.
12. Ibid. p.334.
13. Rand, The Fountainhead, p. 425.
14. Rand, "The Nature of Government", op.cit. p.331.
15. Rand, We The Living, p.323.
16. Ibid. p.vii.

17. Ayn Rand "Government Financing in a Free Society" in The Virtue of Selfishness, pp. 116-20.
18. Ibid.
19. Peter Singer "The Right to Be Rich or Poor" in J. Paul (ed.) Reading Nozick, p.39.
20. See Robert Paul Wolff, "Robert Nozick's Derivation of the Minimal State", in J. Paul (ed.), op.cit. pp.77-106.
21. See Jeffrey Paul "The Withering of Nozick's Minimal state" in J. Paul (ed.), op.cit., pp.68-76.
22. "In today's conditions, the only alternative is to fight that war and win it as fast as possible", Ayn Rand, 'The Wreckage of the Consensus' in Capitalism : The Unknown Ideal, p.226.
23. John Hoffman State, Power, and Democracy, p.58.
24. Here I refer to the arguments of the radical libertarians, represented most importantly by Murray Rothbard and the 'anarcho - capitalists'.
25. Murray Rothbard, "Society Without a State" in J. Pennock & J. Chapman (eds). Anarchism, p.201.
26. See John Hoffman, op.cit., pp.60-62.
27. C. Stone "Some Reflections on Arbitrating our way to Anarchy" in Pennock & Chapman (eds.) op.cit. p.210.

CHAPTER 4

JUSTICE OF 'ENTITLEMENTS'

Thousands of pages have been written on justice since the publication of John Rawls's A Theory of Justice and yet the problem of justice appears largely unsettled since Plato first raised it in The Republic asking, 'what is justice'? If Plato is seldom mentioned in the contemporary debate over justice, it is nevertheless his question that lies unacknowledged at the centre of that debate¹.

In the contemporary debate over justice the question 'what is justice?' has led to an exclusive concentration upon social justice. Social justice is the justice of institutions, the rules that define them and the rules they impose. The contrast to social justice obviously is personal justice : social justice refers to social institutions, while personal refers to the individual. In Greek political theory justice was a virtue (not in the simple moral sense, but in the sense of every person performing the task attached to his station in life), hence the focus of Greek political theory inevitably returned to the just person. Today justice is not a virtue of people but of institutions, as Rawls has declared on the first page of A Theory of Justice². The result is that justice is not something that I do; it is something that is done to me; it is

something that happens to me through the machinations of institutional rules. Obviously it is human beings that apply the rules, but the focus of justice is on the rules. To Greek political theorists the purpose of the social justice of institutions was to make possible the virtue of personal justice. For the Greeks, institutions were means to the end of justice, but in our times these institutions have become the end of justice itself³. Rawls, together with his most vehement critics and worthy rivals⁴, silently agrees that social justice is the whole of justice. Moreover, these writers largely concur in the belief that social justice is nothing more than distributive justice. And they limit distributive justice to the distribution of benefits. Differences arise when Rawls' critics and rivals argue that his principles of justice do not deliver the benefits it declares to be good. The answer to the question 'what is justice?' finally becomes the distribution of a certain set of what Rawls calls 'primary goods'⁵.

Distributive justice rests upon the assumption that society is a self-sufficient co-operative venture for the mutual advantage of the participants.⁶ The

statement is not meant to describe all of any society, but to abstract the most important thing about any society, regardless of what the participants themselves might think or say. On this assumption, society is marked by both the conflict and the coincidence of the interest of its citizens. Their interests are compatible enough to make social co-operation not only possible, but to the benefit of one and all. Conflict is born out of that very coincidence of interests for, it is further assumed, citizens compete for shares of that benefit. In furthering their own particular interests individuals are assumed always to want ever more material benefits. Distributive justice is nothing more than the standard by which citizens assess the distribution of material goods in their society⁷.

The attempt in the present chapter would be to examine the libertarian notion of justice, also called the 'entitlement theory' of justice. Unlike in previous chapters, separate arguments for Robert Nozick and Ayn Rand would not be built up, partly because Rand has not written specifically about justice, and partly because she generally subscribes to the libertarian conception.⁸ Nozick's entitlement theory of justice is the most representative of the libertarian conception

and has been a topic of intense debate. Much interest was generated on the subject, as Nozick's Anarchy, State and Utopia (publ : 1974) followed John Rawls' highly acclaimed A Theory of Justice (Pub; 1971) and took up issue with the latter. In order to understand and appreciate the Nozickian theory of entitlements, a brief analysis of John Rawls' theory would not be too much of a digression, as it was in the immediate context of Rawls's theory that Nozick formulated his conception.

II

RAWLS'S THEORY OF JUSTICE

John Rawls sees himself as building on the work of Rousseau and especially Kant, who "sought to give a philosophical foundation to Rousseau's idea of the general will".⁹ His principal concern is to establish unanimity for the fundamental social contract. His aim is to argue for a theory of justice by convincing the reader that the principles he advocates would be chosen by imaginary persons in a hypothetical state of nature (or "original position"), ignorant of all "particular facts" about themselves and their actual lives in

society which might impair their impartiality. From behind this veil of ignorance, Rawls argues, it would be rational for all persons to choose his two principles of justice over several other common candidates, notably intuitionism, two types of utilitarianism, perfectionism and various combinations of these. The two principles chosen would constitute the basic social structure, as well as shape constitutional, legal and political practices. He sums up the essential impartiality of the conditions under which the principles are chosen in the phrase "justice as fairness". The principles are also held to be procedural expressions of the categorical imperative - to acknowledge and preserve our sense of justice and our essential nature qua autonomous beings capable of free choice. They are public in that everyone understands, acknowledges, and agrees to them, and permanent in that all subsequent decisions will be made in accordance with them and they are understood as applying to future generations as well as present.

Rawls often uses the words "right" and "just" interchangeably, but his considered view is that an account of right must be embedded in a theory of

justice, that it is consequently on the question of justice, that individuals in the original position must agree first and foremost¹⁰. He argues that these individuals will first agree on a general conception of justice which rules out inequalities that are not to the benefit of all. More specifically, they will agree that "All social values - liberty and opportunity, income and wealth, and the bases of self respect - are to be distributed equally unless an unequal distribution of any or all of these values is to everyone's advantage".¹¹

As a "special case" of this general view of justice Rawls formulates his two principles which, in their final form, read as follows :

(i) "Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.

