

***Political Economy IV
Dissecting Liberalism
for Yanis Varoufakis***

***Robert Nozick - The New Right Backlash
Verity Carney
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→ I would say that it was, primarily, a response to the reformist 1960s.

Nozick and his new-breed of ultra-libertarianism represents a backlash from the tempering of free market liberalism which had characterised the direction of liberal theory after Arrow and Sen's revelations that that the market was not a mechanism for the simultaneous maximisation of welfare, utility or liberty. It was a backlash from a liberalism which put greater emphasis on positive conceptions of liberty (Rawls) and consequentialist analysis of distributive justice which analysed justice as residing in socially aggregated end results of production and exchange than in the the 'generating principles' of justice residing in the market. And was against the sort of analysis that relegated the individual to a function of a society (utilitarians).

Nozick in his revamped liberalism undertook a methodological and ideological attack on liberal theory and its conceptualisation of distributive justice. Using game theory and the findings of Sen he argued against organic conceptions of justice and egalitarian mechanisms for arriving at social welfare and combined with a Lockean conceptualisation of rights he developed a logic of purely voluntary exchanges between agents. Through *Anarchy State and Utopia* Nozick reasserted the liberal defence of capitalism, the primacy of the individual and the morality of the market. The role of the state was therefore relegated to simply enforcing voluntary contracts between individuals - a minimal 'nightwatchman' state devoid of a redistributive welfarist function and powers of taxation associated with it, legitimised not through its role but through the process by which it evolved.

Consistent with liberal theory is the use, by Nozick, of the individual as the basic unit of analysis. Where he departs in his analysis from the liberal tradition is however in the primacy he attaches to the individual. Individuals are absolute, they constitute not merely the means but also the ends of liberal theory and analysis. Central to Nozicks analysis then is a rejection of the organic construction of society - that is, the analysis of a society as a sum of its individuals - "there is no social entity... there are only individual people, with their own individual lives." (Nozick; 32) As an extension then he rejects consequentialist principles of distributive justice¹ on the grounds that they treat individuals as means rather than the ends of the analysis. Utilitarianism measures individual utility only to ascertain the overall/aggregate maximisation of happiness in a society. Welfarist income

¹ utilitarianism, egalitarianism, welfarism and also Marxism.

redistribution, uses individuals, through taxation, to achieve an overall desired end.

In line with liberal theory, Nozicks conceptualisation of the individual is taken from a geographical spatial metaphor of land encircled by a fence - the individual is defined by an analogous extension of 'property'. Liberty and rights are defined in accordance to this spatial metaphor - as natural a priori state of being. Individuals moral space has distinct boundaries. Individuals are morally inviolable - they possess the freedom from 'trespass' - from the crossing of their boundaries by others without consent (defined as voluntary contract). Individuals possess the right "to order their actions and dispose of their possessions and persons as they think fit" within the bounds of the laws of nature that require that "no-one ought to harm another in his life, health, liberty or possessions." (Nozick: 10 ; from Locke Two Treatises sect. 4 & 6) This conceptualisation of the individual, rights and liberty is fairly basic to liberalism but again Nozick takes his point of departure in his assertion of the absolutism¹ of negative liberties and rejection of the ethical status of liberty positively defined. Liberty, according to Nozick, is a pregiven state of nature, a physical capacity possessed by all agents - it is not a state to be attained (through education, a decent standard of living etc) necessitating positive rights to education, health, and welfare and thus the right to assistance - it requires only the right to be protected from harm or infringement upon ones moral space. This negative conception of liberty is central to Nozicks construction rights.

Nozick develops two strands (sources) of rights both bounded by the negative conception of liberty. For Nozick there are natural rights and there are process rights. Natural rights predominate in the state of nature, they are negatively defined. Ones natural **right to life** is defined as the right to hold and accumulate ('to have or strive for') those things necessary for living (Nozick: 79) - not as a positive right to life, but rather, a negative right to property. The other strand of natural rights are those that derive from individuals **moral inviolability**. Individuals have the right to order their life and action as they see fit - not to suffer physical aggression or force and not to be treated as the means to somebodies ends without consent. (ibid:

¹ as opposed to prima facie relevance of such a conceptualisation of liberty. That is where ones rights to property may be tempered/overtaken by others positive rights to the necessities for life. Negative liberties are not absolute but contingent upon other factors - namely a positive right to life.

