

THE MORAL LEGITIMACY OF THE MINIMAL STATE

George C. Christie*

Robert Nozick's controversial work, *Anarchy, State, and Utopia*,¹ shares many of the philosophical assumptions about the importance of human moral autonomy that characterize the work of the most famous modern exponent of anarchy, Robert Paul Wolff. Nozick is prepared to recognize the legitimacy of a political authority that is perhaps greater than that which Wolff would recognize, but not much greater. Nozick takes enormous pains to make it emphatically clear that the authority possessed by the "nearly just" political society constructed by John Rawls is definitely not morally legitimate. According to Nozick, not only does Rawls' "nearly just" political society possess more authority than it is morally proper for a state to have, but the very purposes and foundation of the Rawlsian state are also morally impermissible.²

In presenting his arguments Nozick devotes the major portion of his work to a discussion of the "minimal state." Unlike a fervent anarchist, Nozick believes such a state is morally justifiable. According to Nozick, however, no more extensive state is morally legitimate. While I find portions of Nozick's thesis interesting—particularly his often trenchant criticisms of Rawls—there is much in his work with which I take issue. First, I reject many of his assumptions about the overriding importance of human moral autonomy and, more particularly, the conclusions for political theory that Nozick believes are mandated by a commitment to human moral autonomy. I will discuss this aspect of my criticism in the context of a brief review of Robert Paul

* Professor of Law, Duke University School of Law. A.B. 1955, J.D. 1957, Columbia University; Dip. Int. Law 1962, Cambridge University; S.J.D. 1966, Harvard University. Member of the New York and the District of Columbia Bars.

1. R. NOZICK, *ANARCHY, STATE, AND UTOPIA* (1974).

2. *See id.* at 183-231.

Wolff's work, *In Defense of Anarchism*,³ which shares many of Nozick's basic presuppositions and thus exposes some of the weaknesses of both of their theses. My second and more important criticism, to which the latter portion of my paper will be addressed, is that, given Nozick's assumption about the nature and importance of individual moral autonomy, his minimal state cannot be morally justified.

THE PRIMACY OF INDIVIDUAL MORAL AUTONOMY

Perhaps as a result of the discontent produced by the Vietnam war, or perhaps as a by-product of the increasing influence in what is popularly known as the "Western World," or perhaps as a combination of these and other causes, there has been an increasing tendency to question the moral legitimacy of the state and other institutions that exercise political authority. Robert Paul Wolff, who has now been joined by Robert Nozick, is perhaps the best known recent critic of the concept of the state. Although they arrive at somewhat different conclusions, both Wolff and Nozick start out from the position that the principle of human moral autonomy is the most fundamental postulate of morality and that, if the existence of the state cannot be harmonized with that principle, the state is illegitimate.

Wolff and the Anarchist Position

Wolff starts out with certain assumptions about the importance of human moral autonomy that make it difficult, for anyone who might accept these assumptions, to quarrel with his conclusion that the state is illegitimate and that the moral man must opt for anarchy as the only possible form of social organization that is morally justifiable. Given his assumptions, his argument is in a very real sense superfluous. Wolff postulates that the most important thing that a person can do with his time and energy is to make his own personal decisions whenever he is confronted with the possibility of choice in the conduct of his practical affairs.⁴ He recognizes that one may be justified in entrusting the power to make decisions in matters involving his physical health to so-called experts, like physicians, but not in other practical matters.⁵ Admittedly, we usually lack the knowledge necessary to make rational decisions in matters concerning our health, and it would be terribly time consuming to try to acquire this knowledge for the infrequent occasions

3. R. WOLFF, *IN DEFENSE OF ANARCHISM* (1970).

4. *See id.* at 12-18.