(ii) Social and economic inequalities are to be arranged so that they are both : (a) to the greatest benefit of the least advantaged, ... and (b) attached to offices and positions open to all under conditions of fair equality of opportunity".¹²

These principles are "lexically" ordered, with the first prior to the second, and within the second, (b)

prior to (a)¹³. Thus for Rawls a liberty protected by the first principle can never be sacrificed for improvements in economic well-being, no matter how extensive they may be or how minor the infraction of the relevant liberty. The only justifiable basis for sacrificing a liberty in whole or in part would be to "strengthen the total system of liberty shared by all".¹⁴

Once the principles have been chosen under the relevant conditions of ignorance, the veil of ignorance is gradually lifted in a four-stage process. Individuals are given the information necessary to agree on more specific economic, political and legal institutions, always in conformity with the two "constitutional" principles which, once established, constitute the permanent basis of social organisation. Although this four - stage sequence is "suggested by the United States constitution and its history,"¹⁵ the choice problem is conceived of as hypothetical. Once the principles have been justified in this way, however, they are held to be applicable to the real world, as a goal for which to strive and a yardstick for establishing the relative justice of extant institutions. They are conceived of quite generally as

applicable wherever the "circumstances of justice" (the most important of which is conflicting claims for scarce resources) obtain, and are discussed in relation to historical and contemporary societies. They are held to be applicable in both capitalist and socialist societies, although the only case Rawls considers in any detail is that of a "property - owning democracy".¹⁶

III

NOZICK'S THEORY OF JUSTICE

Nozick starts his argument in favour of distributive justice by considering rival theories and their effects. He classifies theories of distributive justice so that whole ranges of theories can be levelled with one objection. Theories of distributive justice can be divided in two ways. They can be patterned or unpatterned, and they can be historical or unhistorical.

Patterned theories of distributive justice require that resources should be distributed along some natural dimension, weighted sum of natural dimensions or lexicographic ordering of natural dimensions'.¹⁷ When

a distribution is patterned there is some dimension such that each individual's ranking on that dimension corresponds to the ranking of his share of resources. Patterned principles of distribution are ahistorical if they distribute on a dimension which does not refer to past actions (e.g. I.Q or race). The most celebrated patterned principles of distributive justice include 'to each according to his merit', 'to each according to his need', and 'to each according to his contribution'.

Unpatterned principles of distributive justice do not assign shares of resources in proportion to individuals' ranking on some dimension. Such principles may also be either historical or unhistorical. Principles of distribution which are neither historical nor patterned specify the structure or profile of just distributions, but do not assign particular individuals to particular positions within these distributions. Nozick calls such principles 'current time - slice principles' or 'end - result principles'. End - result principles may vary greatly in strength. A principle which states that no distribution is just in which the average income of the top quintile is more than four times the average of the bottom quintile is exemplified

by an enormous range of distributions. A utilitarian principle which holds only those distributions just which maximise utility can be exemplified by more than one distribution. A strictly egalitarian principle requiring the same amount for each person is met only by distributions in which the size of each individual's share is determined, and so is not only an end - result principle but incidentally patterned.

End - result principles and patterned principles differ in that the former usually do not determine the size of individual shares, and the latter do. But their similarity is more important. Both are principles for determining the (relative) size of shares. Neither sort of principle is concerned with the composition of individuals' shares, but only with their size.

Nozick's theory of just distribution, the entitlement theory, is neither an end - result nor a patterned theory. It is unpatterned and historical. It specifies just distribution not by stating a mandatory profile or range of profiles for the pattern made by the sizes of individual shares, but by listing procedures by which individuals may justly acquire title to particular resources. Hence the name,

'entitlement theory'. Nozick calls entitlement theory an historical principle of justice, in that it too holds that 'past circumstances or actions of people can create differential entitlements'.¹⁸

Nozick advances a single argument to counter the end-result and patterned principles of distributive justice. The argument leans heavily on one attractive and distracting example. Suppose some distribution of holdings which is just either according to a pattern or according to an end - result theory of distribution. Then transfers are made : for example, premium payments to Wilt Chamberlain by thousands of basketball fans who want to watch him play. The result is a new distribution distinct from the first, which may not conform to the pattern or end-result in terms of which the first distribution was justified. More generally,

"any favoured pattern would be transformed into one unfavoured by the principle, by people choosing to act in various ways... to maintain a pattern one must continually interfere to stop people from transferring resources as they wish to"¹⁹.

So also to maintain a desired end-result. Yet intuitively there seems to be nothing very wrong about premium payments to Wilt Chamberlain.

But this will hardly do as an argument against patterned and end-state principles of justice or for entitlement theory. The argument presupposes, though does not demonstrate, that it is wrong to interfere to restore disturbed patterns or end-states, and that such restorations are always redistributive and violate individuals' property rights. But it is just these property rights which have yet to be established. Until Nozick provides an argument to show that property rights must be full capitalist property rights the Wilt Chamberlain example shows nothing. We can infer little from an intuition that there is nothing very wrong about making premium payments to Chamberlain, particularly when other institutions suggest nothing very wrong in a bit of pattern-restoring redistribution by the method of taxing Chamberlain's now enlarged earnings.²⁰

If Nozick's refutation of patterned and end-result theories of justice is inconclusive, then entitlement theory must be judged on the arguments presented for it without the support of finding itself the only contender in a vanquished field. Nozick presents the following definition of entitlement theory :

"(1). A person who acquires a holding in accordance with the principle of justice in acquisition is entitled to that holding.

(2) A person who acquires a holding in accordance with the principle of justice in transfer, from someone entitled to the holding, is entitled to the holding.

(3) No one is entitled to a holding except by (repeated) applications of (1) and (2)."²¹

The contours of the Nozickian theory of entitlement are broadly found in Ayn Rand's novel Atlas Shrugged. Its theme is the role of the mind in man's existence - and, as a corollary, the demonstration of a new moral philosophy : the morality of rational self-interest. The story shows what happens to the world when the mind goes on strike - when the men of creative ability, in every profession, quit and disappear. Hank Rearden, a character of the novel at his trial for an illegal sale of a metal alloy which he had created and which has been placed under government rationing and control, says :

"I work for nothing but my own profit - which I make by selling a product they need to men who are willing and able to buy it. I do not produce it for their benefit at the expense of mine, and they do not buy it for my benefit at the expense of theirs; I do not sacrifice my interests to them nor do they sacrifice

theirs to me; we deal as equals by mutual consent to mutual advantage.... Let there be no misunderstanding about me. If it is now the belief of my fellow men, who call themselves the public, that their good requires victims, then I say : The public good be damned, I will have no part of it."²²

As it stands, Nozick's definition is extremely general. It can be applied only when the two further principles mentioned - the principles of just acquisition and just transfer. To these a third, a principle of rectification would have to be added if we were to know what should be done about breaches of first two principles. If we are to assess entitlement theory, then we should look for precise formulations of at least the first two principles and arguments in favour of these particular formulations. Amazingly, Nozick writes, 'I shall not attempt that task here'²³. However, there is more to be said, since Nozick relents and sketches a principle of just acquisition.

