

ANARCHY, STATE, AND UTOPIA  
AND THE NATURAL RIGHT OF PROPERTY

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## ABSTRACT

In this thesis, the political philosophy of Robert Nozick as espoused in Anarchy, State, and Utopia is examined. Nozick's main conclusions are that the minimal state, whose functions are limited to such actions as the protection of its citizens against unjustified force, theft, fraud and the enforcement of contracts, is justified and no more extensive state can be justified. Nozick's defence of this position rests on two pillars. The first is the principle of the inviolability of the individual, which has its roots in Kant's Groundwork of the Metaphysics of Morals, and the second is the extensive natural right of property, which has its roots in Locke's Second Treatise of Government.

In this thesis, Nozick's use of the principle of the inviolability of the individual is accepted and his use of the natural right of property is examined. Arguments in support of this natural right are evaluated in two categories. In the first category are those arguments in support of a natural right of property, which are based on human labour. These are discussed in chapter three which concentrates on arguments offered by Locke. In the second category are those arguments which attempt to deduce a natural right of property from the principle of the inviolability of the individual. These are discussed in chapter four.

The conclusions of these examinations are that none of the arguments considered is successful in establishing a natural right of property and that these two approaches cannot provide successful arguments in support of a natural right of property. Furthermore, (most, if not all) other approaches to this problem, such as arguments from utility and arguments from liberty, are shown to be irrelevant to Nozick's position because they cannot establish natural rights. These arguments can at most justify property rights as a means to an end, and as such they would not be natural rights. Therefore, while it may be possible to justify some system

of private property rights, there is no justification for the claim  
that individuals have an extensive natural right of property.

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CHAPTER ONE

In this thesis I am concerned to evaluate a theory in political philosophy. The process of assessing a theory in political philosophy must inevitably involve our moral intuitions. This is not to say that our moral intuitions have some special status or that any correct theory must fit them exactly. The involvement of our moral intuitions is inevitable because any theory in political philosophy will have moral consequences. These moral consequences may be intuitively appealing or they may be contrary to our considered moral intuitions. We may accept the moral consequences and still want to reject the theory which supported them. An unfounded or simply incorrect theory can nevertheless generate intuitively compelling consequences.

If we decide, however, that the moral consequences generated by a particular theory are unacceptable, we cannot simply dismiss the theory. We must examine the arguments within the theory which support the unacceptable consequences. If those arguments prove compelling we must re-examine our moral intuitions. Yet even in the face of compelling arguments we may decide that our original moral intuitions are correct. When this happens, it is necessary either to re-examine the compelling arguments or to delve deeper into the theory in order to discover vague, hidden or poorly defended premises. Such premises should then be evaluated and their role within the theory determined.

This procedure for assessing theories in political philosophy is similar in many respects to the method of reflective equilibrium outlined by John Rawls in A Theory of Justice.<sup>1</sup> According to Rawls, reflective equilibrium is the state of affairs reached by reconciling considered moral judgements or convictions with a set of moral principles. It is an equilibrium because the process of reconciling discrepancies between moral judgements and a set of moral principles involves using each as a tool to

evaluate the other. Thus, moral judgements will sometimes be altered and moral principles will sometimes be altered.

Similarly, in the process of evaluating a theory in political philosophy our intuitions (judgements) about the moral consequences of the theory are used to assess the arguments which the theory employs and these arguments are used to assess our moral convictions. It is not clear that a reflective equilibrium is ever reached with such a theory because the theory may have to be discarded or adopted in its entirety. Yet the process by which a reflective equilibrium would be reached is the same as the process which must be employed to reconcile discrepancies between compelling arguments and moral judgements.

These introductory comments are of particular importance because the subject of this thesis is a theory of the state which is supported by quite compelling arguments but which has moral consequences that are in conflict with strongly held moral convictions. The theory was espoused by Robert Nozick in Anarchy, State, and Utopia<sup>2</sup> and the controversial nature of his conclusions was evident even to him. In the preface, Nozick states that "many persons will reject our conclusions instantly, knowing they don't want to believe anything so apparently callous towards the needs and suffering of others." (ASU p.ix.). The main conclusions which Nozick reaches in Anarchy, State, and Utopia concern the limits of the functions of any legitimate state. In Nozick's view, the minimal state, one whose functions are limited to such actions as the protection of its citizens against unjustified force, theft, fraud and the enforcement of contracts, is justified. Any more extensive state, any state which goes beyond these narrow limits, is unjustified.

In this Chapter, I examine the foundation of Nozick's theory in the light of criticisms of its consequences. One of the major pillars of this foundation is formed by the natural rights of individuals. In the next

chapter the concepts of 'a right' and 'a natural right' are discussed in an effort to determine the particular natural rights on which Nozick's theory is based. The conclusions of this chapter form the basis for the last two chapters of this thesis. Both chapter three and chapter four are concerned with arguments that attempt to establish a natural right of property. In the third chapter, Locke's arguments from labour are examined. In the fourth chapter, arguments based on the principle of the inviolability of the individual are evaluated.

Many of the criticisms of Nozick's position stem from the fact that the extreme laissez-faire market economy, which is an integral part of Nozick's theory, creates and perpetuates intolerable inequalities. I do not wish here to defend equality as a social goal but is it not unjust that some men live in luxury while others exist in conditions of abject poverty? Is it not unjust that some men have tremendous opportunities for social and economic advancement, while other men have few, if any, opportunities to improve their situation? Is it not unjust that some men receive an excellent education while other men are never taught to read or write? Is it not unjust that a society which can afford to feed, clothe and educate its entire population does not do so?

The state, in Nozick's view, is not to exert any control whatsoever over the economic actions of individuals. As a result of this, it is illegitimate for the state to attempt to improve the situation of some members of society by redistributing wealth or by redirecting resources. Many of the institutions which have become commonplace in industrialised countries, such as public education and financial assistance for the handicapped and destitute, would be absent in a society with a minimal state. It is true that voluntary means of redistributing wealth would still be open, but it would not, in Nozick's view, be unjust if people went without proper nutrition or medical care.



This situation, a moral consequence of the minimal state, is contrary to commonly held and strongly held moral intuitions. People disagree about the extent to which government should intervene in the economic realm and the extent to which government should aid certain segments of society. It is rare, however, to encounter an individual who does not find abhorrent the thought of a government that did nothing at all to help the needy. Nozick states in the preface to Anarchy, State, and Utopia that this moral intuition was one which he held prior to considering libertarian views.

The moral judgement that the state should aid those members of society who, for one reason or another, are truly in need is not the only moral judgment which conflicts with the moral consequences of the minimal state. It is also a commonly held moral intuition that the state should act to counter actions of individuals that are deemed gross violations of the principles of fairness. For example, few would deny that the state should intervene to compel an individual to do business with blacks if he would otherwise not do so. Yet it is perfectly consistent with Nozick's views to suppose that individuals could choose to do business only with white people or only with christians and that the state would be forbidden to intervene. (The only exception to this would be if people withheld all of a vital resource. Water, for example, could not be withheld from a segment of the population. This would violate the Lockean proviso.)

Another widely held moral intuition which is in conflict with Nozick's conclusions is that the state is at least sometimes justified in passing laws which are in the public interest. The laws which compel drug manufacturers to comply with certain regulations and testing procedures are designed to protect the public. Similarly, with the laws which compel the owners of shops and other buildings to meet certain fire standards. There is certainly much disagreement concerning the proper extent of government regulation but the principle that the government is at least sometimes



justified in regulating the actions of individuals and groups in the public interest would only be denied by an affirmed libertarian.

The conclusions about the legitimate functions of the state which Nozick reaches are in conflict with several widely held and strongly held moral judgements. The judgements are that the state should act in the public welfare, out of considerations of fairness and in the public interest. The minimal state is limited to such narrow functions that all three of these spheres of actions are closed to it. It is unjust, in Nozick's view, for the state to redistribute wealth or to redirect resources in the public welfare. It is unjust also for the state to regulate the actions of individuals out of consideration for fairness. Finally, it is unjust for the state to interfere with or regulate the actions of individuals or companies in the public interest.

This conflict between our considered moral judgements and the moral consequences of the minimal state provide a powerful but incomplete argument against Nozick's theory. The argument is incomplete because our moral judgements may be wrong and must themselves be judged in the light of the arguments which support Nozick's theory. The remainder of this chapter, therefore, will be devoted to explicating Nozick's theory.

Anarchy, State, and Utopia is divided into three sections. In the first section, Nozick is concerned to show that the minimal state can be justified. In the second section, Nozick attempts to show that the only state which can be justified is the minimal state. Finally, in the third section, Nozick assesses the minimal state in the light of utopian theory. Although this third section is intended to be a defence of the minimal state against the claim that it is singularly uninspiring, it is of little importance to the present task. In this thesis, I will be concerned with the first two sections in which Nozick sets out his defence of the claim that the minimal state is the only state which is justified.

The main task which Nozick faces in the first section is to answer the individualist anarchist's claim that any state must be immoral. This claim rests on the further claim that individuals have natural rights and

that any state in exercising its functions will violate at least some of the rights of some individuals. Nozick must respond to this position because it is based on tenets about individuals and natural rights which form an integral part of his own political philosophy. These tenets are that individuals have natural rights and that an individual's natural rights determine moral constraints upon the actions of other individuals or groups. Treating natural rights as constraints on the actions of others as opposed to treating them as goals stems from "the underlying Kantian principle that individuals are ends and not merely means; they may not be sacrificed or used for the achieving of other ends without their consent." (ASU pp. 30-31). The inviolability of individuals is central to Nozick's theory. What Nozick must show, therefore, is how the minimal state could arise and function without violating any individual's natural rights.

It should be noted that Nozick's interpretation of the Kantian principle that humanity should always be treated as an end and never simply as a means differs significantly from how Kant regards this principle. Kant would agree with Nozick that the treatment of individuals as ends is not a goal to be maximised. He would not agree, however, that this entails that individuals do not have obligations to aid others. On Nozick's view individuals cannot have rights which obligate others unless those who are obligated have given their consent. For Kant, such rights arise from the categorical imperative.<sup>3</sup>

Nozick begins his derivation of the minimal state with a Lockean interpretation of the state of nature. In such a state of nature, every individual is free to act within the bounds of the law of nature, which requires that, "no one ought to harm another in his Life, Health, Liberty or possessions." (Bk.II, Sect.6).<sup>4</sup> One of the things which individuals are free to do is bind together to enforce the law of nature and thus protect

themselves more effectively and more efficiently than would otherwise be possible. In this way, a number of "protective associations" would form. In time, one protective association becomes dominant in a given area. It is important that this occurs as a result of each individual acting freely. The causes can be put down to self-interest and economies of scale. This dominant protective association, however, falls short of being a state. This is the case for at least two reasons: firstly, the dominant protective agency does not claim or attempt to operate a monopoly on the use of force in a given territory, and secondly, it does not attempt to protect all the individuals in its territory, only those who have purchased protection.

Nozick's next move is to claim that those individuals or groups which attempt to enforce the law of nature independently of the dominant protective agency pose a threat to those individuals who have purchased protection because of the inevitable risks involved in independent enforcement. As a result, the dominant protective agency prohibits the private enforcement of the law of nature. But this is only an 'ultraminimal' state because it does not satisfy the second condition mentioned above. Why can the dominant protective agency extend its protection to those who have not purchased it?

If the dominant protective agency prohibits the independent enforcement of justice because it is not sufficiently reliable, then it must compensate those independents whose only method of protecting their own rights is now unavailable to them. This compensation takes the form of protection extended to them by the dominant protective agency. Thus, the two necessary conditions for being a state, set out above, are met by the dominant protective agency in a given territory. The dominant protection agency is a state, albeit a minimal state.

The second section of Anarchy, State, and Utopia is divided into three chapters. In the first chapter, Nozick develops a theory of

distributive justice which does not require a more than minimal state to implement. He then defends this theory against several objections and alternative theories. In the second chapter, Nozick deals with objections to the minimal state, such as those I mentioned earlier.

Lastly, Nozick devotes a chapter to showing how a more than minimal state could arise and to showing that it would be an unattractive alternative.