30,31) Whereas natural rights are set up as a line of defence around individuals, process rights acts as line of communication between individuals and later between individuals and the state. Process rights are those that derive from voluntary agreed upon social procedures (contracts)(Hiskes: 123) - they entitle people to certain goods or treatment as specified in agreements. In his description of the evolution of the minimal state Nozick expounds a narrative of the growth and exercise of individual process rights to which the minimal state is the final stage. In the state of nature there are natural rights, there then arise procedures (contracts) for the expression and protection of these rights which give rise to rights which derive from these procedures (entitlements rights) professional protection agencies arise out of a concern for increasing in number and quality of process rights out of which the minimal state emerges as the final stage - the completion of the 'procedural framework providing for voluntary arrangements and for the acquisition of process rights.'(Hiskes: 130)

In the construction of a mutual exclusion of negative from positive conceptualisations of liberty, where the place within liberal analysis of the latter is undermined by the valorised place occupied by the former, Nozick is thus able to demarcate between notions of 'harming' another and failing to help them.¹

"Your being forced to contribute to another's welfare violates your rights [*bearing in mind that according to Nozick a property right in X is the right to dispose of X*] whereas someone else's not providing you with things you need greatly, including things essential to the protection of your rights does not itself violate your rights."(Nozick: 30)

Therefore for a government to tax able-bodied people to support cripples would violate the rights of those able bodied and would therefore be morally impermissible, alternatively to allow the crippled to go hungry and be left homeless would not violate anyone's rights and thus according to Nozick is the preferred option of government economic policy. (Scheffler: 158) The minimal state thus finds its legitimacy not in its role but through the processes by which it evolves. If person A did not cause person B's predicament, then A has no responsibility for aiding B. Nozick sets up a

¹ this then has significant implications for the role of the state for it sets up a definition of not what the state should do but rather the roles and purposes it shouldn't undertake.

scenario where there is a person drowning on a beach and another walking by, the one passing by is able to save the others life but chooses not to, and the drowning man dies. The passer by is not then responsible for the mans death (he did not violate his right to life as it is defined by Nozick) because ones right to life is not a positive right to live but a negative right to keep those things necessary for living. Rights for Nozick then exist in relation between agents and not as an intrinsic nature of ones life.

It is around this construction of negative liberty and individuals corresponding rights that Nozick develops his **Entitlement Theory** of Distributive Justice, or what he redefines as 'Justice in Holdings'¹.

Consistent with his binary oppositional logic, and as an extension of his privileging of individuals to the exclusion of society, and negative liberty to the exclusion of positive, Nozick develops his entitlement theory of distributive justice which places the underlying generating principles over, and to the exclusion of, the consideration of end results. He argues that justice resides in the functioning of market relations (in the processes of exchange and acquisition) rather than in its outcome (equilibrium, utility maximisation, pareto optimality, or welfarist egalitarianism).

Nozicks entitlement theory is constructed within the ontological framework of negative liberty and according to the principles of justice in acquisition (an adaptation of the Lockean proviso) and justice in transfer (defined in terms of voluntary exchange - consent without coercion). Individuals have the right to accumulate and transfer their holdings as they think fit and as long as a resulting set of holdings-'arises from a just situation by just steps [it] is itself just' (Nozick: 98). The fact that someone may not be better off as a result is irrelevant in his analysis (rejection of paretoism). His is a backlash from teleological ethical theory in favour of a deontological ethical

¹ Although rejecting the use of the term 'distribution' in his theory of distributive justice, on the grounds that it is not neutral in so far as it implies/assumes a central control over resources and their distribution (vis a vis the state) (Nozick 96) his use of 'holdings' instead is of strategic importance to his method. It enables him to easily shift the discussion of distributive justice away from an aggregate/societal arena to that of the individual. Holdings being specific to the holder do not require a conceptualisation of and hence comparison across the social spectrum. Analysis is confined to the individual. Distribution infers a passivity of the receiver/consumer. Nozick, in discarding the term for 'holding' undermines such a conceptualisation in favour of a notion of deserving. Individuals, not the state then become actively responsible for acquisition and transfer. His reasons therefore for a change in terminology are not for the sake of neutrality but rather for conceptual strategism - supportive of a shift in the ontological boundaries for discussion. And serves to decontextualise the assertions/analysis of theories of distributive justice.

theory vis-a-vis Kant.¹ Justice in the entitlement theory is not a quantitative analysis of the distribution of actual wealth/utility in a society, according certain principles of fairness (egalitarian or otherwise), rather justice resides in the process - the procedures by which holdings are distributed between individuals. If exchange is by voluntary contract if individuals are free to choose then the transfers of holdings are just and by implication then any distribution between individuals, no matter how unequal by whatever criteria, is just.