Just transfer leads to just acquisitions only when previous holdings were just without a principle of just acquisition entitlement theory can view holdings only as conditionally just. Hence the importance of the principle of just acquisition. Although it would be difficult to give reasons for thinking that the

holdings of specific date - say 1900, or if you like, 1400 - were just, it is worth considering what would be lost by formulating such a principle of justice in acquisition : 'A person who has held a holding since 1900 is entitled to that holding'. The arbitrariness of the date is perhaps compensated for by the ascertainability of holdings at that date. Nozick even provides an argument for thinking that such arbitrariness might be ironed out over the years :

".... it is held that the operation of the system over time washes out any significant effects from the initial set of holdings. As an example of the latter, if almost anyone could have bought a car from Henry Ford, the supposition that it was an arbitrary matter who held the money then (and so bought) would not place²⁴ Henry Ford's earnings under a cloud".

But this is too quick. Henry Ford's holdings after sales will be tainted if his holdings of the means of production of Ford motor cars was tainted; his customers' holding of their cars will be tainted if the purchase money was tainted. Lack of entitlement is not generally transferred in sales, but transfers do nothing to reduce the total of unjust holdings.²⁵ For if entitlement theory is to work, some principle of

just acquisition must be provided. There must be some way by which persons can come to hold previously unheld things, and this method must yield full capitalist property rights if Nozick is to sustain his claims against principles of distributive justice whose maintenance needs state intervention. Since Nozick's argument fails to show how individuals can acquire full entitlement in the first place, he has not given reasons for rejecting other procedural theories of justice. Since the Wilt Chamberlain argument presupposes full capitalist entitlements, he has not shown why one must reject non-procedural theories of justice. Even if we share with Locke and Nozick the view that individuals have rights not to be harmed in life, wealth or liberty, we have so far no reason to accept entitlement theory.

IV

It may now be apparent that Nozick's argument about freedom and free market relations leads directly to his argument about entitlement and distributive justice. Rawls' original position, for example, is his attempt to create a hypothetical environment from which the subjective and partial views of individuals and

groups definitive of entitlement theory are barred. The result is a relatively objective setting for an impartial debate about the principles of justice. What we require from Nozick, if he means us to take entitlement theory seriously, is a demonstration that appropriation rooted in self - ownership establishes a title more tenable - not than the redistributionist alternatives - but than titles based on conquest, or scripture or royal lineage. What are we to say when confronting a king, a conqueror, a hereditary land - holder and a tenant farmer, each of whom points to a single track of land and exclaims in unison with the others. 'This hectare is mine by all rights ! My title to it rests on a long, historically vindicated tradition of Imperial Domination/right by conquest/right of usage'! Nozick's philosophical question is, why not anarchy?, but the more practical political question ought to be 'why not give America back to the Indians?', who, by Lockean standards, would seem to be its only legitimately titled proprietors. Stated in less historical terms according to Benjamin Barber, what we require, along with Nozick's theory itself, are the criteria by which the theory can be evaluated; and

we require also that these criteria be morally relevant and not arbitrary.²⁶

The problem is that under the guise of entitlement all kinds of fraudulent claims may be advanced. Delegitimising principles of public redistribution in theory does not eliminate arbitrary private principles of redistribution in practice. In the free market it is not right but power that prevails, and in the absence of public coercion, there is nothing to prevent private coercion from running amok. Thus, titled or not, the Indians lost their land because Europeans stole it from them by force - finding new bases for their titles afterwards. The prevailing theory of entitlement generally turns out to be the theory most conducive to prevailing power, justice being on the side of the holding of the strongest. The virtue of redistributionist theories is that they are grounded in ideas of impartiality and disinterestedness that give them some protection against the subjugation to raw power and interest to which all political theories are vulnerable²⁷. Entitlement theories have no such protection; when Nozick warns us of the 'great ingenuity with which people dream up principles to rationalise their emotions',²⁸ he is in fact

identifying the chief weakness of the entitlement theory itself.

Moreover, Nozick attempts to portray Rawls' principle of distribution as a nonhistorical end-result principle. It is erroneous to contend that Rawls maintains that the justice of a distribution can be determined independently of how it was produced. Rather, Rawls contends that its justice depends on the justice of the institutions. This includes the legal institutions defining entitlement, which were involved in its production. Distribution and entitlement, for Rawls, are assessed only partly by their tendency to promote a certain distributive end-state. Rawls certainly gives priority to the preservation of individual liberty, and though he differs in his definition of liberty from Nozick, it restricts the procedures by which a distribution can be justly arrived at²⁹.

Without a doubt there are many important differences between the theories of justice of Rawls and Nozick, but these are differences of degree and not of kind. It would be an error to read too much into the differences, and assert a qualitative difference

between the two. It is the difference between a liberal and a libertarian. Both hold the autonomy of the individual to be at the centre of any politico-philosophic discourse, but while Nozick would hold individual rights to be inviolable whatever the circumstance, Rawls attempts to reconcile a liberal ideal of political obligation with a redistributive conception of social justice. At the risk of oversimplification, it may be said that while Nozick's entitlement theory leads us to a nightwatchman state and negative liberalism, Rawlsian attempt points towards a welfarist positive notion of liberalism. It is equally clear that both Rawls and Nozick work from the common agenda of justice : first, justice is the primary, and the only moral issue. Second, no moral distributions are relevant to justice. Third, individualism is the order of the day. Fourth, only material goods like income and property are brought within the ambit of justice.³⁰

Thus, Robert Nozick's individualism, as exemplified by his entitlement theory of justice is of an extreme kind. Nozick would appear to want to say, with Howard Roark in Ayn Rand's The Fountainhead :

"I came here to say that I do not recognise anyone's right to one minute of my life. Nor to any part of my energy. Nor to any achievement of mine. No matter who makes the claim, how large their number or how great their need. I wished to come here and say that I am a man who does not exist for others"³¹

Nozick is criticised on the grounds that while the individual human being may indeed exist outside society, the same is not true of the individual human person, since the essence of the person is social. This doctrine of 'social essence' has not always been put quite as clearly as that. It claims that the person - the bearer of rights - is (i) a product of social and institutional arrangements, and (ii) able to flourish only in the appropriate social conditions. It is therefore wrong to think that entitlements are inviolable per se. or that individuals can be understood without reference to the social relations in which they participate.

On the other hand, Rawls thinks that the existence of classes unequal in income or wealth is consistent with a substantial equality in liberty and personal rights, in any society including a capitalist market society. But, quite on the contrary, these are

inconsistent in a capitalist market society, where class inequality of income or wealth is the result and the means of an inequality in power which reaches to the liberties, rights and essential humanity of the individuals in those classes.

The model which Rawls proposes as satisfying his two principles of justice is a constitutional democracy in which:

"the government regulates a free economy in a certain way. More fully, if law and government act effectively to keep markets competitive, resources fully employed, property and wealth widely distributed over time, and to maintain appropriate social minimum, then if there is equality of opportunity underwritten by education for all, the resulting distribution will be just"³².