Nozick's theory of distributive justice is the entitlement theory according to which a distribution of holdings is a just distribution if it arose legitimately. The legitimacy is judged by three principles of distributive justice. The principle of justice in acquisition specifies the legitimate way in which holdings can be initially acquired; the principle of justice in transfer specifies the ways in which holdings can be transferred; and the principle of rectification of injustice specifies the ways in which infractions of the first two principles can be rectified. The unique aspect of the entitlement theory of distributive justice is that a distribution is judged on the basis of totally historical principles. No distribution can be condemned as being unjust for reasons other than how it came about. As a result of this, any distribution which results from a just distribution by legitimate means must also be just. (These comments ignore the Lockean proviso which will be discussed in Chapter Three).

After developing the entitlement theory, Nozick discusses the use of time slice, or end-state principles which concern the structure of the distribution at a given time. A theory of distributive justice which includes end-state principles cannot, according to Nozick, be maintained without interfering in people's lives. Continuously realising a patterned distribution of holdings requires determining for people, at least to some extent, what they can and cannot do with what is theirs. But according to Nozick, this situation is an intolerable infringement on people's liberty to act freely and to dispose of their possessions as they see fit.



As a result of this, taxation, or any redistributive scheme by which something is taken from one individual (without his consent) in order to be given to another, is tantamount to theft. The fact that the recipient may desperately need what is being redistributed is simply not relevant.

Rather than present all or most of the points which Nozick makes in the remainder of the second section, which would be quite a lengthy task, I will concentrate on his defence of the minimal state against the intuitive objections I raised above. Those objections can be placed under three headings: public welfare; fairness; and public interest. The claim that the state should provide for the public welfare is certainly rejected by Nozick. He not only rejects the claim that some people should be forced to contribute to the welfare of others, he also rejects the whole notion of a public welfare.

But there is no social entity with a good that undergoes some sacrifice for its own good. There are only individual people, different individual people, with their own individual lives. Using one of these people for the benefit of others, uses him and benefits the others. Nothing more.  
(ASU pp.32-33).

In Nozick's view, therefore, it is incorrect and misleading to claim that a society which can afford to provide for its population should, because it is not the society which can afford the provision. The society is not an atomic entity with a bank balance from which it can make payments. The provision does not come from the society, it comes from the individuals and those individuals have rights over that which is being taken away from them to provide for others. Such provision, therefore, violates the rights of individuals and is for that reason, intolerable. This is the case whether the provision is for the public welfare or whether it is for the welfare of individuals.

Nozick does not discuss directly the question of whether the state could compel individuals to adopt non-discriminatory business practices.



From his discussion of equality of opportunity, however, his position on this question is clear. Equality of opportunity can be provided, Nozick suggest, either by worsening the situation of those with greater opportunity, or by improving the situation of those with less opportunity. Even the second method involves worsening the situations of some, however, because resources must be taken from some individuals in order to be used to improve the situation of other individuals. Nozick states categorically that "holdings to which these people are entitled may not be seized, even to provide equality of opportunity for others." (ASU p.235). According to Nozick, only voluntary means of attaining equality of opportunity are available.

Only the holder of a particular resource may determine how that resource is to be used or to whom it is to be transferred. "Often the person entitled to transfer a holding has no special desire to transfer it to a particular person....He chooses to transfer to someone who satisfies a certain condition...." (ASU p.236). The implication of this passage is that the owner of a holding may choose to transfer that holding to any particular person or to any person who meets certain conditions which he has determined. Nowhere in Anarchy, State, and Utopia is there any indication that a person may not choose as one of these conditions that the person to whom he will transfer his holding must be white or must be a christian. According to Nozick, this determination of the next holder of a particular holding is the sole jurisdiction of the present holder. He may choose the next holder on the basis of whatever conditions he likes. In other words, not only is the state prohibited from acting to equalise individuals' positions, it is also prohibited from acting to equalise individuals' treatment by other individuals.

One possible reaction to this is to claim that every individual has a right to be considered as a prospective recipient of holdings without regard to race, religion, sex, etc. A black man could then claim that he has a right to be served in a restaurant that serves everyone except blacks. It is clear, however, that Nozick does not accept the existence of such 'rights to':

The major objection to speaking of everyone's having a right to various things such as equality of opportunity, life, and so on, and enforcing this right, is that these 'rights' require a substructure of things and materials and actions; and other people may have rights and entitlements over these. No one has a right to something whose realization requires certain uses of things and activities that other people have rights and entitlements over. (ASU p.238).

An individual must exercise his rights within a structure created by other people exercising their rights. If an individual wants to achieve certain goals which require that other people exercise their rights in a particular fashion, then he must convince those other people to co-operate voluntarily. He has no right to anything which obligates other people to exercise their rights in a particular fashion. The unfairness of equal opportunity or even of blatant racial discrimination is not a justification for violating the rights of individuals.

More generally, Nozick does not accept that there is a moral principle of fairness of which he must take account. It is not that individuals' rights override considerations of fairness, it is that considerations of fairness are not moral considerations. This is why Nozick's response to an example of something which is unfair is to give a context in which what was deemed unfair in the example is clearly fair. It seems unfair that a person should benefit from his natural (and therefore deserved) talents. But it does not seem unfair that a person should be chosen by his future spouse on the basis of his natural (and therefore undeserved) talents. (ASU pp.235-238).

The moral judgement which allows a certain degree of paternalism on the part of the state is explicitly rejected by Nozick.

My nonpaternalistic position holds that someone may choose (or permit another) to do to himself anything, unless he has acquired an obligation to some third party not to do or allow it. (ASU p.58 - Nozick's emphasis).

Manufacturers cannot be prevented by the state from producing dangerous drugs and individuals cannot be prevented from using them. The justification for this view rests on the rights which individuals have over themselves. The state has no right to determine for an individual what he can and cannot do.

Similarly, passing laws which regulate the activity of individuals in the public interest would be totally rejected by Nozick. As with 'public welfare' Nozick would claim that there is no public with interests. There are only separate individuals with separate interests and the rights of some individuals may not be sacrificed or violated in the interest of other individuals.

These arguments which Nozick offers as responses to the claim that the minimal state is contrary to considered moral judgements have a compelling logic which makes them difficult to dismiss. Even if we remain skeptical of the rejection of the existence of a social entity with goals, interests and a welfare, we must still contend with the moral constraints formed by the inviolability of the individual and the existence of natural rights. Such a reaction, however, misses the point of examining Nozick's theory. It is precisely because the notion of the inviolability of the individual and the existence of natural rights is so intuitively appealing that Nozick's conclusions present a problem at all. The conflict which

Anarchy, State, and Utopia presents is a conflict between a foundation composed of principles which have intuitively appealing consequences and the consequences of that foundation, which are counterintuitive.

In order to resolve this conflict it is necessary to examine in greater depth the two principle aspects of the foundation of Nozick's theory. In this thesis I will accept the inviolability of the individual and examine the notion of natural rights. I choose this path for several reasons: first of all, there is a sense in which the inviolability of the individual must either be accepted or it must be rejected entirely. Either individuals are inviolable or they are not; it is difficult to see a middle course. The existence of natural rights on the other hand, may be accepted without thereby being committed to the particular natural rights which underpin Nozick's theory. The second, and more important reason, for accepting the inviolability of the individual and questioning Nozick's use of natural rights is that the unappealing conclusions of his theory rest to a greater extent on his use of natural rights. The entitlement conception of justice rests solidly on the natural rights to acquire, hold and dispose of property. More generally, however, Nozick himself indicates the importance of natural rights to his theory in the first paragraph of the preface:

Individuals have rights and there are things no person or group may do to them (without violating their rights). So strong and far-reaching are these rights that they raise the question of what, if anything, the state and its officials may do. (ASU p.ix).



CHAPTER TWO

The concept of a right is both complex and controversial. Rights are encountered in different areas of human activity and in ordinary speech the meanings of 'rights' are many and varied. It is not even clear that there is one concept of a right from which all other concepts and usages of 'rights' are derived. For the purposes of this thesis, however, it is not necessary that the concept of a right be made entirely perspicuous. A working definition that includes those aspects of a right which are particularly relevant to natural rights will suffice. This will leave many questions about rights unanswered but it will provide a basis from which to evaluate Nozick's use of natural rights.

In formulating a working definition of a right, it is important to recognise that certain concepts which are often used in such definitions are as much in need of explication as the concept of a right. For instance, rights are often defined in terms of claims. Yet the notion of a claim involves the concept of a right. Even the concepts of duty and obligation fall into this category. To define a right as a state of affairs in which some person or persons has an obligation or duty to the right-holder is to leave the concept of a right undefined. What is an obligation? It is to be defined as a state of affairs in which the person to whom the obligation is owed has some sort of right? The difficulty with the concepts of rights, claims, duties and obligations is that they all involve some set of principles, such as moral or legal, by reference to which talk of rights, duties, etc., makes sense.

My task, therefore, is to arrive at a definition of a right which is neutral with respect to the sets of principles that establish rights. For the sake of simplicity, I will concern myself only with rights that are similar to natural rights. This will eliminate those rights which, for



example, are created by the actions of individuals. Natural rights are never created by the actions of individuals (though it may be the case that some natural rights are 'brought into force' by the actions of individuals). The definition which I will offer will not be adequate for rights to receive or rights which obligate other people to perform specific actions. My interest is with rights that obligate people not to interfere with the right-holder's performance of a particular action or set of actions. I will leave open the question of whether a natural right can obligate people to perform a particular action for the right-holder. An example of such a right (if indeed it is a right) is the right to receive assistance when in need. Clearly, Nozick believes there can be no such rights and since I am concerned to evaluate his use of natural rights, I will not dispute the point.

The sort of rights which Nozick thinks are natural rights are rights to perform certain actions. For example, the rights of a property owner to use, manage and sell his property. Although many of the rights which Nozick believes people have as natural rights are not obviously rights to perform a certain action, all such rights can be reformulated as rights to perform certain actions. For example, the right to own property, which is not obviously a right to perform certain actions, can be reformulated as the right to perform those actions which constitute acquiring property and the right to perform those actions which constitute owning or controlling property. There is no separate right to be a property owner. Similarly, there is no separate right to be recognised as the owner of a particular holding. That right is simply the right not to be interfered with in the exercise of the rights of ownership. These rights of ownership are rights to do certain things with or to that holding. It may be convenient to talk of rights in terms other than the right to perform a certain action but it is not necessary.

My working definition, then, of a right to perform certain actions is as follows:-

A state of affairs in which person P has a right to perform action A is a state of affairs in which every other person either refrains from interfering with or preventing P's performance of A or violates the principles which established P's right to perform A.

This definition, it might be claimed, does not say a great deal about what a right is. The point of this definition, however, is to capture those elements of 'a right' which are common to natural rights, legal rights, moral rights, rights in games, etc. It ignores, therefore, many questions which require different answers depending on what type of right is being discussed. For example, the issues of what may be done to prevent a violation of a right and of what may be done in reaction to a violation of a right cannot be dealt with without reference to particular types of rights. In a game, the fact that a player has a particular right may not mean (i.e. entail) anything more than that a violation of that right is against the rules of the game.

Several additional comments are appropriate here. This definition ignores the question of whether individuals are the only bearers of rights. Perhaps corporations, or groups of people can also be the bearers of rights. For the purpose of this thesis, however, this question can be ignored because we are concerned with the natural rights of individuals. This definition also ignores the question of whether it is the case with every right to perform an action that every person other than the right-holder must refrain from interfering with the performance of that action. In a game, for example, a player's right to perform a certain action may be consistent with the umpire's or referee's right to interfere with any action of any player. The fact that a particular person or persons are

not obligated by an individual's right to perform a certain action is a result of their having a special status established by the same set of principles that established the individual's rights. No such special status, however, frees any person from the obligations which result from an individual's natural rights. Natural rights concern individuals as individuals and not individuals as referees or as umpires.

