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BEGGING THE QUESTION WITH STYLE: *ANARCHY, STATE, AND UTOPIA* AT THIRTY YEARS*

By Barbara H. Fried

I. Introduction

With thirty years' distance on its publication, one can safely assert that Robert Nozick's *Anarchy, State, and Utopia* (1974) has achieved the status of a classic. It is not only the central text for all contemporary academic discussions of libertarianism; together with John Rawls's *A Theory of Justice* (1971), it also arguably framed the landscape of academic political philosophy in the last decades of the twentieth century. This is perhaps an appropriate moment to reflect on the book and ask, why? Why exactly has this book been so influential?[1]

I start with the conviction—reinforced by a recent close rereading of the book—that the answer cannot be found in the cogency of its affirmative argument. Many of the critical observations in the book—chiefly of Rawls, but also (in passing) of Bernard Williams, H. L. A. Hart, Marxian eco-

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[1] It has been suggested to me that while *Anarchy, State, and Utopia* has been very influential within the academy, its influence (along with the entire Lockean tradition) on "rank-and-file" libertarians outside the academic mainstream has been slight, as compared to the influence of works by Ayn Rand, Ludwig von Mises, Murray Rothbard, Robert LeFevre, Leonard Read, and a number of others who are marginal (or completely invisible) figures in the academic philosophical community. I quote: "Rank-and-file libertarians always regarded him as someone who was fun to have around, mostly because of the hand-wringing and tooth-gnashing that he caused among establishment academics who had to watch one of their own say these awful things, but he was never regarded by libertarians as a serious theorist. He was seen as someone who liked to watch his own mind at work (and whose mind was indeed enjoyable to watch at work), and who asked good questions that serious theorists needed to work on, but he was not a positive contributor to libertarian thought. . . . I've met Objectivists, neo-Objectivists, Randians, neo-Randians, Rothbardians, Lefevrians, Austrians, neo-Hobbesians, Galambossians, Konkinians, religionists, and utilitarians, but I have never met someone who could fairly be described as Nozickian, in the sense of treating Nozick as a serious contributor to his/her world view. Nozick is important because academic philosophers talk about him, and libertarians talk about him because he is important to academic philosophers. But he is not important to modern libertarianism." E-mail correspondence from Gary Lawson, March 25, 2002. This account of the split between academic and rank-and-file libertarianism is intriguing, and well worth pursuing in its own right, but not one I am competent to assess. For purposes of this essay, I confine my focus to how Nozick has been absorbed by his primary audience.

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nomics, and egalitarian theory in general—remain important, fresh, and illuminating thirty years later. By contrast, the affirmative argument for the minimal state that makes up the bulk of the book is so thin and undefended as to read, often, as nothing more than a placeholder for an argument yet to be supplied.[2] The book's central intuition ("Individuals have rights, and there are things no person or group may do to them") continues to resonate thirty years later, precisely because, articulated at that level of generality, it will provoke dissent only among hard-core utilitarians. (Indeed, even utilitarians will blanch more at the rhetoric of rights than at anything that follows from it.) The problem is defending the particular version of rights that make up libertarianism. Where Nozick has not simply begged the question, the answers he provides are often internally contradictory or seemingly random with respect to any coherent moral vision.

In true Nozickian fashion, I am going to leave a proper defense of that bald assertion for another day, in order to pursue another topic entirely: the role of rhetoric in *Anarchy, State, and Utopia*. But by way of down payment on the substantive claim, I offer a (partial) list of the substantive questions begged or dodged in Nozick's book, and one example on which I shall elaborate.

First the list (moving through the book roughly in order). Nozick fails to: establish the moral relevance of hypothetical accounts of how a minimal state *could* come into being; explain why invisible-hand mechanisms for producing the state are morally more appealing than processes (like Locke's social compact theory) that choose the state intentionally; deal with even the most elementary challenges posed by a Coasian analysis to his conception of rights and rights violations ("boundary crossings"); defend the huge exceptions he has created, where expeditious, to the "no boundary crossing" rule, and explain how these exceptions differ from the utilitarian solution; defend the analytically incoherent but argumentatively crucial distinction drawn between acts that harm others with 100 percent certainty and those that pose a risk of harm; give content to the three principles of justice that make up his scheme of distributive justice; justify even the sketchy version of justice in acquisition and justice in transfer that he gives us; and defend the hodgepodge of nonredistributionist conclusions he has pulled out of those principles—and in particular, the assumption that they would jointly bar the taxation of exchange value.

Many of these problems have been discussed extensively in the critical literature on *Anarchy, State, and Utopia* over the past thirty years. Here is one that has not: the peculiar (indeed, radically subversive) relationship of Part III of the book (on Utopia) to the two parts that precede it. Nozick's

[2] No doubt, there is a more general lesson here about the vulnerability of all comprehensive schemes of political philosophy, giving the critic the (always) easier hand to play.