The entitlement theory is set up in opposition to organic, consequentialist liberal analyses (particularly egalitarianism) or what he identifies as current time slice principles of distributive justice. He critiques the **a historicalism** of time-slice analyses which in analysing justice through the structure of a distribution of holdings within a given society (according to certain principles) exclude an analysis of justice in procedures of acquisition and transfer (ie, generating principles) and thus are unable to explain how a distribution was arrived at, and can not accommodate notions of deserving, earning etc. His main criticism, however, is that time slice analyses particularly those that rest on patterned principles of distributive justice are, in analysis and implication (ie redistribution), antithetical to liberty. Using Sen's thesis he argues that reasonable collective decisions/social orderings of preferences are impossible and in fact invariably contradictory (prisoners dilemma). Social orderings do not guarantee all individuals their choices, they impose decisions contrary then to individuals desires and thus infringe upon individuals liberty. And further he argues that **liberty (voluntary exchange) upsets patterns** in so far as in any free society where individuals are free to contract and transfer their holdings as they see fit then patterns of distribution, in the long term, can not be sustained - and consequently, patterned principles of distributive justice require a continual and unacceptable interference of individuals lives, liberty and property - requiring taxation and redistribution (in liberal democracies) and the prevention of capitalist acts between consenting adults (in socialism).

Nozick again sets up a few scenarios to argue his point that liberty - freedom of transfer - rules out not only equality but all patterned end state theories of

¹ deontological ethical theory stresses that morality is essentially based up the relationship an act has to moral laws or principles rather than a relationship to its consequences. (Cornman, Pappas, Lehrer: 305).

distributive justice. He suggests that 'suppose a distribution favoured by one of these nonentitlement conceptions is realised' which he calls D1 and then using Wilt Chamberlains fans generosity (prompted but not forced) argues that holdings justly transferred legitimises the new distribution (D2) which has diverged from the pattern of equality established under D1. This is fine. He then goes on to argue that no third person has any legitimate claims of distributive justice on any portion of what was justly transferred between two persons who were entitled to what they held. And use Wilts extra earnings through overtime and juggling shows after hours to illustrate his meaning. This also is fine. But in so far as he uses this as a critique of Marxism then Nozicks analysis becomes misguided. For what he is attempting to show is that patterning vis a vis equality of distribution asserts that someone earning more than others is in itself immoral according to Marxist principles of distributive justice. The issue for Marxism is not that someone earning more than others per se is unjust, but rather that an initial unequal distribution of income that results in a situation in where some people are able to systematically extract from those who do not have a sufficient share of capital to make use of their own productive capacities, is where injustice in transfer and resulting holdings resides.

Nozicks narrative then goes on to cite an example of so called 'capitalist acts between consenting adults' which he argues as proof that not only that liberty (voluntary contract) upsets patterns but that liberty can only be safeguarded if a society is capitalist. Starting again from an initial distribution of D1 in a socialist society he imagines that one entrepreneurial philosophy lecturer (himself!) is able to not only melt down his possessions but then use the result to build a machine. In exchange for his lectures his followers transfer over parts of their holdings which they have been allocated under D1 (which constitute raw materials of production) and consent to cranking the handle of his machine - and so begins a process of accumulation which results in a shift in distribution of wealth to D2 unfavored by the principle of justice under D1. Nozicks argument is essentially that distribution under D2 is just (despite patterned principles of justice), because it is a situation arrived at through voluntary transfers. The flaw in Nozick's argument is that what he describes in his justification of capitalism is far from a description of a capitalist mode of production or indeed capitalist social relations of production. Capitalism is not just contingent upon freedom to contract within exchange (which is itself

questionable) but it is a mode of production characterised by a significantly unequal initial distribution of income in which one class of people own the means of production and others own naught but their labour-power. Under D1, in Nozicks example everyone has equal access to the means of production in so far as if one person could melt down his material possessions to build a machine under D1 then everyone else could do the same. Furthermore, lectures in philosophy do not constitute commodities necessary for subsistence, workers are not forced to sell their labour power in order to survive because they already possess the means of subsistence and what they do receive in exchange for their labour or that part of their holdings transferred, is not necessary for survival thus relations of production are not characteristic of capitalist social relations of production and are therefore not strictly exploitative. Those who cranked the wheel therefore were free to do so - a Marxist analysis would concede to this - what it does not concede to however is that voluntary exchange in the work contract does occur under capitalism. Seeing as the voluntariness of an exchange is the defining principle of justice in transfer for Nozicks theory, and underpins his claim that it is only under capitalism that liberty can be safeguarded, then a Marxist analysis levels a serious critique of Nozick and his breed of libertarianism.