Another question which this definition does not deal with is whether all rights to perform an action are always 'in force'. Is it the case that all individuals\* hold every natural right at all times? This question is really two different questions. (1) Can individuals who are not in a position, or do not have the capacity, to perform certain actions be properly said to have the right to perform those actions? (2) Are there, or can there be, any mitigating factors which limit or override an individual's natural rights? The answer to the first question is clearly 'yes' because the right to perform an action does not entail nor does it depend on the capacity to perform it. (This point is discussed in greater detail later in this chapter.) The second question has two answers. The first answer concerns mitigating factors that are external to the principles which establish natural rights. An example of external mitigating factors might be natural catastrophes. Since it is Nozick's position that the natural rights of individuals cannot be overridden by external considerations,

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\*I ignore here the question of whether every individual holds every natural right. This point is not essential to this discussion, however, because the restrictions which would be placed on the set of natural rights which a given person holds concern that person's rationality. An infant and a mental vegetable, therefore, may (and I think do) have a set of natural rights which differs from the set held by most individuals.

I will assume this to be the case. The second answer to this question concerns internal considerations. These might be other natural rights or some aspect of the principles which establish natural rights. While Nozick states explicitly (ASU p.238) that the natural rights of individuals do not conflict, he does allow that considerations internal to the principles which established natural rights can limit them. (ASU pp.178-182). I will not deal with the issues raised by this position here. Rather, I will discuss them in chapter three.

The most important aspect of this definition in need of clarification concerns the sets of principles which establish individuals' rights. Rights do not exist in a vacuum. They must be grounded in some set of principles, thus making moral rights, or legal rights, or natural rights, etc. These sets of principles provide the justification for the rights which they establish. A legal right is justified by reference to the legal system; a moral right by reference to the set of moral principles. Similarly, these sets of principles establish obligations, duties, and claims. A moral right has a correlative moral obligation or moral duty. The holder of a moral right has a correlative moral claim. These correlations are determined by the set of moral principles.

The set of principles that establish a given right, also determine the consequences of and remedies for violations of that right. Whether a violator of an individual's right is required to compensate that individual and whether it is justifiable to use coercive measures to prevent a violation are settled by reference to the set of principles which established that right. With regard to legal rights, these questions are easily answered because laws have been passed which establish procedures to rectify injustices. With moral and natural rights, however, the situation is much more complicated. Does the violation of a person's natural rights entitle that person to take retributive action? Here too, Nozick makes his position clear.



Nozick follows Locke's conception of the state of nature in assuming that any individual has a right to enforce the law of nature and to punish any violation of any individual's natural rights. While this point is important to the first section of Anarchy, State, and Utopia, in which Nozick deduces the minimal state from the state of nature, it is not essential to this thesis. I am not concerned with what may be done to prevent or to remedy a violation of an individual's natural rights. What is important is that any such violation is a violation of the law of nature and is contrary to the principles of justice.

So what are natural rights? Natural rights are rights which are established by the principles of the law of nature and as such are pre-political. Whatever the principles of the law of nature are, they apply to all individuals (with certain considerations of rationality). Because the law of nature is pre-political, natural rights are not, nor could they be, established or altered by the actions of social institutions or the actions of groups or individuals. Natural rights are a subset of moral rights because the law of nature forms (and must form, for anyone who accepts the existence of a law of nature) a part of the principles of morality. An infringement on or violation of the law of nature, therefore, is immoral as such.

This characterisation of natural rights follows closely the classical treatment of natural rights which is the basis of Nozick's theory. Yet three main questions must be asked. (1) Are there any natural rights? (2) How do we know that a particular right is a natural right? (3) How do we know that we have a particular natural right? Although the first question is of fundamental importance to political philosophy and especially to natural rights theorists such as Locke and Nozick, it is not necessary to give a complete answer in this thesis. It is one of the assumptions of this thesis that the foundation of Nozick's theory, viz.

the principle of the inviolability of the individual and individual's natural rights, is intuitively appealing. I will assume, therefore, that individuals do have natural rights and I will offer only limited support.

The limited support which I will offer for the claim that there are natural rights is based on an article by H.L.A. Hart, entitled "Are There Any Natural Rights?". In this article, Hart claims that, "if there are any moral rights at all, it follows that there is at least one natural right, the equal right of all men to be free." (p.53).<sup>5</sup> My contention is that the existence of moral rights and moral obligations must either be part of or be consequences of some pre-existing moral framework of rights and obligations. By 'pre-existing' I mean that this moral framework is not a creation of nor can it be altered by the actions of individuals. This moral framework, therefore, is natural in the same sense that natural rights are natural.

Those moral rights which are part of the pre-existing moral framework are just those rights which are (or can be) asserted as natural rights. For this category of moral rights, often called general rights, my contention amounts to the claim that asserting the existence of these moral rights is tantamount to asserting the existence of natural rights. As such it does not support the claim that there are natural rights, it merely makes explicit the link between natural rights and a category of moral rights which are commonly held to exist. To assert, for example, that individuals have a (moral) right to worship however they please, or a (moral) right to hold whatever political beliefs they please, is to assert a general moral right which is a particular application of a natural right, i.e. the natural right of freedom of belief. Although the formulation of natural rights tends to be more general than the formulation of general moral rights, both apply to individuals as individuals and both exist prior to the actions of individuals.

With regard to another category of moral rights, often called special rights, my contention is of greater importance. Moral rights that are created by the voluntary actions of individuals entail some pre-existing moral framework. The moral nature of such rights is a result of the application of pre-existing moral principles. More precisely, if the voluntary consent of individuals is sufficient to establish moral rights and moral obligations, then there must at least exist a natural right to enter into morally binding contracts. That promising morally obligates the promiser entails a pre-existing, and therefore natural, right to obligate oneself and thus limit one's own freedom.

These arguments in support of the claim that there are natural rights are not intended as a conclusive defence. They are merely intended to show that the existence of natural rights is entailed by our considered moral judgements about the moral nature of rights. To question the existence of (at least some) natural rights is to question the existence of (most, if not all) moral rights. (People who have different intuitions about the nature of moral rights may not be swayed at all by my arguments.)

The second question above concerns the criteria which establish that a particular right is a natural right. Some of these have been mentioned already. A natural right must apply to all individuals qua (rational) individuals. It is because an individual is an individual that he has natural rights. Any right which is a natural right, therefore, must be free of references to specific people or specific groups. Also, it must not include references to positions which individuals might hold. In other words, natural rights do not contain (or at least it must be possible to formulate them without) terms which classify or otherwise describe individuals. Individuals have natural rights and not tall people or property owners (except insofar as they are individuals).

Another aspect of natural rights is that they are pre-political. They do not stem from political or social arrangements or institutions.

It must be possible therefore to formulate natural rights without recourse to purely political language. The right to vote, for example, is not a natural right. It is (or could be) a particular application of a natural right, viz. the natural right to choose to whom one transfers authority over particular matters. An action which arises from political or social arrangements or institutions cannot be the subject of a natural right. It can, however, be covered by a natural right. For the purpose of this thesis, it will not be difficult to determine what rights are natural rights. The difficulty arises in answering question (3) above.

This question concerns the justification for the claim that individuals actually have a particular natural right. This is of fundamental importance to this thesis because in order to evaluate Nozick's use of natural rights, it is necessary to determine whether individuals actually have the natural rights which Nozick attributes to them. In other words, we must determine what constitutes a justification for the claim that individuals actually have a particular natural right?

The process of justifying the claim that individuals have a particular natural right is much the same as the process of justifying any moral claim. A sound argument must be constructed which has as its conclusion the assertion that individuals have the natural right in question. It is important to emphasise that the desired conclusion does not involve the assertion that the natural right in question should be held by individuals. Nor does it involve a conditional such as: this natural right is necessary, if we are to ..... Moral claims about what people should have or how they should be treated enter into the argument only as premises (if at all). The conclusion is not a moral judgement or intuition, it is a moral principle. Natural rights are part of the set of moral principles by reference to which we make moral judgements.



What are the natural rights that Nozick believes are held by individuals? In order to answer this question we will examine the section of Anarchy, State, and Utopia in which Nozick develops his theory of distributive justice, or, what he claims is a neutral term for the same thing, justice in holdings. The theory which Nozick offers he calls the entitlement theory and it consists of three principles: (1) The principle of justice in acquisition governs the initial acquisition of holdings; (2) The principle of justice in transfer governs the transference of holdings; (3) The principle of the rectification of injustice governs the manner in which violations of either of the first two principles are to be handled. The holdings which a person is entitled to are determined by these three principles. The entitlement theory of distributive justice maintains that a given distribution of holdings is just, if every individual possesses all those and only those holdings to which they have entitlements.

Although Nozick does not specify the details of his three principles of distributive justice, it is clear that they are based on (and therefore entail) natural rights. The principle of justice in acquisition, for example, specifies for each potential (i.e. unheld) holding an action, or set of actions, which constitutes the acquisition of that holding. In other words, for any potential holding there is an action or a set of actions the performance of which, by any individual, confers on that individual an entitlement, or right, to that holding. Similarly, the principle of justice in transfer specifies for each actual (i.e. held) holding an action or set of actions which constitutes the transference of that holding. The specified set of actions may include actions to be performed by the transferor and the transferee or by one or the other. (It would be peculiar if the principle of justice in transfer specified actions to be performed only by the transferee but it is not impossible). When the

specified actions have been performed by the specified individuals (i.e. the transferor and/or the transferee), a transference of the entitlement, or right, to a particular holding has taken place.

The rights to particular holdings conferred by the principles of justice in acquisition and in transfer are not natural rights. They are not natural rights for two reasons. First of all, they govern specific holdings and specific individuals. A right of this sort is conferred upon a particular person, i.e. that person who performed the specified actions, and is a right to a particular holding. Natural rights are held by all individuals and not just 'the individual who performed the specified actions'. Moreover, natural rights are never rights to particular holdings because any holding is ephemeral whereas natural rights are not. If a person's right to a particular book were a natural right, then what would become of that natural right once the book is destroyed? The natural right cannot disappear because that would constitute the altering of natural rights by the actions of individuals. (Killing an individual does not destroy natural rights, it destroys a holder of natural rights. Similarly, giving birth to a child does not create natural rights, it creates a holder of natural rights.)

This leads directly into the second reason for claiming that the rights conferred by the principles of justice in holdings are not natural rights. Such rights stem from and are created by the actions of individuals. It is precisely because a person has performed certain actions that his right to a particular holding exists. But natural rights cannot be created by the actions of individuals. The existence of natural rights is independent of the actions of individuals; it is independent of the social institutions or arrangements created by individuals. This must be so because natural rights are held by individuals by virtue of their being individuals and not because of anything they might have done.

So what are the natural rights entailed by Nozick's three principles of justice in holdings? Perhaps the word 'entailed' is misleading because the natural rights which Nozick utilises are actually embedded in the three principles of justice. The actions specified by each of the principles that constitute the acquisition or transference of a holding, or the rectification of an injustice, are actions which every individual is entitled to perform. In other words, every individual has a right to perform those actions which are specified by the three principles of justice in holdings. Individuals as such do not have rights to particular holdings but they do have the right to perform those actions that constitute the acquisition of rights to particular holdings. Similarly, individuals have the right to perform those action that constitute the transference of rights to particular holdings. Any individual who interferes with another's performance of an action specified by a principle of justice in holdings is in so doing, violating that principle.

The rights to perform those actions that constitute the acquisition or transference of a holding or the rectification of an injustice, as specified by the three principles of justice in holdings, are natural rights. They are natural rights because they are held by all individuals and are not created or altered by the actions of individuals. The specification of these rights will not involve references to specific people (e.g. the person who did such-and-such) nor will it include references to individuals under some description (e.g. those people who are so-and-so). Since these rights are embedded in the principles of justice in holdings, they exist prior to any social arrangement and, therefore, cannot be created or altered by such arrangements.

It might be claimed that the right to perform those actions which constitute the transference of a holding is only held by those individuals who actually have holdings to transfer. In that case, the right to perform

those actions would not be held by all individuals and, at least on my definition, would not be a natural right. This is mistaken, however. While it is true that those people who have no holdings will not be able to perform any actions which can only be performed by those who do have holdings, nevertheless, people with no holdings do have the right to perform such actions. The right to perform an action does not entail or depend upon the capability to perform it. A person who is physically incapable of jumping ten feet off the ground may still be said to have a right to jump ten feet off the ground. His possession of such a right means that no person may prevent him from jumping ten feet off the ground. It does not mean that he can actually do it.

Moreover, the right to transfer holdings one has is a right individuals have by virtue of their being rational individuals. It is not the case that individuals have this right because they have holdings. In other words, this right does not stem from having holdings to transfer. Except for the fact that they can actually transfer holdings, there is nothing particular about individuals who have holdings by virtue of which they have the right to transfer those holdings. Whatever establishes the right to transfer holdings establishes that right for all individuals.