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basic argument in Part III is that the only plausible utopian vision is a meta-utopian one, in which each person is allowed to choose his own version of an ideal community from a broad menu of possibilities, assuming that such a community can plausibly be created given the preferences of others. Since it is implausible to think that everyone's tastes in utopias will be the same, Nozick argues, it is implausible to think that the best of all possible worlds would produce only one kind of utopia. Here is Nozick's own list of the range of "utopian" communities that might well flourish in a meta-utopian world:

> Visionaries and crackpots, maniacs and saints, monks and libertines, capitalists and communists and participatory democrats, proponents of phalanxes (Fourier), palaces of labor (Flora Tristan), villages of unity and cooperation (Owen), mutualist communities (Proudhon), time stores (Josiah Warren), Bruderhof, kibbutzim, kundalini yoga ashrams, and so forth, may all have their try at building their vision and setting an alluring example.[3]

At first crack, this meta-utopian, free-market vision of utopia seems perfectly consistent with Nozick's libertarian impulses. Why not let a hundred flowers bloom at the level of social organization, just as libertarians would have us do at the level of individual choice? But a moment's reflection surfaces the problem here. Unlike choice operating at the individual level, the outcome of social choice binds all community members. As Nozick concedes, many of the potential utopias included in his list above—indeed, virtually all—would, as part of their collective identity, regulate the behavior of their members in ways that are "unjustifiable on libertarian grounds," including by "paternalistic intervention into people's [private] lives" and by requiring that individuals pool income on egalitarian grounds. Individual members would be prohibited from opting out of many of these regulations as long as they remained in the community. How could such a situation be tolerated from a libertarian perspective? Why is this not exactly the sort of coercion that Nozick has spent the preceding three hundred pages arguing against?

Because, answers Nozick, in his meta-utopia, individual members of any community are always free to exit a given community entirely. As long as they have that choice—as long as it is, in Nozick's terms, a voluntary "association" and not "East Berlin" (*ASU,* 299)—then they can meaningfully be said to have chosen whatever rules they are subjected to within that community, by virtue of choosing to remain in the community itself. That they would have preferred, in the best of all possible worlds,

[3] Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), 316. Subsequent references to the book will appear parenthetically in the text, abbreviated as *ASU,* with page numbers following.

to have the same community but stripped of certain coercive features is hardly reason to question the voluntariness of their choice to take the package deal when presented on a "take it or leave it" basis. After all, says Nozick, people are daily required to "swallow the imperfections of a package P (which may be a protective arrangement, a consumer good, a community) that is desirable on the whole . . . when no more desirable attainable different package is worth to [them] its greater costs over P, including the costs of inducing enough others to participate in making the alternative package" (*ASU,* 321).

At this juncture, the alert reader will begin to realize the trouble that the Nozick of Parts I and II is in. For if it is morally sufficient to say to any member of a community who does not like the particular rules and regulations under which he must live, "If you don't like it, leave it,"—if the mere possibility of exit is enough, that is, to establish the moral acceptability of any compulsory rules to which those who remain are subject—then why has Nozick bothered with the preceding three hundred pages of *Anarchy, State, and Utopia* at all? Why does it not follow from the justificatory role of exit at the community level that *any* state, with *any* compulsory package of rights/restrictions/prohibitions, developed by *any* procedure whatsoever, is morally justified, as long as dissenters who do not like that particular package are permitted to exit? And why then didn't Nozick limit his ambitions in Parts I and II merely to proposing his libertarian version of utopia to compete, in the marketplace of state-ideas, with all those mildly redistributive, social-welfarist, democratic states out there, in the hope that he could drum up enough takers to get it up and running on some utopian island somewhere? Why waste one second tearing down the legitimacy of those mildly redistributive, democratic regimes when (in the view of the Nozick of Part III) those regimes have proved their legitimacy simply by their survival in the face of competing ideas about the ideal state, given the option of exit?

The potential for his free-market vision of communities (in which the option of exit justifies whatever occurs within the community) to moot all that precedes it in *Anarchy, State, and Utopia* is not entirely lost on Nozick. To parry that threat, Nozick suggests that collective compulsion is morally permissible at the level of subnational communities but not at the level of nation-states, because of the differing harms that such compulsion is countering. Because we live face-to-face with comembers of our immediate communities, Nozick suggests, we "cannot avoid being directly confronted with what [we find] to be offensive" in their nonconforming choices. Being forced to see others do things that offend us, Nozick invites us to conclude, is a cognizable harm in a Lockean scheme, along with the classic harms of force and fraud, and therefore a sufficient basis for compelling others to live as we want them to live. ("Must the vast majority cloister themselves against the offensive minority?" asks Nozick, seemingly incredulous the answer could be yes [*ASU,* 323].) At the level of

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nation-states, by contrast, since we "need not be directly confronted by these individuals or by the fact of their nonconformity," we cannot claim harm to ourselves from their nonconformity adequate to justify compulsion (*ASU,* 322).