5. *Id.* at 15.

which require it. Although we often lack sufficient knowledge to make other practical decisions as well, according to Wolff we are not morally justified, in these other types of situations, in delegating our decision-making power to others, however much more knowledge and experience these others might have.⁶

This is not to say that, in exercising our power to make our own decisions, we should ignore the need for group action; we might very well go along with decisions which we regard as less than optimal in order to make group action possible. Nevertheless, each time we are confronted with the possibility of moral choice, we must reserve the ultimate choice for ourselves and gather the necessary information to permit us to exercise that choice ourselves. Blanket approvals in advance of what others may decide are never morally justified. To grant such blanket approval to the decisions of others represents moral cowardice or sheer laziness on our part. Accordingly, the only possible state that can make a claim to moral legitimacy is what Wolff calls "unanimous direct democracy."⁷ This is a state in which every person votes on every issue and decisions can only be reached under a rule of unanimity. Because the individual is only bound by decisions he has already accepted, unanimous direct democracy is, for Wolff, a "genuine solution to the problem of autonomy and authority."⁸

Nozick, of course, is prepared to go a bit beyond Wolff and recognize as well the legitimacy of a state that is not a unanimous direct democracy.⁹ This other type of legitimate state is Nozick's minimal state. Whether Wolff would recognize the legitimacy of Nozick's minimal state is an interesting question. It has been suggested that Nozick has shown that, if Wolff's unanimous direct democracy is legitimate, because its manner of derivation does not offend the principle of human moral autonomy, then an anarchist like Wolff should accept the legitimacy of Nozick's minimal state because its derivation likewise does not offend the principle of the primacy of human moral autonomy.¹⁰

As we have already noted, at the level of its most basic postulates,

6. *Id.*

7. *Id.* at 22-27.

8. *Id.* at 27.

9. See R. NOZICK, *supra* note 1, at 113-18. As will be asserted in the conclusion to this paper, there is little doubt that Nozick would recognize the legitimacy of unanimous direct democracy, since some form of consent is necessary to Nozick's thesis. The reason Nozick explores the device of the minimal state is because he regards universal consent as a practical impossibility and therefore the legitimacy of the minimal state must of necessity be found elsewhere than in consent, if it is to be found at all.

10. See Nagel, *Libertarianism Without Foundations*, 85 *YALE L.J.* 136, 139 n. 4 (1975).

it is hard to criticize Wolff's argument. Perhaps the most effective criticism that can be made is that by Lisa Perkins, who points out that the moral choices, which Wolff wishes to reserve for each adult individual, can only be made in a climate which presupposes the existence of the state.¹¹ Only when a political order that effectively exercises authority actually exists, will we have the opportunity to try to make rational moral choices. Therefore, only by recognizing the legitimacy of the state can we have the opportunity to function as morally sensitive individuals, the goal which Wolff so ardently desires.¹²

Perkins suggests that Wolff appears to concede some of the force of this argument because he is prepared to accept unanimous direct democracy as a "genuine solution to the problem of autonomy and authority."¹³ For, it seems fairly clear, there will always be time lags, even in a unanimous direct democracy, between decisions and their execution. Inevitably, Perkins contends, there will be instances in which conditions change or, even if they do not, there will be instances in which we succeed in obtaining greater knowledge than we had at the time of the decision.¹⁴ I might add that, even where there is no change of conditions and we have obtained no greater amount of information, we may, on further reflection, conclude that we were just plain mistaken. If we are prepared fully to accept Wolff's presuppositions about the overriding importance of individual human autonomy, why should we eschew any moral right to question or oppose the execution of the prior decision? Perkins suggests it is because Wolff implicitly recognizes that an individual can only effectively exercise his human autonomy in the context of a state—presumably some kind of just state.¹⁵ This is the germ of truth in the old saw that freedom is only possible under law. At any rate, by recognizing the "legitimacy" of unanimous direct democracy, Wolff concedes that individuals can bind themselves in advance to doing what they might come to consider to be morally objectionable. How much commitment to how many prior decisions is, of course, another matter, but it all becomes a question of degree; there are no a priori answers. Nozick's minimal state would be a possible candidate,¹⁶ but so might other conceivable states.

11. See Perkins, *On Reconciling Autonomy and Authority*, 82 *ETHICS* 114, 120-21 (1972).

12. *Id.* at 120-22.