The mainspring of the system is private capitalist enterprise operating through free markets in labour and capital. It is stipulated that competitive markets, only supplemented by government operations, handle the problem of the efficient allocation of labour and resources³³.

In this society there will still be inequality, not only as between individual incomes but between the life prospects of the members of different classes. The

inequality is justified by Rawls' second principle, if lessening inequality would 'make the working man even worse off than he is'. And the presumption is that the inequality in expectation provides an incentive so that the economy is more efficient, industrial advance proceeds at a quicker pace and so on, the end result of which is that greater material and other benefits are distributed throughout the system; hence to lessen the inequality is to lower, or at least prevent raising 'the life prospects of the labouring class',³⁴

It thus appears that Rawls is assuming capitalist economic rationality, and is dealing with justice only within the limits imposed by it. Yet there is a sharp limit to Rawls' realism. He does not see that the class inequality in his market system is bound to be inequality of power as well as of income, that it allows one class to dominate another. In his earliest construction he could ask us to suppose a society whose members 'are sufficiently equal in power and ability to guarantee that in normal circumstances none is able to dominate the others',³⁵ However, in his later model of a competitive market society, he does assume a competitive market society, he does assume a tendency for concentration of wealth, and does see that this

concentration of power can be detrimental to equal liberty and equality of opportunity. But he considers that it is so only when inequalities and concentrations of wealth go beyond a certain limit : one of the functions he assigns the government is 'to prevent this limit from being exceeded', but the limit would specifically still permit class differences in life prospects. Where the limit lies is a question, on which Rawls tells us, the theory of justice has 'nothing to say',³⁶.

The shortcoming of this theory of justice is not in its inability to say where the limits should be set to the concentration of wealth to prevent it from becoming an undesirable and unjust concentration of power; it is in its thinking that wealth (the accumulation of capital) only becomes detrimental power (detrimental to equal liberty and equality of opportunity) beyond a certain level of concentration.³⁷

To sum up, in the entire debate on entitlement versus social justice, it is the individual who comes first, last and always. When community is referred to, more often than not it is to elevate the level of generality with which the concerns of individuals are

concerned. The reference is to the collectivity of individuals and not to a social entity that is qualitatively different. In both Rawls and Nozick, the atomistic individual is the receiver of material primary goods. These goods are tailored to the use of an individual who is devoid of any particular social relations, including especially the burden of labouring to produce these goods.

NOTES

1. See, Michael Walzer, Spheres of Justice.
2. John Rawls, A Theory of Justice, p.3.
3. Michael W. Jackson, Matters of Justice, p.8".
4. Robert Nozick and the libertarians being among his foremost critics.
5. See Eric Mack, "Distributionism versus Justice" in Ethics, Jan 1976, pp. 145-53.
6. Rawls "Distributive Justice in Peter Laslett and W.G. Renciman (eds.), Philosophy, Politics and Society, Third Series, pp. 58-59.
7. Hanna Pitkin, "Justice", Political Theory, 1981, p.348.
8. See Ayn Rand, Capitalism : The Unknown Ideal, pp.11-15.
9. Rawls, A Theory of Justice, p.264.
10. Ian Shapiro, The Evolution of Rights in Liberal Theory, p.205.
11. Rawls, A Theory of Justice, p.62.
12. Ibid p.302.
13. A principle higher in a lexical ranking must always be given priority over a lower one, and can never be sacrificed for a lower one should conflicts arise.
14. Rawls, A Theory of Justice, p.302.
15. Ibid, p.196.
16. Ibid, p.274.
17. Nozick, Anarchy, State and Utopia, p.156.
18. Ibid, p.155.

19. Ibid, p,163.
20. See Onora O'Neill, "Nozick's Entitlements" in Inquiry, Winter, 1976, pp.468-481.
21. Nozick, op.cit., p.151.
22. Rand, Atlas Shrugged, p.420-25.
23. Ibid, p.153.
24. Ibid, p.158.
25. See Cheyney C. Ryan, "Yours, Mine and Ours : Property Rights and Individual Liberty", Ethics, Jan 1977, pp.126-141.
26. Benjamin R. Barber, "Deconstituting Politics : Robert Nozick and Philosophical Reductionism" in Michael Freeman and David Robertson (eds.) The Frontiers of Political Theory, p.38.
27. Rawls' theory of justice may be appreciated on this count as rational individuals, who decide on the principles of justice, operate behind the 'veil of ignorance'. See Norman Daniels (ed.) Reading Rawls especially the 'Introduction'.
28. Nozick, op.cit. p.240.
29. Thomas Nagel, "Libertarianism without Foundations" in J. Paul (ed.) Reading Nozick, p.205.
30. Michael Jackson, op.cit. p.42.
31. Ayn Rand, The Fountainhead, p.686. The theme of the novel is individualism versus collectivism, not in politics, but in man's soul ; the psychological motivations and the basic premises that produce the character of an individualist or a collectivist. The story presents the career of Howard Roark, an architect and innovator, who breaks with tradition, recognizes no authority but that of his own independent judgement, struggles for the integrity of his creative work against every form of social opposition - and wins.

The following excerpt is from a conversation between Roark and his friend Gail Wynand, in which Roark explains what he has discovered about the psychology of those whose basic motivation is the opposite of his own : "It's what I couldn't understand about people for a long time. They have no self. They live within others. They live second - hand. Look at Peter Keating I've looked at him - at what's left of him - and it's helped me to understand. He's paying the price and wondering for what sin and telling himself that he's been selfish. In what act or thought of his has the ever been a self? What was his aim in life? Greatness - in other people's eyes. Fame, admiration, envy - all that which comes from others. Others dictated his convictions, which he did not hold, but he was satisfied that others believed he held them. Others were his motive power and his prime concern. He didn't want to be great, but to be thought great. he didn't want to build, but to be admired as a builder. he borrowed from others in order to make an impression on others. There's your actual selflessness. It's his ego that he's betrayed and given up. Isn't that the root of every despicable action? Not selfishness, but precisely the absence of a self".

32. Rawls, "Distributive Justice", op.cit. p.69.
33. Ibid., p.70.
34. Ibid., p.67.
35. John Rawls, "Justice as Fairness" in Peter Laslett and W.G. Runciman (eds.) Philosophy, Politics and Society, Second series, p.138-39.
36. Rawls, "Distributive Justice" op.cit. p.71.
37. See C.B. Macpherson, Democratic Theory : Essays in Retrieval, pp. 87-94.