This is pretty amazing stuff to issue from libertarian quarters, and it is worth a moment's reflection. Start first with Nozick's (astonishing) concession that offense at others' behavior might actually constitute a cognizable harm in the Lockean sense. Many people with far less attachment to libertarian principles than Nozick have argued that the sort of third-party, "nosy" preferences (over what others do) that Nozick is describing here ought not to count at all in social policy. Why should I have a right to veto my neighbor's choice of mates just because it offends my sensibilities?[4] Lest one think that Nozick's deference to nosy preferences extends only to classic "morals" offenses, consider the following: "If the majority may determine the limits on detectable behavior in public, may they, in addition to requiring that no one appear in public without wearing clothing, also require that no one appear in public without wearing a badge certifying that he has contributed *n* percent of his income to the needy during the year, on the grounds that they find it offensive to look at someone not wearing this badge (not having contributed)? . . . Since I do not see my way clearly through these issues, I raise them here only to leave them" (*ASU,* 323). If Nozick cannot see his way clear to explaining why offense at others' unwillingness to aid the poor is not an adequate basis for compelling them to do so, then I think we have found a form of libertarianism that Rawlsians can make their peace with (and most libertarians, one presumes, cannot).

Now consider the grounds on which Nozick has sought to contain this concession to local communities. He has walled off the local case from the national one only by the slender empirical claim that we are not, *as a matter of fact,* offended by our far-removed fellow-citizens' refusal to aid the poor, because we are not, *as a matter of fact,* generally confronted with their refusal. What, then, if the nightly news starts carrying regular features on polygamists in Utah, nonredistributionists in Montana, atheists in New York, and homeschoolers in Texas? Is that enough to give the majority, offended by all four practices, a harm-based reason to mandate a monogamist, socialist, Christian state with compulsory state education for all children? If it is—and it is hard to see what in Nozick's argument would permit us to say no—then the Nozick of Parts I and II might as well pack it up and go home, turning in his libertarian union card on his way out the door.[5]

[4] A standard liberal argument against counting external (nosy) preferences is given in Ronald Dworkin, *Taking Rights Seriously* (Cambridge, MA: Harvard University Press, 1977), 234–38.

[5] There are other grounds that Nozick might more profitably have seized on to differentiate the local from the national case here. One that comes to mind is the practical difficulty

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The foregoing problem may not be the most serious one with the book. After all, the Nozick of Parts I and II could rescue himself from this problem just by excising the third part. But it is illustrative, I think, of the many crucial junctures at which, rather than elaborating his libertarian precepts and defending them against obvious criticisms, Nozick begs or dodges the question. If the enduring prominence of *Anarchy, State, and Utopia* cannot be explained (or explained adequately) by the cogency of Nozick's argument, then what explains it? One important factor at play, I suspect—which I will not pursue directly here—is the ad hominem one. Nozick, by virtue of his academic position at Harvard and his academic reputation, lent respectability to a set of arguments that has had few champions within the mainstream academy, and none of his stature. Arguments that were easy for the academic establishment to marginalize when they came from the likes of Murray Rothbard and Ayn Rand suddenly demanded to be taken seriously simply by virtue of the fact that they came from Robert Nozick. Nozick was hardly unaware of the strategic value of his endorsement—a fact that he played on in *Anarchy, State, and Utopia* in ways I will return to below.

Other explanations for the book's canonical status come to mind as well. One is that, because so few mainstream academics have been willing to speak up for libertarianism, someone looking (for pedagogical or other purposes) for a defense of the libertarian state as a counterpoint to liberal egalitarianism, utilitarianism, etc., did not have many other places to go. *Anarchy, State, and Utopia* may be best in class, if for no other reason than it is almost the only in class. Yet another explanation—somewhat less flattering to the book's critics—is that the book's argumentative weaknesses are precisely what has made it an attractive candidate for canonical status among the liberal egalitarians, who were all too happy to build up the book's importance in order to tear it (and, a fortiori, all of libertarianism) down.

All of these explanations no doubt have some force. I want to focus attention on yet another factor at play: the role that rhetoric has played in the popularity of the book. For purposes of this essay, I mean by "rhetoric," roughly, its standard, lay definition: "The art of using language so as to persuade or influence others."[6] *Anarchy, State, and Utopia* is, in this sense, in many respects a rhetorical tour de force. Much of its charm

(costliness) of exit from both communities and the practical availability of meaningful alternatives. As I have suggested elsewhere, it is no easy matter to defend the proposition that *any* particular baseline of exit options is required by libertarian principles in order to validate the "choice" to stay put. See Barbara H. Fried, "If You Don't Like It, Leave It: The Problem of Exit in Social Contractarian Arguments," *Philosophy and Public Affairs* 31, no. 1 (2003): 40–64. But at least the end to which such an inquiry gestures—to give individuals meaningful choice over the arrangements they are living in—seems to be in tune with broad, libertarian values. One cannot say the same of the ground that Nozick has chosen here (whether we are in fact offended by our neighbors' chosen lifestyles).