13. *Id.* at 118, quoting R. WOLFF, *supra* note 3, at 27.

14. Perkins, *supra* note 11, at 118-19.

15. See *id.*

16. To meet these objections, of course, Wolff might be prepared to reject the legitimacy even of unanimous direct democracy. In regard to the argument that, in a state of anarchy, the individual has less time to make moral choices and probably fewer moral

Beyond Anarchy: Nozick's Minimal State

Nozick's thesis is more complex and in some ways less sweeping than Wolff's. It is, however, for these and other reasons, more difficult to deal with. Nozick places particular emphasis upon the principle of human moral autonomy, as does Wolff. No one, except in certain cases of self-defense, is justified in infringing the rights of another individual without that person's consent. According to Nozick, a rational man would only voluntarily sacrifice his moral autonomy in order to preserve himself and his entitlements from the aggression of others. Thus, a minimal state, which adequately performs these functions, can be morally justified and, consequently, can be a legitimate state. Nozick shows that such a state, as a logical matter, could arise without anyone consciously desiring to create a state, through the device of each individual contracting with private protection societies. In the course of time, one of these societies will become dominant in any particular geographic locality and, in order for the individual to achieve the highest degree of protection obtainable, there will be a natural tendency for people to contract with the dominant protective association rather than with one of the less comprehensive associations. The problem of a few holdouts will, of course, be a likely possibility. The incorporation of these people into the sphere of the dominant protective association to complete the birth of the minimal state is not justified by Nozick with any type of "free-rider" theory. Rather, he argues that the risk to others presented by a few lone people—who insist on enforcing the requirements of justice, as they would exist in a state of nature, in a society where most people belong to a protective association with elaborate and impartial machinery of justice—justifies prohibiting these outsiders from taking justice into their own hands. But the right to enforce the requirement of justice in a state of nature is something to which that individual is entitled. It cannot be taken away without payment of some form of compensation. This Nozick is prepared to do, and the minimal state arises because part of the form in which compensation is provided is the furnishing of minimal protective services to the few holdouts. These latter individuals thus become part of the "night-watchman" state in which one entity, the dominant protective agency now transformed into the minimal state, has a monopoly on the use or authorization of force by one citizen against another and in which all citizens are accorded some measure of protection by this entity. That the minimal state could, as a

choices to make, Wolff might answer that it is better for a person to be morally free in all of the few moral choices he has an opportunity to make than to expand his field of moral choice by accepting some restrictions on his freedom. At this level, Wolff's argument is unassailable. Either one accepts it or he rejects it.

practical matter, possibly arise indirectly, as the result of an "invisible hand," is decidedly a plus factor for Nozick. Indeed, it is one of the major reasons why Nozick concludes that the minimal state can be legitimate.¹⁷

Nozick contrasts his minimal state, which is designed to protect people in the quiet enjoyment of their entitlements, with the state outlined in John Rawls' *A Theory of Justice*,¹⁸ whose dominant purpose, unlike Nozick's minimal state, is to ensure justice in distribution. Nozick's criticisms of Rawls are often quite trenchant. Rawls, it will be recalled, asserts that inequality in the distribution of social goods can only be justified if the inequality leads to making the position of the least advantaged group in society better off than it would otherwise be. Rawls postulates, however, that one social good—liberty—is more important and, partly for this reason, different from other social goods.¹⁹ Thus the liberty of some can only be restricted if the resulting social arrangements "(a) . . . strengthen the total system of liberty shared by all, and (b) a less than equal liberty [is] . . . acceptable to those citizens with the lesser liberty."²⁰ In no event may liberty be traded off for some other types of social goods. To emphasize this difference, Rawls calls liberty a "basic right" and not merely a social good such as are the vast panoply of ordinary legal rights. In this regard, Rawls shows at least some sympathy for the libertarian position, even if he is not prepared to accord it the preeminence that Nozick gives it. Furthermore, even with regard to the other (and lesser social goods) which are subject to the operation of Rawls' difference principle, one such good, freedom of opportunity, can only be restricted to enhance the opportunities of those with lesser opportunities.²¹