CONCLUSION

Our analysis of the libertarian conception of human rights, state and justice, through the works of Ayn Rand and Robert Nozick, has showed that the libertarian conception of rights revolves around the notion of self ownership. For the libertarian individual possesses rights, and all rights are equally inviolable. The only form of moral wrong doing in a society therefore is violation of rights. On the question of the nature of state, the libertarian notion is equally categorical. Both Ayn Rand and Robert Nozick emphasise the necessity of a nightwatchman state, with minimal functions. The protection of rights against fraud and violation is the only legitimate function of the state, beyond which it should have no say in the lives of individuals. Ayn Rand through her many novels has strenuously argued against any state other than a minimal one. She warns against the totalitarian tendencies inherent in the expansion of the functions of the state, and gives the example of Soviet Russia - and other East European countries to prove her point. Nozick takes a slightly different route, and defends the minimal state against the individualist anarchists who propagate the ultraminimal state. On the issue of justice, the libertarians offer a new paradigm - the

entitlement theory of justice. The main emphasis of entitlement theory is to insulate the property holdings of individuals against any expropriation, limitation or redistribution. Infact, it is on the subject of property rights that the libertarian views are strongest. The most important aspect to be kept in mind is that while issues like individual rights, liberty, and property has been emphasised before, it goes to the credit of libertarians that they have knitted these various themes into a coherent philosophical framework. Capitalism has not been justified because of its allocative efficiency. Neither has liberty been seen as a means to an end. Rather the attempt in most of the writings of Ayn Rand and Robert Nozick has been to stress the intrinsic value of liberty (in contradistinction to the instrumental value of liberty). Capitalism is seen as the only system which is in consonance with man's "rational" nature.

It would be apparent by now that individual right is the fulcrum around which the entire thesis of libertarianism revolves. To the libertarians all rights are equally stringent. Libertarianism also assumes that the only alternative to the libertarian philosophy of rights is an unrestricted maximising utilitarianism

which respects not persons but only experiences of pleasure or satisfaction. This may be seen as a false dilemma. On the slightest pretext, libertarians are quick to coin such phrases as 'making others part owners of a man', 'forced labour', 'sacrificing one individual for others' etc. We must confront these descriptions with the realities they are misused to describe. How can two things like taxation and right to life be equally inviolable? We must distinguish between the gravity of different restrictions on different specific liberties, and their importance for the conduct of a meaningful life or the development of the personality. Secondly, even if the foundation of rights is, as the libertarians point out, the separateness of individuals, why should rights be limited to the negative services of others? Why should there not be included a basic right to positive services for the relief of great needs. Infact, it may be more relevant to argue as follows :

1. The fact that human beings have rights is indisputable. But all these rights are not equally stringent or inviolable, and there should be what

many critics have termed 'a discriminating catalogue of liberties and rights'.¹

2. Taxation and redistribution are not immoral. There should be a distinction between the infringement of a right and its violation. Since all rights are not absolute, some can be infringed without being violated. For example, the right to property may be overridden for protecting the more stringent right to life.

3. All this means a greater intervention by the state for egalitarian redistribution. True, there have been problems in the functioning of welfare state, but this does not necessitate our abandoning the concept altogether. In the contemporary world, where there is so much economic disparity between the rich and poor, where microscopic minorities command the major resources of a society, where developed nations coexist alongside the developing (and underdeveloped), it becomes important for the state to have a more pervasive say in the affairs of the individual. The philosophy of 'let things alone' can only result in further worsening the situation.

What has been the impact of libertarian political philosophy ? According to Jeffrey Paul :

"In contrast to the moderate and conventional ideological stance of John Rawls's A Theory of Justice, its distinguished predecessor in political philosophy, Nozick's work announced a thesis so out of joint with its times that the critical acclaim accorded to it by many of its reviewers must have astounded its author as much as it baffled its critics. That a treatise extolling the virtues of eighteenth - century individualism and nineteenth - century laissez - faire capitalism should not have elicited either hostility or silence is both a puzzling and gratifying phenomenon ; puzzling because its themes run counter to the Zeitgeist and gratifying because it is a work of considerable philosophical acuity".²

The policy decisions of the Ronald Reagan government in the U.S. in the 1980s and the present Margaret Thatcher government in the U.K. are widely considered to have been influenced by libertarian propaganda.³ But, notwithstanding the rhetoric, the new liberals' impact on practical politics has, to date been patchy at best. The most fundamental defects of collectivism have been barely touched by governments anywhere. Mainstream new liberals do not advocate the total withdrawal of government from redistribution, but do insist that a clear line should be drawn between the

elimination of poverty and the pursuit of egalitarian levelling in the name of 'social justice'. This line of demarcation has nowhere been satisfactorily drawn, though in America it has been more nearly approached than elsewhere. The failure to draw a clear line explains why the welfare state is so often said to benefit, not the poor, but the rich, or at any rate the middle class. But this unexpected result is inevitable, for if the material holdings are placed at the disposal of the government of the day, and if the government of the day has to win support by making promises to winning coalitions of electors, then it is very likely that already well-off people will take the opportunity to turn the state machine to their advantage.

There are libertarian parties in the USA and Australia, but they attract relatively few votes. The US Libertarian Party points out that it is very far behind the two major parties (in terms of membership and organisation). In Australia the libertarian Workers Party fought the elections throughout much of Australia, receiving only five per cent of the votes in its best seat. Since then its influence has waned. In Britain there is no political party devoted to

libertarian principles, although the Libertarian Alliance, the Adam Smith Club and Carl Menger Society, each perform an educational and propagandist, role outside of electoral politics.

One important reason why massive public opinion in support of libertarianism is highly unlikely to emerge is that in most democratic societies individuals have vested interest in the continuation of a statist - welfarist system no matter how cognisant they may be of its inefficiencies. Since they will have been coerced into paying for other peoples' welfare for most of their lives they are unlikely to demand its abolition precisely because they feel with every justification, that they have become 'entitled to their benefits'. This is exemplified in dramatic form with the case of 'unfunded' state retirement pension schemes, in which one generation of workers is taxed to pay for the present retirees on the assumption that it will be similarly generously treated by the succeeding generations of workers. It is surely far too glib for the anarcho - capitalist to assert that, since the original pension 'agreement' was immoral it should be instantly abrogated, even if this were to leave one

generation unjustly treated (as it almost certainly would).

The challenge to libertarianism comes both from within and without. The debate within libertarianism is likely to focus on the claims of the advocates of minimal state and the anarcho - capitalists. The proponents of limited government would argue that their views are consistent with the conclusions of public choice theory because they maintain, it is possible to devise constitutional rules which reduce the external costs generated by competitive democracy to the point at which state activity is limited to the enforcement of natural law. This route is closed to the anarcho - capitalists whose essentialist definition of the state precludes it from being limited by any general rules. Believers in limited government therefore stress that anarcho - capitalism does require a change in human nature if the abolition of the rule of law, constitutionalism and public delivery of law and order is not to be replaced by lawlessness and gang warfare.

The challenges from without come mainly from the socialists and the mainstream liberals. The socialist do not distinguish between the libertarians and

mainstream liberals, stressing that the difference between the two is of degree, not of kind. While they see libertarian philosophy as an apologia for the 'exploitative' capitalist system, they perceive welfarism as a half - way house, a disguised attempt to justify the western democracies. The mainstream liberals criticise the extreme formulations of the libertarian philosophy, and advocate a positive role for the state.