Thus far, we have discovered where to locate the specific natural rights upon which Nozick bases his theory. Unfortunately, they are to be found in the specific details of Nozick's three principles of justice in holdings and Nozick does not make these details explicit. In order to determine what natural rights Nozick believes individuals have, we must examine his criticisms of alternative conceptions of distributive justice.

According to Nozick, any theory of distributive justice that contains end-state principles must be rejected because the maintenance of the patterned distribution that is entailed by the end-state principles requires that the liberty of individuals be infringed upon by the state. Nozick's claim that liberty upsets patterns has been interpreted by some people as



being the sole basis of his rejection of patterned conceptions of distributive justice. Cheyney Ryan, in "Yours, Mine, and Ours: Property Rights and Individual Liberty" maintains that "what Nozick tries to show is that personal liberty upsets patterns: not private property rights, but personal liberty requires that we adopt an entitlement conception of justice." (p.130).<sup>6</sup> Ryan's point is that Nozick is not appealing to the natural right of property, which Ryan thinks would not be very telling, but to the commitment to (the value of) individual liberty.

It is true that Nozick says "that no end-state principle or distributional patterned principle of justice can be continuously realised without continuous interference in people's lives." (ASU p.163). But this does not support Ryan's point and to see why it doesn't we must examine Nozick's view of liberty. Nozick does not believe that individual liberty is a social goal; he does not believe that it is something society should attempt to maximise. For Nozick, any infringement on an individual's liberty is intolerable. Furthermore, the natural rights of individuals determine moral side constraints that establish the area in which it is permissible to act.. Since a person is not at liberty to violate these side constraints, they also determine the area of individual liberty. It is not an infringement on individual liberty to interfere with a person's violation of the moral side constraints (e.g. self-defence). Since the side constraints are determined by the natural rights of individuals, and the area of personal liberty is determined by the moral side constraints, it follows that what a person is at liberty to do is determined by the natural rights of individuals. It is not (morally) permissible to do anything that violates an individual's natural rights and it is (morally) permissible to do anything which does not. If, therefore, an infringement on individual liberty is not (morally) permissible, it must be because such an action violates an individual's natural rights. So, if Nozick

condemns patterned conceptions of distributive justice because they infringe upon people's liberty, it must be because such infringements constitute violations of natural rights. Unless every infringement on personal liberty does violate an individual's natural rights, it cannot be said that infringements on liberty are wrong as such.

It is clear, therefore, that to claim that patterned conceptions of distributive justice must be rejected because of considerations of personal liberty, is just to claim that they must be rejected because of considerations of natural rights. As a result of this, it is possible to discern from what Nozick says about patterned conceptions of distributive justice the specific natural rights he utilises. For if Nozick claims that a particular action by the state would infringe upon people's liberty, then there must be some corresponding natural right which that action would violate.

What, then, are the natural rights which the state would have to violate in order continuously to realise an end-state or distributional patterned principle of justice? To answer this question, we must look at the actions which would be required in order continuously to realise such principles. For example, taxation is an extremely common method of realising and maintaining distributional patterns. Taxation involves taking part of a person's income or part of the returns on his investments. That this is rejected as being immoral by Nozick entails that he believes individuals have a natural right to use, spend, or transfer (all of) their income as well as the returns on their investments. The prohibition on making gifts or bequeathing one's holdings is another way of realising and maintaining a distributional pattern. That this is unjust entails a natural right to determine the next owner of one's holdings. Distributional patterns can be realised and maintained in many other ways as well. Regulations can be placed on how and to what ends a person may use his

holdings. Regulations can be placed on who is permitted to use a person's holdings. Nozick certainly believes that such regulations would constitute gross violations of individuals' natural rights. This entails that people have natural rights to perform those actions involved in determining how and to what ends their holdings will be used and who will use them. This gives an individual the right to exclude others from using, managing or enjoying the benefits of his holdings.

It is not necessary to go through every action the state might take to achieve a particular patterned distribution of holdings. It is enough to say that any such action will violate individuals' natural rights. This leaves individuals with a wide range of rights, pertaining to holdings. Henceforth, we will refer to these as the natural right of property. Nozick's conception of the natural right of property is as extensive as it could be. An individual has the (natural) right to do with his holdings as he chooses within the bounds of the side constraints (e.g. an individual cannot use his holdings to do bodily harm to someone else). An individual has complete and exclusive control over his holdings. Any interference with an individual's performance of the actions involved in exercising control over his holdings is a violation of his natural right of property and is intolerable.

One more element of Nozick's conception of the natural right of property deserves comment and that concerns what can be property. Nothing has yet been said which precludes the exclusion of certain things, such as air, music, or ideas, from the realm of what can be owned. It may be the case that there is no way to acquire a right to certain things. A detailed specification of the principle of justice in acquisition would make clear what can and what cannot be acquired. Although Nozick does not provide a detailed specification of this principle, it is clear that he believes almost anything can be acquired. The criteria which are

implicit in his theory are that an individual can acquire property in a thing if that thing is such that it can be controlled, used, managed, disposed of, etc. While this does not settle the issue for things such as air, oceans, and ideas, things such as land and the means of production can be acquired. Certainly, nothing can be said to remain in common just because it is better for society or because it achieves some goal. Only those things which, at least in some sense, are such that property in them cannot be exercised can be excluded from being owned.

The natural right of property is clearly a natural right which Nozick believes individuals have. Moreover, he conceives of it as being an extremely extensive natural right of property. Is this the only right which he thinks people have? What role does the natural right of property have in the theory developed in Anarchy, State, and Utopia? Both these questions can be answered by examining the consequences for the state of this extensive natural right of property. The immediate consequence of accepting a natural right of property as extensive as Nozick assumes it to be is that the state will be unable to utilise any of the resources possessed by individuals. Individuals may choose to transfer to the state particular holdings either as gifts or in return for some service. The state would be forbidden, however, from seizing, regulating the use of, or in any way controlling an individual's property (without that individual's consent). As a result of this, the state could have no redistributive function, nor could it have any regulatory function. The state would be confined to the narrow functions of the minimal state.

An extensive natural right of property vests complete control of all those things which can be controlled (in the relevant sense) in the hands of individuals. When this is combined with the Kantian principle of the inviolability of the individual, the state is left with nothing to control and, therefore, with no power, save that which is voluntarily transferred



to it by individuals. These two principles form the foundation of Nozick's theory because they place the control of all things and of all individuals in the hands of individuals. In order to evaluate Nozick's theory, it is essential that the justification of the extensive natural right of property be examined. It is this task which is the concern of the next two chapters.

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CHAPTER THREE

In the previous chapter, we saw that Nozick's assertion that the only state which can be justified is the minimal state rests on two principles. The first is the Kantian principle of the inviolability of the individual and the second is the natural right of extensive private property. By maintaining these two principles, Nozick has placed the complete and exclusive control of people and (most, if not all) things firmly and solely in the hands of the individual. Each individual has as a natural right the complete and exclusive power over himself and his property (within the bounds of the side constraints). The state, on the other hand, has no natural rights and therefore no right of control or power which is not derived from the natural rights of individuals. The state can only control those things which are transferred to it by individuals or which it gains through free contractual arrangements with individuals. (One possible exception to this is the right Nozick claims the state has to prohibit, and therefore to act to prevent, the independent enforcement of the Law of Nature. Nozick claims that "an independent might be prohibited from privately exacting justice because his procedure is known to be too risky and dangerous.... or because his procedure isn't known not to be risky." (ASU p.88). Although I think this causes great problems for Nozick's theory, I will not pursue them in this thesis.) Since the state can only have those rights which are transferred to it by individuals, and since individuals do not have 'rights to' (i.e. rights which require other individuals to perform specific actions), the state cannot legitimately attain any of the characteristics which would make it a more than minimal state.

It is not difficult to see exactly how important the natural right of property is to Nozick's theory. It is also not difficult to see how damaging to his case it would be if a successful attack were made against his conception of that natural right of property. Considering the

vulnerability of his theory to an attack of this kind, it is surprising that Nozick does not provide an explicit justification for his conception of the natural right of property. What he does, instead, is make a number of comments in the course of his book which indicate lines of argument that can be brought to the defence of his conception of the natural right of property. Although Nozick does not explicitly defend his claims about property, implicit in the development of his theory are certain specific arguments which support his case.

The arguments that can be gleaned from Anarchy, State, and Utopia which support extensive private property as a natural right, fall into two broad categories. On the one hand, many of Nozick's statements concerning property appeal to the Kantian principle of the inviolability of the individual. On the other hand, Nozick relies on arguments concerning human labour, which, at times, parallel arguments used by Locke. An example of a statement that indicates and implicitly relies on an argument of the first type is the following. Nozick says that taxing a person's earnings, "is like forcing the person to work n hours for another's purpose." (ASU p.169). Here Nozick is claiming that taxation is unjust because it involves using one person as a means to another's end. This obviously violates the Kantian imperative. Nozick's rejection of taxation also indicates an argument of the second type. Taxing a person's earnings is the same as taking part of the product of his labour. Taking part of the product of a person's labour is unjust because it violates that person's (natural) right to the entirety of the product of his labour.

It is not always a simple matter to construct an argument that is implied by a given statement or set of statements. Nevertheless, in order to evaluate Nozick's claim that individuals have a natural right to extensive private property, the two categories of arguments mentioned above must be examined. These two categories of arguments do not exhaust the arguments which can, and have, been brought to bear in support of property rights, but they do exhaust the arguments which are appropriate for

consideration in this thesis. This is not because they are the only arguments which are implicit in what Nozick says in Anarchy, State, and Utopia. The fact that Nozick does not indicate other arguments does not rule out the possibility that other arguments could be used to support his case. But the other arguments which have been offered in defence of extensive private property are not relevant to Nozick's case because each of them conflicts, in one way or another, with the foundation of Nozick's theory.

It is too large a task to defend this claim fully as that would require examining a great many arguments. I will, however, show that two extremely common lines of argument in support of extensive private property could not be used to support Nozick's case (ignoring the question of whether they are good arguments or not). These two lines of arguments are the arguments from utility and the arguments from liberty.

Arguments from utility cannot be used by Nozick to justify extensive private property because such arguments assert that private property rights are a means to an end. The particular end will vary depending on the conception of utility adopted in the argument, but the justification will always be that property rights are a means to an end. This precludes the use of an argument from utility in the defence of Nozick's position. There are three interrelated reasons for this. First of all, justifying private property as a means to an end is inconsistent with the entitlement conception of distributive justice. If private property is justified because it maximises some conception of utility, then a particular distribution of holdings must be judged on the basis of unhistorical principles. Even if the position taken is that the system of private property rights is justified on the basis of a utilitarian argument and not particular property rights in particular things, it is still the case that a utilitarian goal is relevant to the justness of the distribution of holdings.



In other words, if private property rights are justified in order to meet criteria of utility, then the justness of anything must meet those same criteria.

The second reason for rejecting arguments from utility as being irrelevant to Nozick's theory is contained in Nozick's discussion of moral side constraints and moral goals. Nozick explicitly rejects the treatment of moral concerns as moral goals. The non-violation of rights is not, according to Nozick, something to be maximised. Rights form moral constraints upon the actions of individuals and any violation is prohibited and is unjust as such. This position is a rejection of consequentialist arguments for rights, of which utilitarian justifications are an example. Arguments from utility do not claim that the violation of property rights is wrong as such. They assert that property rights should not be violated because, and only insofar as, the non-violation of property rights achieves some specified goal, viz. the maximisation of some conception of utility.

Thirdly, although arguments from utility can be used to justify private property rights, they cannot be used to establish a natural right of property. Natural rights are held by individuals by virtue of their being individuals and not because of considerations of utility. Natural rights cannot be based on the claim that if individuals have natural rights, some goal will be achieved. Arguments from utility can only show that property rights conform with or are required by considerations of morality, which are (a subset of) utilitarian considerations. Natural rights are not required by considerations of morality, they are considerations of morality. For these three reasons, arguments that attempt to justify private property rights on the basis of considerations of utility are simply not relevant to Nozick's theory.