Rawls justifies his conclusions in two ways. First, he contends that they coincide with what, on reflection, we would consider as most in accord with mankind's intuitive notions of justice.²² Second, as a logi-

17. This textual paragraph has summarized the argument of Part I of ANARCHY, STATE, AND UTOPIA, entitled *State-of-Nature Theory, or How to Back into a State Without Really Trying*. See R. NOZICK, *supra* note 1, at 3-146. The period between the disappearance of competitive protective associations and the incorporation of the holdouts Nozick describes as the period of the "ultra minimal" state. See *id.* at 26-28.

18. J. RAWLS, *A THEORY OF JUSTICE* (1971).

19. See *id.* at 243-51. By "liberty," Rawls means only the very basic liberties, such as those of conscience and speech, and equality before the law.

20. *Id.* at 250.

21. *Id.* at 298-303. For other social goods subject to the difference principle, it is the position of the least favored that is crucial.

22. That is, Rawls is claiming that his principles of justice would be found to be in accord with our moral sensibilities, in what he calls the state of "reflective equilibrium." *Id.* at 20. This latter condition, as applied to our concept of justice, is one which we have arrived at after a disinterested reflection of all the possible principles of justice that occur to us. See *id.* at 20-21, 48-53, 120; *cf. id.* at 432 (indicating that the state of reflective equilibrium may not portray the same concept of what is "just" for all people).

cal matter, social arrangements embodying his principles could arise from what we would regard as a fair procedure.²³ We come to see what might be the fair procedure and its outcome by asking ourselves the following question: What would happen if individuals, living in a state of nature and ignorant of both their intellectual gifts and the social position and material possessions they might possess within the social order, met together to decide, on the basis of unanimity, what should be the basic principles upon which they will establish a state? Prudential considerations, namely the desire to protect themselves against the possibility that they may turn out to be among society's least advantaged people, would lead them to adopt Rawls' principles.²⁴

It is surprising that some arrangement should be considered just *because* it arose from prudential considerations.²⁵ In point of fact, that what we do consider just should coincide with our perceived self-interest, under some given set of circumstances—such as Rawls' original position—is not surprising.²⁶ Rawls further argues, however, that his principles accord with man's own disinterested and intuitive notions of justice.²⁷

Nozick, on the other hand, makes a strong counter argument that Rawls' arrangements do not accord with our intuitive notions of justice.²⁸ There are many important social goods which almost all people,

23. Rawls distinguishes between perfect procedural justice and imperfect procedural justice. "[P]ure procedural justice obtains when there is no independent criterion for the right result: instead there is a correct or fair procedure such that the outcome is likewise correct or fair, whatever it is, provided that the procedure has been properly followed." *Id.* at 86. In the real world, imperfect procedural justice is the most that can be hoped for and the results of following such a procedure will not always be correct, fair, or just. The purpose of the restrictions imposed on the "original condition" is to approximate a framework of pure procedural justice. Once a "just" state has been established in accordance with Rawls' principles of justice, the actual operation of that state will approximate that of an imperfect system of procedural justice (Rawls sometimes calls it a system of "quasi-pure procedural justice"), which will generally, but not always, lead to just legislation and the like, which is why Rawls recognizes the validity of conscientious objection even in a basically just state. *See id.* at 83-90, 197-201, 356-91.

24. *See id.* at 136-61, where Rawls discusses the "veil of ignorance" and the "reasons leading to the two principles of Justice."

25. Nozick argues rather persuasively that it is not even clear that the adoption of the principles of justice is in fact the rational thing for men to do in Rawls' artificial "original condition." *See R. NOZICK, supra* note 1, at 189-97.

26. Long ago, David Hume pointed out why this is likely to be the case. *See D. HUME, A TREATISE OF HUMAN NATURE* 484-549. (Selby-Bigge ed. 1888).

27. *See J. RAWLS, supra* note 18, at 48-53.