Therefore, it would be erroneous to suggest that libertarianism has succeeded in providing an alternative world - view to the welfare state. The importance of libertarianism has been in highlighting the lacunae in the functioning of the welfare state, and also in reminding us of the dangers implicit in the marginalisation of individuals and the broadening of political authority.

NOTES

1. See H.L.A. Hart "Between Utility and Rights" in Alan Ryan (ed.) The Idea of Freedom : Essay in Honour of Isaiah Berlin pp. 81-85.
2. J. Paul "Introduction" in his (ed.) Reading Nozick, p.1.
3. See D.G. Green, The New Right, Chs. 6-8.

BIBLIOGRAPHY

BIBLIOGRAPHY

BOOKS

- Arblaster, Anthony : The Rise and Decline of Western Liberalism, (Oxford, Basil Blackwell, 1984).
-, : Democracy, (Milton Keynes, Open University Press, 1987).
- Barry, Brian : The Liberal Theory of Justice (Oxford, Clarendon Press, 1973).
- Barry, Norman P. : An Introduction to Modern Political Analysis, (London, Macmillan, 1981).
-, : On Classical Liberalism and Libertarianism, (London, Macmillan, 1986).
-, : The New Right, (London, Croom Helm, 1987).
- Bentham, J. : Introduction to the Principles of Morals and Legislation, (Oxford, Clarendon, 1976).
- Bell, Daniel : The End of Ideology, (New York, The Free Press, 1962).
- Berlin, I. : Four Essays on Liberty, (Oxford, Oxford University Press, 1969).
- Branden, Nathaniel : Who is Ayn Rand, (New York, Random House, 1962).
- Brandt, Reinhard (ed.) : John Locke, (Berlin, Walter De Gruyter, 1981).
- Buchanan, James M. : The Limits of Liberty : Between Anarchy and Leviathan, (Chicago, University of Chicago Press, 1975).
- Buchanan, James M. et.al. : The Economics of Politics, (London, Institute of Economic Affairs, 1978).
- Chapman, J. and Pennock, J. (eds.) : Anarchism, (New York, New York University Press, 1979).

- Charvet, John : A Critique of Freedom and Equality (Cambridge, Cambridge University Press, 1981).
- Cranston, Maurice : What are Human Rights, (London, The Bodley Head, 1973).
- Crespigny, A. and Minogue, K. (eds.) : Contemporary Political Philosophers, (London, Methuen, 1976).
- Dallmayr, Fred R. (ed.) : From Contract to Community, (New York, Marcel Dekker, 1978).
- Daniels, N. (ed.) : Reading Rawls, (Oxford, Basil Blackwell, 1975).
- Dewey, Robert E. and Gould, James A. : Freedom : Its History, Nature and Varieties, (London, Macmillan, 1970).
- Dunn, John : The Political Thought of John Locke, (Cambridge, Cambridge University Press, 1969).
- Feinberg, Joel : Rights, Justice and The Bounds of Liberty, (Princeton, Princeton University Press, 1980).
- Flanagan, Thomas and Paul, Anthony (eds.) : Theories of Property : Aristotle to the Present, (Calgary, Wilfrid Laurier University Press, 1979).
- Flew, A. : Equality in Liberty and Justice, (London, Routledge, 1989).
- Forbes, Ian and Smith, Steve (eds.) : Politics and Human Nature, (London, Frances Pinter, 1983).
- Freedman, Michael : The New Liberalism, (Oxford, Clarendon Press, 1978).
- Freeman, M. and Robertson, D. (eds.) : The Frontiers of Political Theory : Essays in A Revitalised Discipline, (New Delhi, Heritage, 1982).
- Freidman, Milton : Capitalism and Freedom, (Chicago, University of Chicago Press, 1982).
- : Essays in Positive Economics, (Chicago, University of Chicago Press, 1953).

- Freidman, M. and Freidman, R. : Free to Choose, (Harmondsworth, Penguin, 1980).
- Graham, Keith (ed.) : Contemporary Political Philosophy, (Cambridge, Cambridge University Press, 1982).
- Gray, John : Liberalism, (Milton Keynes, Open University Press, 1986).
- Gray, John and Pelczynski, Z. (eds.) : Conceptions of Liberty in Political Philosophy, (London, The Athlone Press, 1984).
- Green, David G. : The New Right, (Sussex, Wheatsheaf, 1987).
- Green, Leslie : The Authority of the State, (Oxford, Clarendon, 1988).
- Haksar, V. : Equality, Liberty and Perfectionism (New York, Oxford University Press, 1979).
- Hayek, F.A. : The Constitution of Liberty (Chicago, Henry Regenry, 1960).
-, : New Studies in Philosophy, Politics and the History of Ideas, (London, Routledge & Kegan Paul, 1978).
-, (ed.) : The Counter Revolution of Science, (Glencoe, Illinois, The Free Press, 1952).
- Hobbes, T. : Leviathan, (ed.) by C.B. Macpherson, (Harmondsworth, Penguin, 1968).
- Hoekema, David A. : Rights and Wrongs : Coercion, Punishment and the State, (Sellingrove, Sellingrove University Press, 1986.)
- Hoffman, John : State, Power and Democracy, (Sussex, Wheatsheaf, 1988).
- Hospers, J. : Readings in Introductory Philosophical Analysis, (New Jersey, Humanities Press, 1968).
-, : Libertarianism, (Los Angeles, Nash, 1971).

- Jackson, M.W. : Matters of Justice, (London, Croom Helm, 1986).
- Levitas, Ruth (ed.) : The Ideology of the New Right, (Cambridge, Polity, 1986).
- Locke, John : Two Treatises of Government, (London, Everyman, 1924).
- Machan, Tibor : Human Rights and Human Liberties, (Chicago, Nelson Hall, 1975).
- Macpherson, C.B. : The Political Theory of Possessive Individualism : Hobbes to Locke, (Oxford, Oxford University Press, 1962).
-, : Democratic Theory : Essays in Retrieval, (Oxford, Clarendon, 1973).
- McLellan, D. (ed.) : Karl Marx : Early Texts, (Oxford, Basil Blackwell, 1971).
- McLennan, G., Held, D. and Hall, S. (eds.) : The Idea of The Modern State, (Milton Keynes, Open University Press, 1984).
- Milne, A.J.M. : Freedom and Rights, (London, George Allen and Unwin, 1968).
- Mises, L.von : Liberalism, (Kansas, Sheed Andrews and McMeel, 1962).
-, : Human Action, (New Haven, Yale University Press, 1963).
- Mishra, Ramesh : The Welfare State in Crisis, (Sussex, Wheatsheaf, 1984).
- Nisbet, Robert : Conservatism, (Milton Keynes, Open University Press, 1969).
- Nozick, R. : Anarchy, State and Utopia, (Oxford, Basil Blackwell, 1974).
- Parekh, B. : Contemporary Political Thinkers, (Oxford, Martin Robertson, 1982).
- Phelps, E.S. (ed.). : Altruism and Economic Theory, (New York, Russell Sage Foundation, 1973).