For many of the same reasons, arguments that attempt to justify private property rights be appealing to the goal of maximising (personal) liberty are also irrelevant to Nozick's theory. If liberty is construed as something to be maximised, then the same three points which were made against arguments from utility are applicable. The entitlement theory of distributive justice cannot be based on the goal of maximising liberty. Furthermore, a natural right of property cannot be established on the basis of arguments which show that property rights are required in order to maximise liberty.

Nozick, of course, does not construe liberty as something to be maximised. For him, the non-violation of personal liberty is a moral constraint upon the actions of individuals. This is the case because a violation of an individual's liberty entails a violation of an individual's natural rights. If an action does not violate anyone's natural rights, then it does not violate anyone's personal liberty and it is not morally prohibited. On this view, it would be circular to attempt to establish the natural right of property on the basis of personal liberty. What an individual is at liberty to do is determined by natural rights. How then can natural rights be determined by consideration of liberty?

It might be argued that when liberty is appealed to as a justification of natural rights, it is not liberty as defined by individuals' natural rights, but liberty defined as (roughly) doing what one wants without interference from others. I think it is clear that Nozick would reject this conception of liberty for the reasons I have already stated. Moreover, it is not clear that this conception of liberty is relevant to arguments concerning morality. If liberty is appealed to in the context of arguments concerning morality, must it not be 'liberty' construed as doing what one wants within the constraints of morality? Even if we accept this conception, however, it is doubtful that by appealing to it

we could justify an extensive system of private property. As Gerry Cohen states in "Capitalism, Freedom and the Proletariat":

"private property always limits liberty". (p.12)<sup>7</sup>. This is because private property limits severely what an individual can (is at liberty to) do with what is someone else's property. It is only by using natural rights to delimit individual liberty that this conclusion is avoided. The natural right of (private) property does not limit liberty if liberty is construed as doing what one wants without violating the moral side constraints established by individuals' natural rights.

Neither the arguments from utility nor the arguments from liberty could be used by Nozick to support his contention that individuals have an extensive natural right of property. This does not, of course, mean that arguments from utility and arguments from liberty are irrelevant to political philosophy. Nor does it mean that such arguments could not be used to justify a system of private property rights. Nozick's theory requires an argument to establish a natural right of property and one which is not in conflict with any part of the foundation of his theory.

The rejection of these two lines of argument is not sufficient to establish that the only arguments which can be used to support Nozick's claim that individuals have a natural right of property either stem from the inviolability of the individual or are based on human labour. There are other lines of argument which have not been considered. I will assume, however, that all these other lines of argument would also prove to be of no use to Nozick. In support of this assumption I offer only one point. In order to be relevant to Nozick's theory, any argument must attempt to establish a natural right of property and not attempt to justify (i.e. show that the dictates of morality require) a system of private property rights. This excludes any argument which concludes '....therefore a system of private property rights is required (or 'is needed', or 'is necessary', or 'should exist' etc.)...' Natural rights are not a means to an

end, just as morality is not a means to an end. Natural rights may achieve an end but that is not why individuals have them. Individuals have natural rights because they are individuals capable of rational thought. To say that natural rights are a means to an end is to say that they are accorded to individuals because they are (in someone's judgement) the best way of achieving that end. But natural rights are not accorded, nor are they justified. Natural rights are discovered. In order to be relevant to Nozick's theory, an argument must conclude: 'therefore individuals have a natural right of property'. A conclusion of this form must be deduced from other natural rights or from some other aspect of the law of nature. Both the arguments from the inviolability of the individual and the arguments from human labour attempt to deduce the natural right of property from other natural rights. In the first case, from the natural right an individual has not to be used as a means to another's end; and in the second case, from the natural right an individual has in his own person. (Although the first natural right might be questioned, I will accept Nozick's view that it is entailed by the principle of the inviolability of the individual.)

The remainder of this chapter will be concerned with the arguments for a natural right of property which rest on considerations of human labour. The next chapter will be devoted to an examination of the arguments which rely on considerations of the inviolability of the individual.

The most celebrated exposition of the labour theory of property acquisition is contained in John Locke's Second Treatise of Government. Locke attempted "to shew, how Men might come to have a property in several parts of that which God gave to Mankind in common, and that without any express Compact of all the Commoners." (Bk.II,sect.25). Although Nozick does not explicitly rely on Locke's arguments to support the extensive natural right of property, he does assume at least some elements



of Locke's theory of acquisition. Moreover, Nozick's theory adopts much of the Lockean framework. Nozick's conception of the state of nature, for example, is explicitly attributed to Locke. This, and the other aspects of Locke's Two Treatises of Government which Nozick utilises form an integral part of Anarchy, State, and Utopia.

Locke's theory of acquisition is developed in the chapter "Of Property". In that chapter, Locke offers several different arguments in support of private property rights. While Locke clearly puts more emphasis on one of these than on the others, all are relevant to this discussion. The most important and the most often quoted of Locke's arguments begins with the assertion that "Man has a Property in his own Person. This no Body has any Right to but himself." (Bk.II,Sect.27). From this Locke derives the property right each person has in his own labour.

"The Labour of his Body and the Work of his Hands, we may say, are properly his." (Bk.II,Sect.27). Locke then says that something a man has laboured to change from its natural state, to remove from the state of nature, "he hath mixed his Labour with, and joyned to it something that is his own." (Bk.II,Sect.27). Thereby, Locke concludes, he makes it his property.

Locke qualifies this argument with several stipulations which apply equally to his other arguments. First of all, Locke means by "labour", useful work intended to result in some benefit. Secondly, property is only established when "there is enough, and as good left in common for others." (Bk.II,Sect.27). Thirdly, one's property is limited to "as much as any one can make use of to any advantage of life before it spoils." (Bk.II,Sect.31). The first qualification is of crucial importance to two of Locke's other arguments. Its purpose for this argument is to delimit the type of human activity which can establish property in a thing. When a person takes something out of its natural state by labouring on it, he is doing more than simply changing it by some physical activity. He is

engaged in purposeful work which is intended to improve something. This is not to say that if the change is not beneficial, then the activity is not labour. It is the intent to improve that is relevant. Of course, a person may labour on something in order to make it worse. Someone who works to destroy a building is doing this. But if 'improving something' is construed as 'making it more suitable for some specified purpose', or more generally, as 'changing it in order to achieve some specified goal', then even a destroyer of buildings is a labourer.

The second stipulation is of particular importance because it is a proviso which Nozick believes will be contained in some form, in any adequate theory of justice in acquisition. This proviso has been interpreted in different ways by different philosophers and Nozick chooses a particularly narrow interpretation. One of the difficulties with interpreting this proviso is that Locke, at the end of the chapter "Of Property", claims that the introduction of money, which was done by 'tacit agreement', makes appropriations permissible that would otherwise have violated the proviso. Neither Locke nor Nozick view this proviso as a major constraint on the acquisition of property. I will not argue here for one interpretation or another. Rather, I will treat the proviso as a stipulation involving in some way the effect that an individual's acquisition of property has on others. Later in this chapter, I will make more specific comments on this proviso. The third stipulation is a nonwaste condition and since it is doubtful that Nozick would accept such a stipulation, I will not consider it in this thesis.

Following his main argument, Locke presents a number of other arguments. These arguments do not have a great deal of independent weight and their function is largely to complement, in one way or another, his central argument. Some of these arguments are no more than short statements of a semi-political nature. For example, Locke claims "that he who

appropriates land to himself by his labour, does not lessen but increase the common stock of Mankind." (Bk.II,Sect.37). Locke is not here claiming that private property is justified because it increases the common stock. Such an argument, in any case, could not establish a natural right of property. The importance of this statement is to show that the exercising of private property rights is good for mankind because it increases the common stock. It has much more political significance than it does philosophical.

Of the remaining arguments that Locke offers in "Of Property", three are worthy of comment. In the first of these, Locke claims that the earth, its fruits and beasts, were given to mankind in common "yet being given for the use of Men, there must of necessity be a means to appropriate them some way or other before they can be of any use, or at all beneficial to any particular Man." (Bk.II,Sect.26). Locke goes on to argue (Bk.II, Sect.29) that requiring the explicit consent of every commoner is totally impractical and would make life (almost) impossible. "If such a consent as that was necessary, Man had starved, notwithstanding the Plenty God had given him." (Bk.II,Sect.28). Locke is offering the following argument. What is held in common is (given by God) for man to use to support and sustain himself. In order to use something held in common, any man must (be able to) appropriate it. If man is to appropriate something held in common in order to sustain himself, it must be (the case that it can be) appropriated without the explicit consent of all commoners.

Locke completes this argument by giving a supporting example. "He that is nourished by the Acorns he pickt up under an Oak, or the Apples he gathered from the Trees in the Wood, has certainly appropriated them to himself." (Bk.II,Sect.28). Previously, Locke had claimed that in order to use something held in common, there must be a way of appropriating it. Here Locke is showing that a person who has used what was held in

common, as for example, when he eats the fruits of the earth, has clearly appropriated them. (It is therefore not necessary to assume that God gave what is held in common to mankind to use. It is enough to suppose that mankind must use it and that using what is held in common entails appropriating it.) Locke goes on to ask: "When did they begin to be his?" (Bk.II,Sect.28). He answers that "'tis plain, if the first gathering made them not his, nothing else could. That labour put a distinction between them and common." (Bk.II,Sect.28).

The importance of this argument is at least partially due to the support it gives to Locke's main arguments. It creates a context in which Locke's main argument is compelling. It does not, however, have any independent weight because of at least three problems. Firstly, Locke claims that a person who eats acorns has clearly appropriated them. If by this Locke means only that he has used them, then nothing of importance follows from it. If, on the other hand, Locke is claiming that he has property in the acorns, then it is not clear what follows from it. For once the acorns are eaten, presumably they would be covered by his natural right of property in himself. Anyone who attempted to use or control these acorns would have to violate his right to exclusive control of his own person. Whether or not the acorns remain independent entities after being eaten which are either unowned or owned and whether or not they become the property of the eater are questions with no clear answers. Moreover, I see no obvious way of answering them.

The second problem with this argument is that the example used to make Locke's point is a very narrow one. While our intuition is strong that an individual has property in something he has eaten (though this may be because it becomes part of him), our intuition about most other things "used" by individuals is much weaker. Does an individual have property in a house he has built? This is just a restatement of the original



question. The example, which is supposed to be a clear case, is a very limited one. Even if we accept that a person has property in what he has eaten, nothing much follows.

The third problem concerns Locke's claim that it is the initial labouring which puts a distinction between what someone has property in and what is held in common. It is difficult to determine exactly what Locke means by this. In a trivial sense this must be true. The fact that an individual has laboured on something distinguishes it from what he has not laboured on. But how does this distinction establish his right to what he has laboured on? What Locke says is that a person who is nourished by acorns has appropriated (i.e. has property in) them and this appropriation (i.e. right) is established by the initial gathering of the acorns (i.e. the initial labouring). The reason he gives for this is that: "if the first gathering made them not his, nothing else could." (Bk.II, Sect.28). Even if we accept that a person has property in what he eats, why is it not possible that this right is established by the act of eating? The initial labouring puts a distinction between what he has laboured on and what he has not laboured on and the act of eating what he has laboured on puts a distinction between what he has eaten and what he has not eaten. Why should the first distinction create a property right and not the second? Why should either?

The second of Locke's additional arguments begins in the same way as the first. Every individual has property in himself and therefore his labour is his property. The derivation of property in things laboured on from this, however, proceeds differently. Locke claims that the value of a thing laboured on is almost entirely due to the labour. "Of the Products of the Earth useful to the Life of Man 9/10 are the effects of labour." (Bk.II,Sect.40). Locke immediately declares this a gross underestimation and says that 99/100 of their value is due to labour. The conclusion of this argument is that a person is entitled to property in

something he has laboured on.

It is important to state that Locke does not actually offer this argument, although it has been attributed to him. Lawrence Becker, for example, in Property Rights<sup>8</sup> constructs this argument as an important variant of Locke's main argument. Yet Locke's stated purpose in claiming that 99/100 of the value of a thing laboured on is due to the effects of labour, is to explain why it is not peculiar that labouring on something held in common establishes a property right in it. Whether or not Locke intended this claim to form the basis for a variant of his main argument, Becker's claim that such a variant is important deserves comment.