28. R. NOZICK, *supra* note 1, at 213-31. Why, Nozick asks, is a man not entitled to the fruits of his natural talents and abilities and, even more, of his superior character which may permit him more fully to utilize his natural talents and abilities? Moreover, if Rawls is not prepared to take into account people's individual entitlements, why cannot the difference principle be used to justify taking one of a person's corneas to help someone less advantaged (or, I would add, one of a person's kidneys to help someone experiencing total kidney failure)? *Id.* at 206-07. Nozick also is distressed because, despite Rawls' talk of liberty, the citizens of Rawls' society do not have the liberty, through voluntary transaction, of disturbing the end state distributions arrived at by the difference principles. For this reason Nozick considers such distributions, *contra* Rawls, to be highly unstable. *See id.* at 153-74.

even after considerable reflection, will agree are part of the entitlements of those who possess these goods. There is no generally perceived sense of justice that requires those who are fortunate enough to possess these social goods to share them with the least advantaged. Indeed, most people would be aghast at any effort to enforce such a presumed requirement of justice and would, indeed, find any such effort to be the epitome of injustice.

Nozick's arguments are certainly a major contribution to the debate generated by Rawls' work and a welcome antidote to some of the uncritical acceptance Rawls' conclusions have received. However, to shake the moral foundations of the Rawlsian state does not necessarily establish the moral superiority of Nozick's minimal state. It is to this problem we must now turn.

INDIVIDUAL MORAL AUTONOMY AND THE MINIMAL STATE

Where Nozick's argument causes trouble is in its assertion that nothing more than the minimal state can be legitimate; that for an individual to accept any more extensive authority is not morally justifiable. Indeed, it seems that Nozick's own argument, if all its implications are examined, militates against the validity of his conclusion. In the first place, it is all very well to talk about people participating in the minimal state in order to protect themselves against aggression directed toward their persons or their entitlements. The important practical question is what, in point of fact, are people entitled to? According to Nozick, what one is entitled to are things that one has acquired under the principle of justice in acquisition or under the principle of justice in transfer.²⁹ Amplifying Locke's thoughts on the subject of the acquisition of property in a state of nature,³⁰ Nozick asserts that the principle of justice in acquisition requires—as a condition precedent to anyone acquiring “a permanent bequeathable property right in a previously unowned thing”—that a person's acquisition of “the thing” may not result in worsening the position of others no longer at liberty to use “the thing.”³¹ When such an appropriation will result in a worsening of the position of others, the item cannot be appropriated unless those whose position is worsened are paid compensation.³² In the extreme case, things which are absolutely essential to the life of

29. *Id.* at 150-82.

30. See J. LOCKE, TWO TREATISES OF GOVERNMENT 327-44 (Laslett ed. 1963) (Second Treatise).

31. R. NOZICK, *supra* note 1, at 178.

32. *Id.*

others cannot be the object of the exclusive domination of one person.³³ In its turn, the principle of justice in transfer specifies that one can acquire things that are already the property of others only by voluntary exchange or by gift.³⁴

Now, if one lives in a social condition where people own all sorts of things that they did not acquire in accordance with the two principles of justice that Nozick has enunciated, what should be done? According to Nozick, a third principle of justice comes into play—the principle of justice in rectification.³⁵ Nozick never makes clear how this principle would operate in practice, particularly if the injustice has persisted over many generations. It certainly does not seem implausible to conclude that one will need much more than the aims and machinery of the minimal state to accomplish this rectification. Indeed, Nozick himself admits as much when he asserts, “[a]lthough to introduce socialism as the punishment for our sins would be to go too far, past injustices might be so great as to make necessary in the short run a more extensive state in order to rectify them.”³⁶ Unless, however, the rectificatory state is to become in large part a coercive order (compare the dictatorship of the proletariat), it will need to possess a great deal of authority in order to achieve its rectificatory goals. Certainly it must have more authority than the minimal state, the purpose of which is merely to provide its citizens mutual protection against aggression. The conclusion, then, seems inescapable: One can be morally justified in accepting the legitimacy of something more than the minimal state. In short, one can be morally justified in permitting others to possess authority over him that is greater than that which they would possess in the minimal state.