- Paul, J. (ed.) : Reading Nozick, (Oxford, Basil Blackwell, 1982).
- Rand, Ayn : The Fountainhead, (London, Cassell, 1947).
-, : Atlas Shrugged, (New York, Signet, 1957).
-, : For the New Intellectual, (New York, Signet, 1961).
-, : The Virtue of Selfishness, (New York, Signet, 1964).
-, : The Objectivist Epistemology, (New York, The Objectivist, 1966).
-, : Capitalism : The Unkonwn Ideal, (New York, Signet, 1966).
-, : The New Left : The Anti-Industrial Revolution, (New York, Signet, 1970).
-, : The Romantic Manifesto, (New York, Signet, 1971).
-, : Philosophy : Who Needs It, (New York, Signet, 1976).
-, : Anthem, (New York, Signet, 1955).
-, : Night of January 16th, (New York, Signet, 1956).
-, : We The Living, (New York, Signet, 1957).
- Rawls, J. : A Theory of Justice, (Cambridge, Harvard Unviersity Press, 1971).
- Ritchie, D.G. : Natural Rights, (London, George Allen and Unwin, 1952).
- Rossiter, C. : Conservatism in America, (New Delhi, Kalyani, 1962).
- Rothbard, Murray N. : For A New Liberty, (New York, Macmillan, 1978).
-, : The Ethics of Liberty, (New Jersey, Humanities Press, 1982).

- Ryan, Alan : Property and Political Theory, (Oxford, Basil Blackwell, 1984).
-, : Property, (Milton Keynes, Open University, Press, 1987).
-, (ed.) : The Idea of Freedom : Essays in Honour of Isaiah Berlin, (Oxford, Oxford University Press, 1979).
- Sandel, Michael : Liberalism and the Limits of Justice, (Cambridge, Cambridge University Press, 1982).
- Shapiro, I. : The Evolution of Rights in Liberal Theory, (Cambridge, Cambridge University Press, 1986).
- Sowell, Thomas : Knowledge and Decisions, (New York, Basic Books, 1980).
- Stewart, Robert M. (ed.) : Readings in Social and Political Philosophy, (Oxford, Oxford University Press, 1986).
- Ten, C.L. : Mill on Liberty, (Oxford, Clarendon, 1980).
- Waldron, Jeremy (ed.) : Theories of Rights, (New York, Oxford University Press, 1984).
-, (ed.) : Nonsense Upon Stilts, (London, Methuen, 1987).
- Walzer, Michael : Spheres of Justice, (Oxford, Martin Robertson, 1983).
- Wilding, Paul and George, Vic : Ideology and Social Welfare, (London, Routledge, 1976).
- Winch, D. : Adam Smith's Politics : An Essay in Historiographic Revision, (Cambridge, Cambridge University Press, 1978).
- Wolff, Robert Paul : The Poverty of Liberalism, (New York, Beacon Press, 1968).

ARTICLES

- Aggrawala, B.K. "Nozick on Social Justice", Journal of Indian Council of Philosophical Research, January - April, 1988, pp.1-14.
- Anderson, T. and Hill, P.J. "An American Experiment in Anarcho-capitalism : The Not so wild, wild west", Journal of Libertarian Studies Spring, 1979, pp. 9-30.
- Andrew, E. "Locke, Nozick and Marx on the alienability of Labour". Canadian Journal of Political Science, Sept. 1988, pp.529-50.
- Axinn, S. "The Law of Land Warfare as Minimal Government", Personalist, Vol. 59, 1978, pp. 374-85.
- Barber, B.R. "Deconstituting Politics : Robert Nozick and Philosophical Reductionism.", Journal of Politics, Vol.39, No.1, 1977, pp. 2-23.
- Barnett, Randy E. "Whither Anarchy ? Has Robert Nozick justified the state?" Journal of Libertarian Studies, Winter 1977, pp. 15-21.
- Barry, Norman P. "New Liberalism" British Journal of Political Science , Jan 1983, pp. 93-124.
- Childs, Roy A. "The Invisible Hand Strikes Back", Journal of Libertarian Studies, Winter, 1977, pp.23-33.
- Blackstone, W.T. "The Minimal State : An Assessment of some of the Philosophical Grounds", Personalist, Vol. 59, 1978, pp.333-43.
- Bowie, N.E. "Welfare and Freedom", Ethics Vol. 89, 1979, pp.254-68.
- Buchanan, A. "Distributive Justice and Legitimate Expectations", Philosophical Studies, Vol.28, 1975, pp.419-25.
- Christie, G.C. "The Moral Legitimacy of the Minimal State", Arizona Law Review, Vol.19, No. 1, 1978, pp.31-43.

- "Nozick on Appropriation", New Left Review, Mar/Apr 1985, pp.89-107.
- Coleman, J.S. "The Balance between Rights Individually Held and Rights Collectively Held", Arizona Law Review, Vol.8, No.1, 1978, pp.180-92.
- Danley, J.R. "Robert Nozick and the Libertarian Paradox", Mind, Vol.88, 1979, pp. 419-23.
- Davidson, James D. "Note on Anarchy, State and Utopia", Journal of Libertarian Studies, Fall 1977, pp.341-348.
- Davis, L. "Comments on Nozick's Entitlement Theory", Journal of Philosophy, Vol.73, 1976, pp.836-44.
- Davis, M. "Necessity and Nozick's Theory of Entitlement", Political Theory, Vol.5, 1977, pp. 219-32.
- Degregori, T.R. "Market Morality - Robert Nozick and the Question of Economic Justice", American Journal of Economics and Sociology, Vol.38, No.1, pp. 17-30.
- Den, Uyl D. and Rasmussen, D. "Nozick on the Randian Argument", Personalist, Vol.59, 1978, pp.184-205.
- Exdell, J. "Distributive Justice: Nozick on Property Rights", Ethics Vol. 87, 1977, pp.142-49.
- Feinberg, J. "The Nature and Value of Rights", Journal of Value Inquiry, Winter, 1970, pp.243-57.
- Fielding, Karl T. "The Role of Personal Justice in Anarcho Capitalism", Journal of Libertarian Studies, Fall, 1978, pp. 239-242.
- Flew, A. "Could there be Universal Natural Rights?", Journal of Libertarian Studies, Summer/Fall 1982, pp. 277-288.
- Goldman, A.H. "The Entitlement Theory of Distributive Justice", Journal of Philosophy, Vol. 73, 1976, pp. 823-35.
- Gray, John N. "F.A. Hayek on Liberty and Tradition", Journal of Libertarian Studies, Spring, 1980, pp. 119-138.