Becker discusses this variant of Locke's main argument together with another variant, which is the third additional argument I will consider. This other variant is based on the 'pains' that a person takes in labouring to remove something from the state in which nature left it. Locke claims that a person "ought not to meddle with what was already improved by another's labour; if he did, 'tis plain he desired the benefit of another's Pains, which he had no right to." (Bk.II, Sect.34). Both these variant arguments conclude that a person who labours on something and thus takes it out of the state in which nature left it is entitled to property in it. 'Entitled to property in it' does not mean 'has a right to property in it'. What is meant here is something like 'has a moral case which supports his claim to have property in it'. In other words, it is not being claimed that a person has a right to have a property right, but that he should have a property right.

Clearly, Becker is correct in treating these two arguments as supporting and possibly justifying some system of property rights. Both argue from intuitively appealing premises to the conclusion that a person is entitled to or deserves what he creates or labours on. The problem, with

respect to this thesis, which these two arguments present, is that they do not, nor could they, establish a natural right of property. Individuals do not have natural rights because they deserve them. To maintain that they do have natural rights because they deserve them is to claim that natural rights are justified on the basis of a moral judgement (whose moral judgement?). Yet this is to confuse the nature of natural rights. A justification for a natural right would be needed only if the question of whether individuals have that natural right, depended on human actions. But this is not the case. Natural rights are not accorded to individuals (by whom would they be accorded?) they are simply (and naturally) held by individuals. Natural rights are not in need of a justification, all that is needed is their discovery. An argument based on strongly held intuitions that concludes that individuals are entitled to or deserve a certain right, does, of course, complement an argument which attempts to establish that individuals have that right as a natural right. But it is the latter argument that is specifically relevant to Nozick's theory.

Of the arguments expounded by Locke in his Second Treatise of Government, only one presents the possibility of establishing a natural right of property. For the purpose of clarity, I will restate this argument before examining it:

- (I):
- (1) Every individual has a natural right of property in his own person.
  - (2) Every individual has a natural right of property in his own labour.
  - (3) Every individual who labours on something and thereby changes it from its natural state has mixed it with or joined it to his labour.
  - (4) Every individual who mixes his labour with or joins it to something acquires property in that thing.
  - (5) Every individual has a natural right of property in something he labours on, thereby changing it from its natural state.

Premise (1) is an assertion that individuals have a particular natural right. Since the point of this exercise is to establish that individuals have a natural right of property, is it not question begging to assume that individuals have a natural right of property? The natural right of property asserted in (1) is a very particular one. It is not the natural right of property on which Nozick rests his entitlement theory of distributive justice because it does not concern actions that constitute the initial acquisition of holdings. A person does not acquire property in himself because his own person is not something that is ever held in common. Even if we grant Nozick the natural right asserted in (1), he will still have to argue for a natural right to appropriate that which is held in common. For without such a right, the entitlement theory never gets off the ground.

Yet one might still protest that if Nozick must assume the existence of one natural right (of property) in order to establish the existence of another natural right (of property), then he cannot hope adequately to support his theory. Even if a satisfactory argument based on (1) can be made, is the defence of Nozick's theory any stronger? Are we more certain that individuals have a natural right of property in themselves than we are that individuals have a natural right to appropriate that which is held in common? If argument (1) is to have any role in the defence of Nozick's theory, these questions must be answered.

The natural right of property in oneself gives each individual the right to control himself. More importantly, it gives each individual the right to (act to) exclude others from exercising control of his own person. No individual can use or possess or determine what will happen to or with another individual (without the other individual's consent). As such, the major part of the natural right of property in oneself follows from (Nozick's interpretation and treatment of) the Kantian principle of



the inviolability of the individual. (This is just to say that accepting ((Nozick's claim)) that the individual is inviolable commits one to accepting that the individual has at least most of the rights which the natural right of property in oneself would give him). That individuals cannot be used (without their consent) in order to achieve another's ends entails that individuals have the right to determine for themselves to what ends they can be used. Moreover, the natural right of property in oneself, including those aspects of it that are not entailed by the Kantian principle, is as intuitively compelling as the principle of the inviolability of the individual. I will suppose, therefore, that individuals do have a natural right of property in themselves.

What is the natural right of property in oneself? Is it the right to complete and exclusive control of oneself? There is some question as to whether the natural right of property in oneself entitles individuals to do anything (e.g. kill, maim, etc) to themselves. In particular, it is not obviously the case that such a natural right entitles individuals to sell themselves permanently into slavery or to transfer some of their rights in themselves (e.g. the right to determine what one says, eats, etc.) to other individuals. This point is of great significance to Nozick because if having property in oneself does not give one complete and exclusive control of oneself, then considerable doubt is thrown on the proposition that having property in an object gives one complete and exclusive control of that object. Yet, this proposition is crucial to Nozick's case.

Of course, Nozick states explicitly (ASU p.58) that an individual is entitled to do whatever he wants to or with himself (though he cannot violate the side constraints by throwing himself on top of someone). (In this respect, Nozick's position differs markedly from that of Locke and, for quite different reasons, that of Kant as well.) He also states

(ASU pp.281-290) that individuals have the right to transfer some or all of their rights in themselves to other people. Although Nozick does not argue for these positions ("A person may choose to do himself, I shall suppose....." - ASU p.58) I will not question them. Rather, I will assume that the natural right of property in oneself gives every individual complete and exclusive and permanent control of himself. Every individual has the right to do whatever he wants with and to himself (within the side constraints) including selling himself into permanent slavery. I assume this not because questioning it would obviously be fruitless, but because it is not clear how questioning it would proceed. How does one determine exactly how extensive the natural right of property in oneself is (assuming that it has already been established that individuals have this natural right)? And how does one determine exactly how a particular limitation on what a person can do to or with himself affects what a person can do to or with objects that he owns (assuming that it has been established that individuals have a natural right to acquire property in objects)? I will not attempt to answer these questions.

Premise (2) also asserts that individuals have a particular natural right (of property). The natural right of property in one's labour, however, presents few of the problems and questions associated with the natural right of property in oneself. This is the case, at least, when premise (1) has been accepted. The natural right of property in one's labour can be seen as an aspect of the natural right of property in oneself. The right to complete and exclusive control of one's labour is incorporated in the right to control oneself. One's labour is just an aspect of oneself. Premise (2) therefore follows from premise (1).

Premise (3) is not particularly problematic either. A person who labours on something and changes it has, in some sense, mixed his labour with something and created something new. A person who has built a

sand castle has done so by joining his labour to the sand. The sand castle is the product of the joining of two things, viz. sand and labour. I will ignore the question of whether a person must change what he is labouring on in order to have mixed his labour with it. (Does, for example, a person mix his labour with a heavy object that he is trying unsuccessfully to move?). The point of premise (3) is that creating something new (i.e. changing something from its natural state) by labouring on it constitutes mixing it with or joining it to that labour.

Premise (4) is, of course, the crucial premise. The claim being made in (4) is that mixing one's labour with something (unheld) creates a property right in that thing. More precisely, mixing one's labour with an object that is in its natural state creates a property right in the new object which is the product of the labour. A person who works land that has never been worked creates productive land by mixing his labour with unproductive natural land. In so doing, he has acquired property right in the newly created productive land. He has also acquired a property right in products of (his labour and) this productive land. But why should this be so? Even Nozick is perplexed by this. "Why does mixing one's labour with something make one the owner of it?" (ASU p.174). According to the argument, mixing one's labour with something in its natural state is mixing what one owns (i.e. one's labour) with what is un-owned. "But why isn't mixing what I own with what I don't own a way of losing what I own rather than a way of gaining what I don't?" (ASU pp. 174-175).

It is often at this point that Locke's other arguments are mentioned. (A person's labour creates 99/100 of the value of what is laboured on, so a person deserves or is entitled to - i.e. should have - property in what he labours on.) As we have already shown, however, these arguments cannot establish a natural right of property and are, therefore, only

ancillary arguments that are of little relevance to this thesis. If argument (1) is to be saved, Nozick's questions will have to be answered directly. Some argument must be constructed to show that mixing one's labour with something does result in a property right.

One possibility is to draw a distinction between what is laboured on and what is created by that labouring. The question of how a person can come to own something that is unowned does not arise. Individuals do not acquire property in what is held in common. They acquire property in what they create (out of what is held in common). Is this distinction between the object laboured on and the object created by that labour contrived or ad hoc? Is there a distinction here to be made or is this merely playing with words? Consider a log cabin. Is a log cabin simply a collection of tree trunks? Or is a log cabin a different item created out of tree trunks? Let us suppose that individuals in the state of nature have a method of altering the molecular structure of an object. They can rearrange the atoms within a substance and they can even rearrange the sub-atomic particles to form different atoms. With this ability, individuals could labour on a tree and create out of it a bushel of wheat. Does not this process bring into the world a new item that is created out of the bits and pieces (i.e. atoms) of a tree? Analogously, does not the process of changing a number of trees into a log cabin bring into the world a new item created out of bits and pieces (i.e. trees) of a forest?

But how does this argument proceed? How do we reach the conclusion that people own what they create and bring into the world? Perhaps the question should be put differently. What is the status (with respect to ownership) of an object that is created and therefore brought into the world by human labour? If an argument is needed to show that the individual who created it owns it, is not an argument also necessary to show



that it is unowned? In other words, the question does not concern the justification for changing the status of an object from unowned to owned. Rather, it concerns the determination of the status of an object that has no history of being owned or unowned because it has not history.

Unfortunately, (for this argument) the burden of proof is still on the individual claiming the property right. The question is not simply is this object owned or unowned. The question is does the individual who created this object have a right to complete and exclusive (or any degree of) control of it? Why does (and not should) the fact that an individual created an object mean that he owns it? Perhaps it is because the object 'owes' its existence to something he owns. An object that is created by human labour would not have existed were it not for that labour. But this is no closer to establishing a (natural) right of property in the products of one's labour than is the argument we started with. And there is another problem which this argument elucidates.

The clearest example of something that is created by human labour and 'brought into the world' as a new item is another human being. Children are the products of (the mixing of) their parents' labour. Are children the property of their parents? Do parents have complete and exclusive (and permanent) control of their children? As Becker points out, this conclusion is inconsistent with the principle that (all) individuals have a natural right of property in themselves. (Property Rights, p.37). Since both arguments are based on this principle, such a contradiction is disastrous unless it can be reconciled. But how is this to be done? There are three alternatives. Either children are not the products of their parents' labour, or not all individuals have property in themselves, or individuals do not have property in all the products of their labour.

The first alternative is attempted by Locke, who recognises this problem and discusses it in the First Treatise of Government. Locke

offers several arguments in Chapter VI, "Of Adam's Title to Sovereignty by Fatherhood", to show that parents do not make, or create, their children. "How can he be thought to give Life to another, that knows not wherein his own Life consists?" (Bk.I,Sect.52). "If he made it, let him, when it is out of order, mend it, at least tell wherein the defects lie." (Bk.I,Sect.53). The point Locke is making is that man cannot be said to create life because he does not know or understand what life is nor how it is created. As Nozick says, however, this would apply to many of the products of our labour. (ASU p.288). Does the farmer understand how his crops are created from seeds? Does the dairy farmer understand how his cows were created? Clearly, this argument covers too wide a range of cases.

Another argument used by Locke is that God, and not man, is the true creator of life, the true parent of children. "Even the Power which God himself exerciseth over Mankind is by Right of Fatherhood, yet this Fatherhood is such an one as utterly excludes all pretence of Title in Earthly Parents; for he is King because he is indeed Maker of us all, which no Parents can pretend to be of their Children." (Bk.I,Sect.53). Again, Nozick responds by pointing out that the position espoused by Locke in this passage would severely limit, if not exclude entirely, individuals having property in other things (ASU pp.288-289). If the fact that God is the creator of life means that children cannot be owned, then it also means that all other life, and possibly all other things, cannot be owned either. If God's right of Fatherhood over all individuals precludes their owning their children, then it precludes them from owning anything at all.

Any argument which attempts to establish that individuals do not create their children will run the risk of precluding property in a wide range of things, if not in everything. The second alternative, that not all individuals have property in themselves, we can dismiss quite quickly.