[6] Shorter Oxford English Dictionary (1773), s.v. "rhetoric."

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comes from its discursive playfulness, which is a far cry rhetorically from the earnest, dense, and often ponderous character of much of political philosophy. My colleagues who teach the book regularly in courses on political philosophy report that their students—even the vast majority who disagree vehemently with the book's politics—love to read it, because it is just plain fun.

The captivating playfulness of the book draws the reader in; once hooked, the reader confronts a variety of other rhetorical devices designed to nudge, cajole, seduce, or otherwise persuade her to Nozick's programmatic conclusions. Let us start with the matter of tone. The brash, insouciant, dressed-down, *je ne regret rien* tone that Nozick strikes in *Anarchy, State, and Utopia* mirrors the substantive agenda of the book: it shrugs off stern duty as instantiated in the conventional, ponderous academic style, just as Ayn Rand's Atlas invites all of us to shrug off stern duty instantiated in the substantive burdens of egalitarianism.[7] The rhetorically liberated "I" of Nozick's book anticipated—and quite possibly hastened—the moment at which libertarians would not only come out of the closet, but indeed take center stage in the political arena. Like Adam Bellow's recently published defense of nepotism,[8] it cleared the air of shame for the self-regarding practices we are all wont to engage in, declaring itself proud to stand up for the freedom to pursue one's self-interest, for the view that every man is, after all, an island. The book's sympathetic readers (then and now) no doubt experienced this manifesto, not without reason, as a liberating release from the stifling left-liberal orthodoxy of academic political philosophy circles, in which most disputes turn out to be nothing more than friendly family quarrels. There is some suggestion in the book that Nozick may have experienced a different, more personal, sort of release as well. I am thinking here of Nozick's reference to "the not wholly admirable pleasure of irritating or dumbfounding people by producing strong reasons to support positions they dislike or even detest"—a pleasure that Nozick declares himself (not wholly convincingly, to this reader's ear) to have outgrown by the time he wrote the book (*ASU*, x). Even without such a guilty pleasure as inducement, Nozick could well have regarded it as a public service to throw a bomb into the middle of this clubby party, and see what was left standing at the end of the day.

The brash, insouciant tone of much of the book is only one of the many rhetorical devices that Nozick deploys to charm and disarm his audience, simultaneously establishing his own credibility with readers, turning them on his ideological opponents, and deflecting attention from some of the more serious gaps in his affirmative argument. In the balance of this essay, I want to take a look at these various devices at work. Some are

[7] I thank Gillian Lester for this shrewd observation about the parallels in the book's rhetorical and substantive performances.

[8] Adam Bellow, *In Praise of Nepotism: A Natural History* (New York: Doubleday 2003).

clearly more successful than others in enhancing the persuasiveness of the various substantive claims in the book. Whether any ultimately succeeds in winning converts to an argument that could not have compelled their allegiance on the merits is a harder question.

Many of these rhetorical devices, although they have the potential for mischief, are not inconsistent with the possibility that Nozick's substantive argument holds water. Others seem to be deployed solely to deal with the (to my mind) justifiable anxiety that it does not. (The reader will discern a difference on this score between the rhetorical devices discussed in Sections II and III below, and those discussed in Section IV, which clearly fall more in the latter camp.) Of course, it is hard to separate rhetoric from substance, particularly where rhetorical devices are employed to dodge substantive problems. At various points below, the discussion undoubtedly veers from observations about rhetoric to quarrels about substance. But for the most part, I want to detach from what I regard as the substantive problems with Nozick's argument. I also mean to make no claims about Nozick's intent with respect to the rhetorical maneuvers in the book. I assume that the rhetorical choices here are not accidental (how could they be?), but I have no basis to conjecture about the extent to which Nozick was conscious of, and motivated by, the strategic role such choices might play in winning over his audience.

Finally, I do not mean to imply that there is something inherently suspect or unusual about the use of rhetoric to enhance the persuasiveness of a substantive argument or the credibility of the author. After all, that is its function. It is the writer's job to do the best he can by his argument. It is our job as readers to discern whether the rhetorical stratagems being deployed to that end are in service of good arguments or bad ones. To the extent it is the latter here, well—"use every man after his desert, and who shall 'scape whipping?"[9] I would wager there is no academic who has not, at one time or another, deployed numerous rhetorical devices, some of which are catalogued here, to slide the reader past inconsistencies or gaps in an argument. To name just a few of the more popular devices: the fatal concession to the counterargument phrased as a minor qualification and buried in a parenthetical or a footnote; the preemptive self-accusation; the feigned modesty to win the reader's trust; the go-for-it strategy of brash overstatement; the strategy of offering up the only example we can think of that proves our point as if it stands for hundreds of others we simply don't have time to report on; and the strategy of skewering the opposition for its minor vices while ignoring its possibly more substantial virtues. The fact is, we are all guilty of begging, dodging, or otherwise underhandedly dispatching the question with style. To that extent, I hope the balance of this essay will be read, not as singling out a class of one, but as an exemplum of a much larger class to which all

[9] William Shakespeare, *Hamlet,* 2.2.528–29. References are to act, scene, and line.