Even if the principle of justice in rectification does not come into play—let us assume there is no injustice to redress—there is a second difficulty with Nozick’s limitation of the amount of personal moral autonomy which one may be morally justified in surrendering in order to make the minimal state functional. For the minimal state to function, indeed for a protective association to exist, there is a need for an enforcement staff. Now, while this enforcement staff can be recruited by contract, the members of that staff are contracting for more than protection against aggression and they also surrender certain of their rights to act on their own initiative in repelling aggression. The mem-

33. The case is persuasively made that what is essential for life from a physical point of view, as well as from a social point of view, is relative and that, even accepting Nozick’s notion of property, a case can be made for providing basic subsistence and, perhaps, other basic goods to the destitute. See Grey, *Property and Need: The Welfare State and Theories of Distributive Justice*, 28 STAN. L. REV. 877, 888-97 (1976).

34. See R. NOZICK, *supra* note 1, at 150-53, 158-59.

35. *Id.* at 152-53.

36. *Id.* at 231.

bers of the enforcement staff quite obviously must assume the obligations of quasi-military discipline. They may do this because the pay is good, because they like the kind of life involved, or because they wish to serve their fellow men. Nozick believes that men are free, morally autonomous agents, and, in the absence of coercion, they may do what they wish—provided they do not infringe the rights of others. Indeed, it is central to Nozick's thesis that no legitimate state more extensive than the minimal state can arise without the consent of all the people subject to its dominion. He considers such a state unlikely to arise legitimately because there would always be some holdouts and it would be unjust to force them to join. The whole key is voluntary choice because the ability to make such choices is the essential ingredient of moral autonomy—being a person. For Nozick, the range of possible choices is limitless. Men thus are free even to contract themselves into slavery.³⁷ This is an important difference between Wolff and Nozick. Presumably the members of the enforcement staff in Nozick's minimal state, who must assume some obligations which might be considered similar to slave labor, are, nevertheless, free to submit to the increased obligations required for the functioning of an efficient enforcement staff.

But, while people are free to assume these obligations, are they morally justified in doing so? Nozick lays stress on the fact that the enforcement staff is "hired," but the fact that they receive payment for enlisting surely does not answer the question whether they are justified in entering into any such arrangements. It may be instructive then to turn to the last portion of Nozick's book, in which he discusses the concept of Utopia.³⁸ He criticizes previous attempts to describe in great detail what a Utopian society would look like. People are diverse and they have disparate desires. Therefore, rather than attempt to describe an actual Utopian state, Nozick believes it is more fruitful to construct a framework of Utopias. This is a somewhat complicated concept, but its essential feature is that it permits individuals to join any associations they wish in search of their individual Utopias. Once they have joined an association, however, they lose their right to opt out of any *particular* arrangement in force in that society.³⁹ Nozick is prepared to recognize this restriction of individual freedom because he envisages such Utopian societies as existing within the overall framework of the "mini-

37. *Id.* at 331. *But cf. id.* at 283, where Nozick allows for the possibility that, in a morally justified minimal state, the protective association, which is in effect the executive arm of the minimal state, might choose *not* to enforce such contracts.

38. *Id.* at 297-334.

39. *Id.* at 320-23.

mal state."⁴⁰ He suggests that, unlike the larger community that composes the minimal state, these particular Utopian communities—which Nozick calls “face-to-face” communities—may prohibit their members from opting out of particular community arrangements.⁴¹ However, while individuals cannot opt out of particular arrangements prevailing in a subcommunity that they have joined in search of Utopia, the Utopian framework requires that each individual must always have the right to leave any particular community to seek his Utopia in some other community.⁴² This is a right crucial to Nozick's thesis, and must be enforced by the minimal state.⁴³