- Hall, John A. "Classical Liberalism and the Modern State", Daedalus, Summer 1987, pp. 95-118.
- Hamowy, R. "The Hayekian Model of Government in an Open Society", Journal of Libertarian Studies, Spring 1982, pp.137-144.
- Hart, H.L.A. "Are there any Natural Rights?", Philosophical Review, Summer 1955 pp.175-91.
- Hayek, F.A. "Towards a Free Market Monetary System", Journal of Libertarian Studies Spring 1979, pp. 1-8.
- Held, V. "John Locke on Robert Nozick" Social Research, Vol. 43, 1976, pp. 169-95.
- Hodnson, J.D. "Nozick, Libertarianism and Rights" Arizona Law-Review, Vol.8, No. 1, 1978, pp. 212-227.
- Holmes, R.L. "Nozick on Anarchism", Political Theory, Vol. 5, 1977, pp.247-56.
- Kearl, J.R. "Do Entitlements Imply that Taxation is Theft?", Philosophy and Public Affairs Vol. 7, 1977, pp.74-81.
- King, C. "Seeing Through the Political Realm", Western Political Quarterly, Vol. 29, No.2, 1976, pp. 179-81.
- Litan, R.E. "On Rectification in Nozick's Minimal State", Political Theory, Vol. 5, 1977, pp. 233-46.
- Machan, T. "Nozick and Rand on Property Rights", Personalist, Vol. 58, 1977, pp. 192-95.
-, "Fishkin on Nozick's Absolute Rights", Journal of Libertarian Studies, Summer/Fall 1982, pp. 317-320.
-, "Recent works in Ethical Egoism", American Philosophical Quarterly, 1979, pp. 1-15.
-, "Against nonlibertarian natural rights", Journal of Libertarian Studies, Fall, 1978, pp. 233-238.

- Mack, E. "Egoism and Rights", The Personalist, Vol. 83, No.1, 1973, pp.5-33.
-, "Distributionism versus Justice", Ethics, Vol. 86, No.2, 1976, pp. 145-54.
- Maneli, M. "Expanding the Functions of the State and the Freedom of the Individual", Personalist, Vol. 59, 1978, pp. 424-27.
- Moffat, R.C.L. "Minimal Government : An Introductory Appraisal", Personalist, Vol. 59, 1978, pp. 321-32.
- Newmen, Stephen L. "Chimers of Libertarianism : What's Behind this Political Movement", Dissent, Summer, 1987, pp.308-16.
- Norton, D.L. "Individualism and Productive Justice", Ethics, Vol. 87, 1977, pp. 113-25.
- Nozick, Robert. "Distributive Justice", Philosophy and Public Affairs, Fall 1973, pp. 45-126.
-, "On the Randian Argument" in J. Paul (ed.) Reading Nozick, pp. 206-31.
- O'Neil, P. "Inadequacy of Contract Theory in Robert Nozick", Personalist, Vol. 68, No.4, 1979, pp. 468-81.
- O'Neil, Patrick M. "Ayn Rand, and the Is - Ought Problem", Journal of Libertarian Studies, Spring 1983, pp.81-100.
- O'Neill, O. "Nozick's Entitlements", Inquiry, Vol. 19, 1976, pp. 468-81.
- Paul, J. "Nozick, Anarchism and Procedural Rights", Journal of Libertarian Studies, Fall, 1977, pp. 337-340.
- Pazner, E.A. "Entitlement Principles and the Original Position : A Rawlsian Interpretation of Nozick's approach to Distributive Justice", Arizona Law Review, Vol. 8, No.1, 1978, pp. 169-79.

- Pejovich, S. "Towards an Economic Theory of the Creation and Specification of Property Rights", Review of Social Economy, Sept. 1972, pp. 309-325.
- Replogle, R. "Natural Rights and distributive justice : Nozick and the Classical Contractarians", Canadian Journal of Political Science, March 1984, pp. 65-86.
- Rodman, J. "Analysis and History - Or, How Invisible Hand works Through Robert Nozick", Western Political Quarterly, Vol. 29, No.2, 1976, pp. 197-200.
- Rosa, Peter de. "Where they stand : The Libertarian Party and its Competition 1968-1978", Journal of Libertarian Studies, Winter, 1979, pp. 391-404.
- Rothbard, Murray N. "The Laissez Faire Radical : A quest for the Historical Mises", Journal of Libertarian Studies, Summer, 1981, pp. 237-254.
- Rothbard, Murray N. "Robert Nozick and the Immaculate Conception of the State", Journal of Libertarian Studies, Winter, 1977, pp. 45-57.
- Russell, Paul. "Nozick, Need and Charity", Journal of Applied Philosophy, 1987, pp. 205-16.
- Ryan, C.C. "Yours, Mine and Ours : Property, Rights and Individual Liberty", Ethics, Vol. 87, 1977, pp. 126-41.
- Sampson, G. "Liberalism and Nozick's Minimal State", Mind, Vol. 87, 1978, pp. 93-97.
- Sanders, J.T. "The Free Market Model versus Government : A Reply to Nozick", Journal of Libertarian Studies, Vol. 1, 1978, pp. 35-44.
- Scaff, L.A. "How Not to Do Political Theory : Nozick's Apology for the Minimal State", Arizona Law Review, vol. 8, No. 1, 1978, pp. 193-211.
- Scanlon, T. "Nozick on Rights, Liberty and Property", Philosophy and Public Affairs, Vol. 6, 1976, pp.3-25.

- Schoettli, Urs. "State of Liberalism : Challenges from Left and Right", Contemporary Review, Feb. 1986, pp. 79-85.
- Sen, Amratya. "Rights and Agency", Philosophy and Public Affairs, Winter, 1982, pp. 289-316.
-, "Why Nozick is not so Easy to Refute", The New York Reivew of Books, Vol. 22, No.3, pp. 19-24.
- Steiner, H. "Anarchy, State and Utopia : Book Review", Mind, Vol. 86, No.341, 1977, pp. 120-129.
-, "Justice and Entitlement", Ethics, Vol. 87, No.2, 1977, pp. 150-52.
- Thomson, J.J. "Some Ruminations on Rights", Arizona Law Review, Vol. 19, No.1, 1978, pp. 45-60.
- Tucker, D. "Nozick's Individualism", Politics, Vol. 14, No.1, 1979, pp. 109-21.
- Watner, C. "The Proprietary Theory of Justice in the Libertarian Tradition", Journal of Libertarian Studies, Summer/Fall, 1982, pp. 289-316.
- Wolff, R.P. "Robert Nozick's Derivation of the Minimal State", Arizona Law Review, Vol. 19, No.1, 1978, pp. 7-30.
- Wood, D. "Nozick's Justification of the Minimal State", Ethics, Vol. 88, No.3, 1978, pp. 260-62.
- Yanal, R.J. "Notes on the Foundations of Nozick's Theory of Rights", Personalist, Vol. 60, No.4, 1979, pp. 349-59.