This would not only cause serious and probably insurmountable problems for any argument that tried to deduce a natural right of property from the natural right of property in oneself, it would also be in conflict with the Kantian principle of the inviolability of the individual. More generally, such a position would be inconsistent with the principle, fundamental to Nozick's theory, that no individual is another's master. (Young children may not be entirely their own masters, but, on Nozick's view, neither are their parents their masters.)

The third alternative is to accept that children are the products of their parents' labour but to show that individuals do not always have property in the products of their labour. There are two possible ways of doing this. Either there is something in the nature of children (perhaps that they are also individuals with natural rights) that precludes parents owning their children, or there is something in the principle of acquisition of property that precludes parents owning their children. The first possibility is the more attractive of the two. Neither possibility will work, however, because both would amount to showing that natural rights to the products of one's labour would be overridden by a child's right to be his own master. This would be unacceptable to Nozick.

In his discussion of the Lockean proviso, Nozick has a similar problem to solve and does so while explicitly rejecting that there is any overriding of rights. He claims that when a person finds himself in possession of the entirety of a resource that is necessary for the lives of others (e.g. water), he does not have the same rights he would have were it not necessary for life or were he not in possession of all of it. He claims that "there is no such external (and ad hoc?) overriding. Considerations internal to the theory of property itself, to its theory of acquisition and appropriation, provide the means for handling such cases." (ASU pp.180-181). But this just says that the rights are overridden by

considerations internal and not external to the theory of property. If Nozick is to accept that rights can be overridden so long as the considerations are contained within the same set of principles that establish the rights, then the floodgates are open. All those 'rights to' which Nozick claimed no one had (ASU p.238), can be asserted as placing limitations on an individual's natural right of property. If a child's right of property in himself limits other individuals' rights of property in the products of their labour, then why cannot an individual's right to assistance, which is internal to the principles that establish natural rights, limit other individuals' right of property? I do not see how Nozick can extricate himself from this problem. Moreover, I do not see how argument (1) or the version of it that I constructed, can answer the problem of property in one's children without contradicting some fundamental aspect of Nozick's theory. Even if this problem could be solved, there is no apparent way of grinding a natural right of property (acquisition) out of argument (1). The perplexing questions raised by this argument are asked even by Nozick. He did not attempt to answer them and I suggest that this is because they are unanswerable.

All this is not to say that arguments from human labour cannot establish some system of private property rights. The arguments offered by Locke which concentrate on what people who create things by labouring deserve are quite promising. But such arguments cannot establish a natural right of property and are, therefore, of no relevance to Nozick's theory. What Nozick requires from an argument based on human labour is a derivation of the natural right of property (acquisition) from the natural right of property in one's labour. As I have attempted to show, this approach to establishing a natural right of property is plagued with problems. None of the arguments offered by Locke are successful and I see no way of altering them to make them successful.



CHAPTER FOUR

In the last chapter, several arguments which attempted to derive the natural rights of property from human labour were examined. These arguments were found not to have established any such natural right and no way was found to make this approach successful. It remains, therefore, to examine another approach to this problem. As was demonstrated in chapter three, most approaches will not work. What must be established is a natural right of property and not just a system of private property rights. This point is important because many of the arguments for property rights that are commonly given, argue for the latter and not the former. This is true of many of the arguments offered by Locke and it is true of arguments from liberty and from utility.

The arguments that will be the subject of this chapter stem from the Kantian principle of the inviolability of the individual. As was mentioned in chapter one, Nozick has interpreted the Kantian imperative in a particular way. Kant would certainly have rejected many of the conclusions which Nozick deduces from the principle that individuals are ends and must be treated as such and not merely as means. For Kant, this principle entailed both that "to preserve one's life is a duty" and that "to help others where one can is a duty." (Groundwork p.63). The categorical imperative could not, in Kant's view, result in a natural right of property because it entailed an obligation to aid others in their pursuit of their ends. This obligation is inconsistent with that concept of property which is the basis of Nozick's theory.

Kant and Nozick differ not only in their interpretation of the categorical imperative, they also differ in their conceptions of ends. For Nozick, an individual's ends are whatever he works for, or desires, or seeks to produce. These are relative or subjective ends. For Kant, the ends which must be considered when treating another individual (or

oneself, on Kant's view) are rational objective ends. To treat a person as an end, therefore, may require that his wishes and desires (i.e. ends, on Nozick's view) be ignored, if they are contrary to rational objective ends. For Nozick, no such conclusion follows because he considers a person's wishes and desires. (i.e. his subjective ends) to be what must be respected. Both these differences are extremely important, but for the purpose of this thesis, I will simply accept Nozick's position. In this chapter I will tolerate a vague and flexible conception of ends. In constructing arguments, I will not be concerned to determine whether a particular conception of individuals' ends affects our intuition about the principle that individuals should always be treated as ends and never merely as means.

One argument for a natural right of property that is based on the principle of the inviolability of the individual proceeds as follows. The prohibition on using an individual merely as a means to an end not his own entails that every individual has a natural right to determine and pursue his own ends. This natural right entails that any interference with a person's pursuit of his own ends (which is within the side constraints) is a violation of his natural rights. Since labouring is an intentional activity, a person who labours does so in pursuit of some goal or end. Interfering with a person's labouring, therefore, is a violation of his natural rights. Taking or using something that another individual is labouring on is an interference with his labouring. Taking or using something that another individual is labouring on (within the side constraints) is, therefore, a violation of his natural rights. But this is just to say that individuals have a natural right of property in whatever they labour on.

This argument has six premises, several of which have already been considered. The first premise asserts that the principle of the inviolability of the individual constitutes (or 'entails', or 'is another way of

stating') the natural right to determine for oneself what goals to pursue or what ends to attempt to achieve and the natural right to perform those actions involved in the pursuit of those goals or ends. The justification for this assertion lies in the comparison of the actions which the Kantian imperative prohibits with the actions which the claimed natural rights prohibit. If individuals must be treated as ends and never merely as means, then any action that involves an individual and ignores or fails to recognise or contravenes his chosen ends is prohibited (assuming that those ends do not violate the side constraints). Similarly, if individuals have a natural right to determine and pursue their own ends, then any action that involves an individual and ignores or fails to recognise or contravenes his chosen ends is prohibited. To assert the Kantian imperative is to claim that certain actions are prohibited. To claim that these actions are prohibited is just to assert that individuals have the natural right to determine and pursue their own ends.

The second premise is a statement of the consequences of the natural right asserted in the first premise. Clearly, if an individual has a natural right to pursue his own ends, then any interference with an individual's pursuit of his own ends (as long as his pursuit is within the side constraints) is a violation of his natural rights. The only problematic aspect of this premise is the question of what is to count as an interference with an individual's pursuit of his own ends. Is it the case that only the performance of an action can constitute an interference or can the refusal to perform a particular action also constitute an interference? If a person requires another's assistance in the pursuit of some goal, is the other person interfering with the pursuit of that goal if he refuses to co-operate? Nozick must maintain that the refusal to co-operate with or assist someone in the pursuit of his goals is not an interference with that pursuit. If it were an interference, then the individual would not be inviolable in the sense that Nozick requires.

Individuals could be obligated to perform actions as a result of the needs and positions of others. Clearly, Nozick cannot accept that.

The third premise was discussed in connection with Locke's arguments. Locke drew a distinction between labouring on something and accidentally improving it. The more general point can be made, however. Labouring is something a person does intentionally and for a purpose. The purpose may be to create something, or to destroy something, or simply to change something. A person who constructs a sand castle has laboured on the sand. A person who absent-mindedly plays with the sand is not labouring even if his actions result in a sand castle. In order to be labouring, a person's actions must be directed towards some end or goal. This premise is straightforward and unproblematic.

The fourth premise of this argument asserts that interfering with a person's labouring violates his natural rights. This assertion is a deduction from the previous two premises. If labouring is the pursuit of one's goals (third premise), and if interfering with the pursuit of an individual's goals is a violation of his natural rights (second premise), then interfering with an individual's labouring is a violation of his natural rights. This premise is also entailed by the natural right of property in oneself. This natural right entails the natural right of property in one's labour which entails that an individual has complete and exclusive control of his labour. So any interference with his labouring is a violation of his natural rights. That the natural right of property in oneself entails an assertion which is also entailed by the principle of the inviolability of the individual should not be surprising. As was noted in the third chapter, the principle of the inviolability of the individual on Nozick's view incorporates the major part of the natural right of property in oneself.

The fifth premise asserts that it is an interference with an individual's labouring to take, or use, or in any way appropriate what he is



labouring on. This premise is common sense and is clearly correct. If one individual is building a sand castle (and therefore labouring on the sand), and another individual shovels all of the sand into his pails (let us assume this is taking place in a sandbox and not on a beach), then he has interfered with the labouring of the individual building the sand castle. That individual has had his labouring interrupted. He cannot simply continue building his sand castle because all of the sand has been shovelled into someone else's pails. Is there ever a situation in which taking or appropriating something that someone else is labouring on does not constitute an interference with his labouring? The activity of labouring is always labouring on something. If a person is labouring on something intangible (e.g. an idea), then the question does not arise. Otherwise, if someone takes or appropriates what that person is labouring on, then his labouring must cease. If an action causes someone to stop labouring or to change what he is labouring on, then that action is an interference with that labouring.

The sixth and final premise of this argument follows from the previous two premises. If interfering with an individual's labouring is a violation of his natural rights (fourth premise), and if taking or using something that someone else is labouring on is an interference with his labouring (fifth premise), then taking or using something someone else is labouring on is a violation of his natural rights. All six premises, therefore, are true and the inferences from one to the other are all valid. The only part of this argument that has not been examined is the inference from the last premise to the conclusion. Is it valid to infer from the premise that it is a violation of an individual's natural rights to take or use something he is labouring on, to the conclusion that individuals have a natural right of property in whatever they labour on?

Clearly, this is not a valid inference. The only actions that are prohibited by the natural right asserted in the sixth premise are those which involve taking or using something that someone else is labouring on. It does not follow from this that it is prohibited to take or use something which someone else has laboured on but is no longer labouring on. Yet this is what the conclusion asserts. To have property in an object is not just to have it in your possession. If it is your property, it remains so even when it is not in your possession. The sixth premise claims only that one person may not use what another is labouring on while he is labouring on it. It does not, however, make any claims about what may be done with things that are no longer being laboured on. It is not an interference with an individual's labouring to take something he was labouring on but no longer is. If an individual has property (as a natural right) in something he is labouring on, however, then no other individual can take or use it (without his consent) even after he has stopped labouring on it.

If this argument is to establish a natural right of property, then a premise will have to be added in order to make the argument valid. The additional premise must concern the products of one's labour and not the activity of labouring. This is because the products of one's labour are what exist after the labouring has ceased. One possible additional premise is the following: to use or to take the products of another's labour is to interfere with his pursuit of his ends. With this premise the argument under consideration does establish a natural right of property in the products of one's labour. Is this additional premise sound? Is it an interference with an individual's pursuit of his own ends to take or use the products of his labour?

There are two different possible explanations of why this additional premise is correct. On the first explanation, it is correct because taking

the products of another's labour blocks the pursuit of any of his ends that involve the use of those products. A person can no longer use a house he has built if someone else begins to dismantle it. On the second explanation, the additional premise is correct because the products of an individual's labour are manifestly involved in his pursuit of his ends. The two explanations differ in one important respect. The first explanation is not based on anything peculiar to the products of an individual's labour. The pursuit of one's ends may involve the products of one's labour but it may also involve things which are not the product of one's labour. As a result of this, the first explanation would result in everyone having property in whatever they needed to pursue their ends. But this is contrary to Nozick's conception of property. On his view, many people having rights of control over the same thing is inconsistent with any one of them having property in that thing. How can it be the case that anyone who requires a particular item for the pursuit of his ends has complete and exclusive control of that item?

The second explanation avoids this problem by concentrating on the products of an individual's labour. The basis of this explanation is that the products of an individual's labour stand in a unique relationship to his pursuit of his ends. The pursuit of one's ends is here construed as a process which involves the products of one's labour. Many things may be required in the pursuit of one's ends but only the products of one's labour are actually a part of that process. To take something that another needs is to block his use of a potential element of his pursuit of his ends. To take the products of an individual's labour, however, is to block his use of an actual element of his pursuit of his ends and, therefore, to block that pursuit. The products of an individual's labour are just those things which he has incorporated into his pursuit of his ends.