If the justice of a transfer is defined in terms of whether the act was voluntary, on what terms then is the voluntariness of an exchange/transfer assessed. Nozick states:

"whether a person's actions are voluntary depends on what it is that limits his alternatives. If facts of nature do so, the actions are voluntary.... other people's actions place limits on one's available opportunities. Whether this makes one's resulting action non-voluntary depends on whether these others had the right to act as they did." (Nozick; 262)

Essentially what he is saying is that non-voluntary actions are those that result **only** from direct actions of others which themselves violate rights. (Wolff, J 1991: 84) Such a conclusion is the result of the negative conception of liberty and methodological individualism underpinning Nozickian liberalism which analyse liberty and rights only in relation between agents. Nozick states that a man faced with an armed robber will consent to giving over his holdings - but the transfer is not voluntary because the actions of the robber violate the man's moral inviolability and unacceptably infringes

on his right to life. The robbers actions directly limited the mans options to an unacceptable choice between transferring his holdings or else to die/suffer, and in doing so the transfer was unjust. Nozicks negative conceptualisation of liberty however does not permit an analysis of capitalist social relations of production as similarly unjust. Although acknowledging the limited options of the working class - faced under the capitalist mode of production with the choice to work or starve - he does not concede that the labour contract is consent under force (non-voluntary) because he argues the individual employer (capitalist) is not personally responsible for the individual workers plight. Since no active coercion, that is infringements of individuals negative liberty has occurred in the labour contract, then there is no legitimate reason to claim the choice was not voluntary, that workers were not free to choose and the exchange/transfer was unjust. Furthermore the fact that the capitalist may take advantage of the worker (in an extractive sense) - is irrelevant in Nozicks analysis of justice in transfer. For the principle for ascertaining justice in transfer is not quantitative nor qualitative - it does not asses what is exchanged - rather justice is bound up with the process of exchange itself - that is, how a commodity is exchanged (and that is by voluntary contract).

Nozicks analysis of consent (voluntary contract) is restricted by his ontology. In using an axiomatic conception of liberty, defined in both negative and naturalistic terms, individual freedom is given an a priori absolutist status (a freedom in being) which can not incorporate any circumstantial contingency to do with factors external to the bounded individual (ie historical and strategic circumstances or socio-economic environments for instance). All individuals are naturally free and their actions are thus naturally voluntary. The only constraints on ones liberty are the direct actions of others that infringe on ones moral space - a negative conception taken from 'a spatial metaphor whose roots can be traced in the eagerness of landlords to keep trespassers at bay'.(Varoufakis: 8)

Thus Nozicks reliance on a naturalistic metaphor neutralises the meaning of freedom and liberty and thus demonstrates the danger in using and accepting an analogous definition for a concept¹. Individuals are defined

¹ Analogies are quite prevalent in *Anarchy State and Utopia* and constitute a significant component of Nozicks epistemological method. His use of argument by analogy poses an intuitive appeal but are dangerous as a mode of definition. Nozick argues his case of the voluntariness of the labour contract, despite workers limited options, through analogy of the

only by analogy from private property, individuals rights are analogous only to property rights, freedom is realised only in exchange through the market and only exchange defines freedom. The market thus occupies a centrality in Nozicks liberalism greater than liberal theory had granted it in over a hundred years. Nozicks entitlement theory is ontologically irreconcilable with any concept of distributive justice which does not start from a negative conception of liberty and use radical form of methodological individualism. It can not acknowledge, as Marxism asserts, that you may have voluntary transaction yet coercion if your options are few - assessing liberty by the range of choices an agent is faced with prior to market exchanges. Nor can it accommodate a notion of freedom put forward by Macpherson which deals with the freedom from extractive power - the right to be living in a situation where others can't extract things from you simply because they have more options than you have - an extraction in production after the market exchange (labour contract) . There is not the conceptual space within the negative naturalistic metaphor located in the market to define freedom in terms of the ability not to consent to a transaction - on whether an agent has the option to say 'no' to a contract rather than whether they say 'yes'. (Varoufakis: 11) For Nozick then liberty is embedded absolutely in the market, realised in the process of voluntary exchange between individuals. Only the free market, operating without interference of the state, in a capitalist society can safeguard liberty and ensure distributive justice according to his entitlement theory.

Very good !

marriage of twenty six men and twenty six women ranked A-Z in accordance to their desirability. He argues that A and A will pair up B and B and so on until Z and Z have no other option but each other although they would have preferred any of the others. His argument is that the restricted options of Z and Z were not the direct result of the actions of any of the others just the result of nature. Their marriage contract can not be seen as anything but voluntary therefore because they were not coerced to consent by any act that violated their moral space. Using this scenario then he argues then that the labour contract is voluntary!!

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