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of us, to differing degrees, belong. I hope it will be read in part as well as an implicit (if, one might sometimes feel, too grudging) tribute to someone who was in his own way a master stylist.

II. Behold, Diogenes, the Only Honest Man

One of the book's recurring tropes to pry readers loose from their habitual attachment to Nozick's chief targets (egalitarianism in its various guises and utilitarianism) is to suggest that Nozick alone, on the contemporary political philosophy scene, can be trusted to go wherever the truth leads him. The message is conveyed through a kind of rhetorical Mutt and Jeff routine, in which Nozick alternately portrays himself as a humble toiler in the vineyards of truth, and portrays his antagonists as intellectual con men or sentimental fools. These two approaches clearly work in tandem to establish Nozick's claim to (unique?) credibility. I take up the first one here, and the second in Section III below.

A. Witness for the prosecution

Probably the strategically most important rhetorical device Nozick employs to establish his own credibility is to cast himself in the preface as the unwilling convert (the "Witness for the Prosecution" move). Noting his long-standing attachment to more conventional, nonlibertarian views, Nozick assures the reader that no one could have been more surprised than he to discover that libertarianism was the answer to which honest inquiry (when he was finally willing to undertake it) led him:

> [M]any persons will reject our conclusions [that the only aid to the poor that is morally permissible is voluntary charity] instantly, knowing they don't *want* to believe anything so apparently callous towards the needs and suffering of others. I know that reaction; it was mine when I first began to consider such views. With reluctance, I found myself becoming convinced of (as they are now often called) libertarian views. . . . My earlier reluctance is not present in this volume, because it has disappeared. (*ASU*, ix–x)

Whatever the truth of the claim here asserted (that Nozick came to libertarianism only reluctantly),[10] its strategic value is obvious. Like Glenn

[10] I have no basis to judge the truth of the claim myself. But one person who does has vouched for it: "I knew [Nozick] before *ASU* was a gleam in his eye, and he really had been a leftist, having been a member, and if I recall correctly the ring leader, of the YPSL (the Young People's Socialist League) at Columbia. The chapter eventually became the SDS, with all of the tumult that ensued at Columbia, but that was after Nozick's time. He really was a convert to libertarianism; [I] knew his fellow graduate student who accomplished the deed." Correspondence with Ellen Frankel Paul, 2003.

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Loury coming out in the end for affirmative action after all, David Brock turning on the Right, or Colin Powell defending the U.S.-led invasion of Iraq, the reluctant convert who comes to see the truth only slowly and painfully, and at great personal cost (my views simultaneously "[put] me in some bad company" and at odds with "most people I know and respect" [*ASU,* x]), is the most valuable front man any movement can put forward. Who can doubt the man who has paid so dearly for the truth? This is not to deny that the costs of conversion—paid in hard self-examination as well as admissions against material interest—are very real in many cases. That they *are* is (after all) the underlying social reality from which the figure of the convert derives its rhetorical power. But the decision to call attention to one's status as a convert, and thereby lay claim to the enhanced credibility bestowed by that status, is a rhetorical choice and not a substantive one, and it carries the same strategic advantages in any case whether the conversion was in fact hard-earned or not. (That is to say, the rhetoric of the reluctant convert free-rides in any given case on the reality in the general case.)

Closely related to the figure of the reluctant convert (establishing his bona fides by contrast to past beliefs) is the believer who, even once converted, is unafraid to acknowledge the weaknesses of his own convictions—indeed, insists on doing so as a matter of intellectual integrity—and stands ready to modify them, or indeed abandon them entirely, whenever truth requires it. Who could distrust a fellow such as that? The balance of Section II looks at some of the rhetorical devices deployed in *Anarchy, State, and Utopia* to create and sustain that persona.

B. The artless artist

"I am no orator. . . ."[11] Nozick announces his allegiance to the truth up front, in the guise of a methodological commitment. Simultaneously exposing and disavowing the pretentions to completeness that characterize many contemporary works of political philosophy ("There is room for words on subjects other than the last words"), Nozick declares that he, alone, is going to tell it like it is, warts and all (*ASU,* xii). Here is his charming description of the usual deceptive arts practiced by his profession:

> Indeed, the usual manner of presenting philosophical work puzzles me. Works of philosophy are written as though their authors believe them to be the absolutely final word on their subject. . . . One form of philosophical activity feels like pushing and shoving things into some fixed perimeter of specified shape. All those things are lying out there, and they must be fit in. You push and shove the material into the rigid area getting it into the boundary on one side, and it bulges

[11] William Shakespeare, *Julius Caesar,* 3.2.219–20.