On this second explanation, the additional premise in conjunction with the other six premises does lead to the conclusion that it is a violation of an individual's natural rights to take or use the products of his labour. The only difficulty is that the additional premise on the second explanation is, strictly speaking, unsound. Not every product of an individual's labour is an element of his pursuit of his ends. Even if most are, some of the products of his labour will be of no use to him in the pursuit of his ends. A person may build something to use for a particular purpose and find that it does not work. Just the possibility that an individual may not need some of the products of his labour is sufficient to require an alteration of the additional premise. That premise should be: to use, or take those products of another's labour that are involved in his pursuit of his ends is to interfere with his pursuit of his ends.

This revised premise is sound but with this revision, the argument does not establish a natural right of property. If an individual may exclude others from using the products of his labour only when those products are of use to him, then he does not have property in the products of his labour. An individual does not have property in something he may control just so long as ..... The natural right of property gives an individual complete and exclusive and permanent control of what is his property. The argument just examined, even with the revised additional premise can only establish a system of limited private property and not a natural right of property.

The additional premise, however, does suggest a different argument for a natural right of property. This argument is also based on the principle of the inviolability of the individual. The argument proceeds as follows. The principle of the inviolability of the individual entails that an individual has a natural right not to be used as a means to another's end. This natural right prohibits using an individual as a means to another's end which entails a prohibition on using an individual's labour



as a means to another's end. To use the products of an individual's labour is to use that individual's labour. It is, therefore, prohibited to use the products of an individual's labour as a means to another's end. An individual, therefore, has a natural right of property in the products of his labour.<sup>9</sup>

This argument has four premises, the first of which we discussed above and was shown to be unproblematic. The second has two parts. The first part merely states the consequences of the natural right not to be used as a means to another's end, viz. such actions are prohibited. The second part of this premise asserts that if using an individual as a means to another's end is prohibited, then using an individual's labour as a means to another's end is also prohibited. Although this part of the second premise is correct, it is not unproblematic. The prohibition on using a person's labour as a means to another's end follows from the prohibition on using a person as a means to another's end in just the same way as the natural right of property in one's labour follows from the natural right of property in oneself. An individual's labour is part of his person. To use his labour is just to use him. The difficulty arises in trying to determine exactly what is to count as using an individual's labour.

This question is particularly relevant to the third premise of this argument which asserts that using the products of a person's labour is the same as using that person's labour. Since the fourth premise follows unproblematically from this premise, it is clearly this premise on which the argument rests. What does constitute using a person's labour? If one person forces another person to dig ditches, then clearly he is using that person's labour. But this is not surprising, since forcing a person to perform an action is a paradigm of slavery and slavery is a paradigm of using a person's labour as a means to an end not his own. Not all examples are this clear. Is it using a person's labour to build a house

in a clearing in a forest that was created by another person chopping down all the trees? The clearing is in some sense a product of someone else's labour. Moreover, the person building a house in that clearing is benefitting from the labour of someone else. The notion of 'benefit', however, does not have any role in this argument. The argument is not, nor can it be, based on the premise that individuals should not benefit from the labour of others. What must be shown is that individuals are prohibited from using or taking the products of the labour of others.

Yet, what is wrong with using something someone else has created, if the creator no longer wants or needs it? (Even this would be prohibited unless the creator gave his consent). Is this tantamount to using the labour of the person who created it? Clearly, there is a crucial difference between forcing a person to labour and simply using something someone else has freely created. To use something is to direct it; it is to control it. To use the products of another's labour is to control them; to decide what will happen to them. In no way, however, does this entail that the labour of the individual whose products they are, is being controlled or directed. His labour was "used" only in the trivial sense that it was used to create what another is now using. In order to show that a person who uses the products of another individual's labour, is using that individual's labour, it must be shown that controlling the products of another individual's labour is controlling that individual's labour. Clearly, this cannot be demonstrated. If a person freely creates something and another person uses it, the creator is not thereby made a slave. Only if an individual's labour is actually being controlled or directed is that individual's labour being used. Using the products of another's labour is not the same as using that individual. An example which makes this point clearly is that of the products of the labour of a person who is dead. To use those products is certainly not to use the

labour of a dead man.

The arguments for a natural right of property that have been considered in this chapter are based on the Kantian principle of the inviolability of the individual. Although it may be possible to deduce from this principle some system of private property rights, none of the arguments considered, successfully established a natural right of property. The major problem with this approach to establishing such a natural right is that it focuses on an individual's pursuit of his ends. Only insofar as the products of an individual's labour are necessary for his pursuit of his ends does any property right follow. Yet many of the products of individuals' labour are irrelevant to the pursuit of their ends. It is difficult to see, therefore, how this approach could establish a natural right of property.

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CONCLUSION

In the previous two chapters, two approaches to the problem of establishing a natural right of property were considered. Locke's arguments from human labour were examined in chapter three and arguments stemming from the principle of the inviolability of the individual were evaluated in chapter four. The conclusions of both these chapters are that none of the arguments considered, successfully establishes a natural right of property. Moreover, the problems which plague these arguments are insurmountable.

The Lockean arguments in support of a natural right of property, attempt to derive that natural right from another natural right, viz. the natural right of property in oneself. If this approach is to provide a successful argument, some justification must be given for accepting a premise that bridges the gap between having property in oneself and having property in the products of one's labour. I can see no way of justifying any such premise and I can see no way of bridging this gap so as to establish a natural right of property in the products of one's labour.

The arguments which attempt to derive a natural right of property from the Kantian principle of the inviolability of the individual are similarly unsuccessful. This approach produces arguments which are based on one of two related principles. Either they are based on the principle that using the products of another's labour is an interference with that individual's pursuit of his own ends, or they are based on the principle that using the products of another's labour is tantamount to (i.e. is the same as) treating that individual not as an end but as a means to an end not his own. The first principle fails to establish a natural right of property because no case can be made for the assertion that all the products of one's labour are necessary for, or are a part of, one's pursuit of one's ends. Without this assertion, however, arguments which are based



on this principle cannot establish a right of property in the products of one's labour.

Arguments based on the second principle also fail to establish a natural right of property. These arguments fail because the major assumption of the second principle, viz. that using the products of another's labour is the same as using that individual's labour, is simply not true. As a result, the principle itself is false and any arguments based on it will fail to establish a natural right of property. Therefore, the main conclusion of the previous two chapters is that neither of the two approaches examined in detail in this thesis can produce a successful argument for a natural right of property. This conclusion, by itself, might not be so damaging to Nozick's theory, since another approach to the problem of establishing a natural right of property could prove successful.

Another major conclusion which was reached in chapter three, however, is that the other approaches to this problem are irrelevant to the defence of Nozick's theory. This conclusion was based on an analysis of two alternative approaches. Both the approach based on utility and the approach based on liberty were shown to provide, at most, justifications for some system of private property rights. This is because both approaches seek to justify property rights as a means to an end. But natural rights cannot be justified as a means to an end. Therefore, neither approach can provide an argument which establishes a natural right of property.

Not only are arguments from utility and arguments from liberty of no use to Nozick, any approach which attempts to justify property rights as a means to an end are also of no use to Nozick. Of the approaches to this problem that have been suggested, only the two examined in this thesis do not attempt to justify property rights as a means to an end. Only these two approaches, therefore, have any chance of establishing a natural right of property. The conclusion that neither of these approaches is successful

in establishing a natural right of property, therefore, is also the conclusion that a natural right of property cannot be established. There is no justification for Nozick's claim that individuals have a natural right of property.

How does this conclusion affect Nozick's theory? Is it as devastating as I have suggested? After all, I have admitted that it is quite possible that some system of private property rights can be justified. Are such justifications irrelevant to the defence of Nozick's theory, as I have claimed? Or it is possible to revise Nozick's conclusions so as to make them follow from a consequentially justified system of private property rights?

Unless Nozick can establish a natural right of property, he cannot defend the main conclusion of Anarchy, State, and Utopia. That conclusion is that no state whose functions extend beyond those of the minimal state can be justified. This conclusion rests on three assertions which Nozick makes. (1) Individuals are inviolable, and therefore no individual or group is permitted (morally) to use or control another individual (without that individual's consent). (2) Individuals have a natural right of property and therefore no individual or group is permitted (morally) to use or control anything which is the property of another individual (without that individual's consent). (3) Individuals do not have any natural rights which require or obligate other individuals to perform specific actions, and therefore, the moral side constraints only prohibit, and never require, the performance of specific actions. These three assertions, taken together, preclude any state from legitimately (i.e. morally) extending its functions beyond those of the minimal state.

(I indicated in the third chapter that Nozick has a severe problem with the third assertion. It is necessary to his theory, yet within his theory is an example of natural rights which do require others to perform

specific actions. The Lockean proviso establishes these rights. Nozick admits that considerations internal to the theory of property can limit a person's right to a vital resource if he becomes the owner of the entirety of that resource. This is just to claim that individuals have a natural right to receive vital resources. Although I think this is a great problem for Nozick, it is not the major concern of this thesis.)

Can Nozick's theory be revised to accommodate the following revision of assertion (2)? Individuals have a consequentially justified right of private property. Clearly it cannot be. For if the right of property is consequentially justified, it no longer follows that no individual or group is permitted (morally) to use or control anything which is the property of another individual (without that individual's consent). This prohibition on using or controlling another's property would only follow to the extent to which the consequences that justified the property rights did not also justify using or controlling another's property. In other words, some property right could be justified as a means to an end, and that could be consistent with the justification of state intervention in the economic activity of its citizens as a means to that same end.

Nozick's claim that only the minimal state is justified, must be supported by an absolute right of property. Only an absolute right of property can entail an absolute prohibition on using or controlling another's property. And only a natural right of property is an absolute right of property. Natural rights are absolute because they cannot be established or altered by the actions of individuals or groups. Moreover, natural rights require no justification and so there cannot be any argument or dispute about whether individuals should have a particular natural right. Natural rights simply are those rights which individuals have, because individuals have them by virtue of their being rational individuals. Only the claim that individuals have a given natural right requires justification. A justification for such a claim is provided by an argument

which establishes that individuals have the natural right in question.

No argument has been found which establishes a natural right of property. Therefore, Nozick's claim that individuals have this natural right is unjustified. Without this claim, however, Nozick cannot establish that a more than minimal state must violate the natural rights of individuals. Nozick has failed to demonstrate, therefore, the main position which he puts forth in Anarchy, State, and Utopia. He has failed to establish that the minimal state is the only state which is justified.

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NOTES

- <sup>1</sup>Rawls, John. A Theory of Justice. (The Belknap Press of Harvard University Press, Cambridge, Massachusetts, 1971.)
- <sup>2</sup>Nozick, Robert. Anarchy, State, and Utopia. (Basil Blackwell, Oxford, 1974.) All references to this work are cited as 'ASU'.
- <sup>3</sup>Kant, Immanuel. Groundwork of the Metaphysic of Morals. Translated by H.J. Paton as The Moral Law. (Hutchinson, London, 1958). All references to this work are cited as 'Groundwork' and page numbers given are as in The Moral Law.
- <sup>4</sup>Locke, John. Two Treatises of Government. Edited by Peter Laslett. (Cambridge University Press, Cambridge, 1965, revised edition.) All references to this work are cited by Book and Section numbers.
- <sup>5</sup>Hart, H.L.A. "Are There Any Natural Rights?" In Political Philosophy, edited by Anthony Quinton. (Oxford University Press, Oxford, 1967.) pp.53-66.
- <sup>6</sup>Ryan, Cheyney. "Yours, Mine, and Ours: Property Rights and Individual Liberty." Ethics, 87 (1977), pp.126-141.
- <sup>7</sup>Cohen, G.A. "Capitalism, Freedom and the Proletariat." In The Idea Of Freedom, edited by Alan Ryan. (Oxford University Press, Oxford, 1979.) pp. 9-25.
- <sup>8</sup>Becker, Lawrence C. Property Rights. (Routledge & Kegan Paul, London, 1977.)
- <sup>9</sup>This argument is based on a similar argument in John Exdell's "Distributive Justice: Nozick on Property Rights." Ethics 87 (1977), pp. 142-149.

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