The implications of this discussion are clear. Rational and moral individuals would not wish to belong to a community from which they would be forbidden to leave whenever they chose to. Indeed, the Utopian framework is not only protected and preserved by the minimal state; it is the minimal state.⁴⁴ The purpose of Nozick's discussion of Utopia becomes clear. It is not simply an occasion for him to engage in interesting philosophical speculation; it also represents his argument that there is an alternative route to the minimal state. The minimal state is thus not merely the only morally justifiable state, but it is also the most desirable state for another reason as well—it is the best vehicle for permitting each individual to seek his own Utopia. Yet, for the minimal state to be possible, there must exist a subgroup of individuals—the enforcement staff who themselves constitute a social order—who are prepared to live in a social environment in which a much more extensive authority exists and has the right to structure their lives for them. The members of such a staff must be bound to execute orders with which they may disagree and which they may even find offensive. In addition, an effective enforcement staff clearly must be constrained by minimum terms of enlistment. They must consequently give up the aspiration of participating in what Nozick calls the Utopian framework. Their sights must be set lower than the quest for Utopia and the inalienable freedom of choice to move from one social group to another. Thus, while they are free to join the enforcement staff or not, their very act in doing so shows them to be lacking in certain very

40. *See id.* at 333.

41. *Id.* at 316, 329-31. Nozick has set the stage for this conclusion by first considering what an individual might be prepared to accept as an ideal model of Utopia. He suggests that this ideal model would be a stable association—a world, if you will—of human beings which is of such a nature that none of its members can imagine an alternative world in which they would rather live and which they believe would continue to exist even if all its rational members had the same right of imagining other Utopian worlds and then emigrating to such new worlds. *Id.* at 297-306.

42. *See id.* at 330-31.

43. *Id.*

44. *Id.* at 333-34.

desirable human qualities: rationality, and a developed moral sense, including a sense of their own moral autonomy. Accordingly, while the only legitimate state is, for Nozick, the minimal state, its very existence requires the existence of a substate which is much more than minimal and which requires for its very existence that some people renounce the full range of moral aspiration. The problem is even more complicated if not enough people volunteer to join the enforcement staff and the state must resort to some form of compulsory service. Presumably, if this is done, the very legitimacy of the minimal state will be more than threatened; it would be completely undermined.

CONCLUSION

Robert Nozick rejects anarchy but the only state whose moral legitimacy he is expressly prepared to accept is his so-called minimal state. It is fairly certain he would accept the legitimacy of Wolff's unanimous direct democracy, but Nozick makes it clear that such universal consent could never be secured in the real world. Indeed, his derivation of the minimal state is designed to circumvent the problem that universal consent is impossible and that therefore the legitimacy of the state must be ensured in some other way. With regard to Nozick's minimal state, as with regard to Wolff's unanimous direct democracy, we may well ask: Why is man predominantly a moral agent when all he wants is to be left alone and to have absolute freedom of choice on as many occasions as possible? Certainly man has conflicting desires. At times he wishes to be as free and independent as possible; at other times, he wishes to be part of some large scale effort and to be caught up in the web of loyalties and operational goals that make the exercise of unencumbered moral choice difficult. It is not clear that either aspect of man's nature is to be despised.

As moral agents and social beings, we may be unprepared to opt for anarchy—either because we feel that anarchy restricts rather than expands human moral autonomy or because we find that it leads to a very narrow view of human existence. If we also regard unanimous direct democracy as a pipedream (as I think it is), then any notion like that of the minimal state requires the existence of a fairly extensive authority to maintain it. Unless the minimal state is to degenerate into being merely a coercive order, the moral basis for the organization of the enforcement staff must be considered. As we have seen, providing such a base is not without its difficulties. The very existence of a minimal state seems to require the presence of a class of helots who have renounced part of the individual moral autonomy that Nozick asserts is

the very essence of being a person. Moreover, to assert that the subjugation of some is a necessary evil in order to preserve the moral autonomy of others is to make some men a means to other men's ends, a result which is ruled out by the concept of individual moral autonomy—the very concept that the theory of the minimal state is designed to fulfill.