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> out on another. You run around and press in the protruding bulge, producing yet another in another place. So you push and shove and clip off corners from the things so they'll fit and you press in until finally almost everything sits unstably more or less in there; what doesn't gets heaved *far* away so that it won't be noticed. . . . *Quickly,* you find an angle from which it looks like an exact fit and take a snapshot; at a fast shutter speed before something else bulges out too noticeably. Then, back to the darkroom to touch up the rents, rips, and tears in the fabric of the perimeter. All that remains is to publish the photograph as a representation of exactly how things are, and to note how nothing fits properly into any other shape. (*ASU*, xii–xiii)

This is great stuff. Who would not be disarmed by the candor of a master magician laying bare all the sleights of hand and other tricks of his trade, thereby simultaneously establishing his mastery (I know how all this is done, and could do it again at any time, if I wanted) and turning state's evidence on himself and all the fellow members of his guild? And who could resist the artfully artless promise that follows to abjure those arts himself in favor of the unvarnished truth—a promise made all the more credible by his having just told us how it is done. (Now, of course, thanks to his forthcomingness, we'd catch him out if he ever tried it again himself, wouldn't we?) We philosophers, confides Nozick, "are all actually much more modest than [our method would suggest]. Having thought long and hard about the view he proposes, a philosopher has a reasonably good idea about its weak points; the places where great intellectual weight is placed upon something perhaps too fragile to bear it, the places where the unravelling of the view might begin, the unprobed assumptions he feels uneasy about" (*ASU,* xii). And so, declares Nozick, in a Prospero-like renunciation of the tricks of his trade: "I propose to give it all to you: the doubts and worries and uncertainties as well as the beliefs, convictions, and arguments" (*ASU,* xiv).[12]

The classic model here for the self-described plainspoken, honest man is the conclusion of Mark Antony's famous funeral oration in *Julius Caesar*:

> I come not, friends, to steal away your hearts.
> I am no orator, as Brutus is;
> But (as you know me all) a plain blunt man
> That love my friend . . .
> For I have neither wit, nor words, nor worth,
> Action nor utterance, nor the power of speech
> To stir men's blood; I only speak right on.
> I tell you that which you yourselves do know,

[12] "But this rough magic / I here abjure . . . I'll break my staff, / Bury it certain fathoms in the earth, / And deeper than did ever plummet sound / I'll drown my book" (*The Tempest,* 5.1.50–57).

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> Show you sweet Caesar's wounds, poor poor dumb mouths,
> And bid them speak for me.[13]

In Nozick's case, like Mark Antony's, what makes this a rhetorical device rather than a truly artless description of method is the distance between those professions of intellectual modesty and the speaker's true imperial ambitions. Managing this tension is a tricky business, to which I will return in Section IV. (It is fair to say that Nozick is no Mark Antony in this regard, but then, who is?) First, however, I want to take a closer look at the various rhetorical devices used to sustain the claims of intellectual modesty and self-doubt throughout the book.

All of these devices convey in different ways (earnest, tongue-in-cheek, playful) the sense that Nozick can be counted on to be his own harshest critic. That impression serves several aims simultaneously. It reassures skeptical readers that they can relax: if there are hard questions to be asked, Nozick will ask them. It invites readers to infer that if, at any point, no hard questions are asked, it is because there are no hard questions *to* ask. (After all, if there were, can't we trust the author to have asked them?) And, finally, it invites readers to conclude that if any portion of his affirmative argument resurfaces after being subjected to such intense scrutiny, it is because the doubts expressed turned out not to be fatal after all.[14]

C. The self-accuser

The most frequent device delivering on the promise to give it all—the "doubts and worries and uncertainties"—is (a) the unadorned proposition put on the table, followed by (b) a barrage of unanswered (and often unanswerable) questions. Exhibit A here is Nozick's famous discussion of Locke's labor theory of ownership. After coyly producing Locke's theory as a stand-in for his own unspecified theory of justice in acquisition, Nozick acknowledges that Locke's theory "gives rise to many questions." Two paragraphs of probing questions duly follow, touching on the moral basis for Locke's claim, the scope of ownership thereby established, and the problem of satisfying Locke's proviso that "enough and as good [be] left in common for others" (*ASU,* 174–75). Most of the time, Nozick allows the sheer volume of his skeptical questions to attest to his honorableness as an author. But on occasion he cannot resist calling attention to it, lest anyone should have missed it. Here is one such example: "While feeling the power of the questions of the previous two paragraphs (it is *I*

[13] *Julius Caesar,* 3.2.218–25.

[14] I use the word "resurfaces" advisedly, as typically Nozick does not try to resurrect the affirmative case hard on the heels of his own (unanswered) assault on it. Rather, he typically reintroduces it several pages or even chapters later, without any acknowledgment of the criticisms and abuses that he himself heaped on it. For further discussion, see Section IV below.

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who ask them), I do not believe that they overturn a thoroughgoing entitlement conception" (*ASU*, 237). To my ear, at least, the parenthetical here is a rhetorical misstep, the condescension so palpable as to risk (indeed, almost court) insubordination from the reader.

D. Giving the devil his due

"But Brutus is an honorable man." By going out of his way to give the devil his due on small matters, Nozick demonstrates his continued willingness to change course on large matters as well, should truth compel it. (Happily, in the end, it doesn't, but we know he would have told us if it did.)

Consider one of the more overt rhetorical plays along these lines, in which Nozick invites the reader along as he recreates one of the moments in which he himself is stunned to discover the implications of his own argument. After establishing that the just libertarian state might, under some circumstances, be required to purchase liability insurance for individuals engaged in risky activities, Nozick concludes: "Thus we see how . . . another *apparent* redistributive aspect of the state would enter by solid libertarian moral principles! (The exclamation point stands for *my* surprise.)" (*ASU*, 115). Well, maybe it does, but then again, maybe it doesn't. It is no small feat, in the intellectual realm as much as the physical one, to sneak up on one's self, unawares (the self being snuck up on being the unaware one, that is, not the sneaking self). A more plausible account of what Nozick's exclamation point stands for, along with the italicized *my*, is something like this, I think: Behold, you see before you a man whose intellectual integrity is so uncompromised that he will go wherever his principles take him, even if doing so compromises the political ends that cynics might mistakenly have taken to be his true motive.

Most of the time, Nozick eschews overt self-congratulation of this sort, in favor of more indirect plays for the reader's confidence. Sometimes this takes the form of earnest frettings out loud about exactly how far it is fair to push his claims. Consider here Nozick's fussing over how best to put the thought (central to his argument against the redistributive state) that taxation is a form of slavery. He first tests the water with the slightly equivocal "Taxation of earnings from labor is on a par with forced labor . . ." (*ASU*, 169), but follows it up immediately with confessions of doubt as to whether even this equivocal claim is sustainable: "I am unsure as to whether the arguments I present below show that such taxation merely *is* forced labor; so that 'is on a par with' means 'is one kind of.' Or alternatively, whether the arguments emphasize the great similarities between such taxation and forced labor, to show it is plausible and illuminating to view such taxation in the light of forced labor" (*ASU*, 169 n. *).

Other times, Nozick simply acknowledges matter-of-factly the limits of his argument—the parts of his argument that he is not even going to try to prove, the conditions that must hold true for his argument to go through,

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etc. Consider, for example, Nozick's list in Part III of only some of the still-to-be-resolved details about his utopian state: how the central authority will be selected, how it will be policed, whether there could be toll charges on exit to compensate for benefits an individual has gotten from the community, and what rights children have to learn about exit options (*ASU,* 329–30). Consider as well his concession that much work remains to be done to figure out when to prohibit involuntary boundary crossings through a "property" rule and when to permit them, provided ex post compensation is paid: "To say that [boundary crossings] should be allowed if and only if their benefits are 'great enough' is of little help in the absence of some social mechanism to decide this." And the various considerations he himself has put on the table, Nozick concedes, "do not yet triangulate a solution in all its detail" (*ASU,* 73). Or finally, consider Nozick's confession at the end of his discussion of the principle of rectification: "These issues are very complex and are best left to a full treatment of the principle of rectification. In the absence of such a treatment . . . , one *cannot* use the analysis and theory presented here to condemn any particular [distributive] scheme . . ." (*ASU,* 231). The rhetorical (as contrasted with substantive) function of all of these concessions is to reassure the reader that because Nozick has told the truth here, when it is manifestly not to his argumentative advantage, he can be trusted to tell it elsewhere as well.

E. The abject penitent

"Alas, why would you heap this care on me? / I am unfit for state or majesty."[15] Not infrequently, Nozick's effusions of self-doubt are concluded with an abject confession of inadequacy and a plea for the reader's indulgence as he reluctantly sets these doubts aside for another day. The confession of inadequacy serves to convey to the reader that he (the reader) cannot possibly think worse of Nozick's argument at this juncture than Nozick thinks of it himself. This ritualized form of self-debasement is, of course, designed to provoke protestations to the contrary in his readers, who find themselves thinking that Nozick—modest fellow that he is—is really much too hard on himself; that, really, if you think about it, few could have done better than he has here.

An apt model here is the passage from *Richard III* quoted at the outset of this section.[16] Richard offers first a fake demurral when the crown is offered to him (through prearrangement) by one of his henchmen: "Alas, why would you heap this care on me? / I am unfit for state or majesty." To Richard's protestations of unworthiness, the rhetorically compelled response is, of course, to insist, to the contrary, on his inestimable worth, and to press the crown on him once more, with redoubled zeal ("Call him

[15] *Richard III,* 3.7.204–5.
[16] Ibid., 204–26.

again, sweet prince. Accept their suit. / If you deny them, all the land will rue it"). This is followed by Richard's inevitable capitulation to the henchman's pleas, couched in false humility:

> Will you enforce me to a world of cares?
> Call them again, I am not made of stones,
> but penetrable to your kind entreaties,
> Albeit against my conscience and my soul.

Typically, Nozick's protestations of inadequacy are delivered with flat earnestness—the careful philosopher flagging for us (in case we have missed it) the serious gaps in his argument that remain to be filled. At other times, the rhetorical self-flagellation is so extravagant, verging on burlesqued, as to raise suspicions that Nozick is having a little fun at the expense of his anxious readers. Consider here Nozick's treatment of his decision (in Part I) to derive the minimal state from a Lockean (moralized) state of nature. Nozick tries first to defend that choice by stating that "since considerations both of political philosophy and of explanatory political theory converge upon Locke's state of nature, we shall begin with that" (*ASU*, 9). Anticipating that this may not seem an adequate defense of a stipulation on which the entire edifice of Part I is built, he preemptively makes the charge of inadequacy himself:

> A completely accurate statement of the moral background . . . is a task for another time. (A lifetime?) That task is so crucial, the gap left without its accomplishment so yawning, that it is only a minor comfort to note that we here are following the respectable tradition of Locke, who does not provide anything remotely resembling a satisfactory explanation of the status and basis of the law of nature in his *Second Treatise*. (*ASU*, 9)

The extravagantly exaggerated diction of Nozick's confession here ("so crucial," "a gap so yawning," "only a minor comfort") undercuts the sincerity of his contrition while purporting to underscore it, communicating to us (with its mock gravity) that our anxieties in this department are more than a trifle ridiculous. At still other times, the conclusion that Nozick is having fun at our expense seems unavoidable—which brings us to the character of the charming rogue.

F. The charming rogue

This is a liminal figure, somewhere between the earnest penitent and the talk-radio belligerent denouncing his opponents as big, fat idiots (see Section IIIB below), who disarms the skeptics by conspiratorially telling them he's picking their pocket even as he does it. For a brief feint in this direction, consider Nozick's assertion that if a side constraint is violated,

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the transgressor is required to compensate the victim so as to leave him as well off as he would have been without the violation, which is followed by Nozick's confession: "Shamelessly, I ignore general problems about the counterfactual 'as well off . . . as X would have been if Y's action hadn't occurred'" (*ASU,* 57). Given the central role that compensation for boundary crossings plays throughout the book, a little (intellectual) shame might be in order here, if genuine. It is safe to say that it is not, and that readers who would prissily insist on real contrition are being mocked for their small-minded earnestness.

For a more striking example, consider Nozick's discussion (*ASU,* 84–97) of his principle that the state is required to pay compensation (to the would-be actor) whenever it prohibits productive activities that impose risks on others. After subjecting the principle to a barrage of skeptical challenges, Nozick concludes, in the voice of the earnest penitent, "I am not completely comfortable presenting and later using a principle whose details have not been worked out fully." But then Nozick the sly rogue takes over, mocking the very readers whose earnestness he has just aped. Maybe, says Nozick, it is okay to leave the principle in this "somewhat fuzzy state . . . [if] something like it will do. This claim, however, would meet a frosty reception from those many proponents of another principle [Rawls's] scrutinized in the next chapter, if they knew how much harder I shall be on their principle than I am here on mine. Fortunately, they don't know that yet" (*ASU,* 87).

Of course, all of these rhetorical devices, designed in different ways to give the devil his due, work to shore up the case for the angels only if the reader comes away with the impression that what the devil is due is, finally, trivial. For those (many) concessions in the book that are in fact trivial, this is easy to pull off. The classic how-to model here is provided by the daily corrections page of the *New York Times*. The sheer numerosity of the editors' corrections, coupled with their exquisite fussiness ("Due to a transmission error, the author of the recent biography of General Sherman was identified as Rufus G. Lighthouse rather than Rufus T. Lighthouse"), conspire simultaneously to impress on the reader that, as far as the *New York Times* is concerned, no error is too inconsequential to be worth correcting, while distracting attention from the fact that it is *only* inconsequential errors the editors have in fact confessed to.[17]

[17] I am indebted for this observation to Renata Adler, *Canaries in the Mineshaft: Essays on Politics and Media* (New York: St. Martin's Press, 2001). Some emendation is perhaps in order here, in light of the 2003 Jayson Blair scandal. To my ear, the *New York Times*'s paroxysms of front-page self-flagellation in the wake of disclosures that it had been "had" by a cub reporter, while in rhetorical demeanor miles apart from its bland, business-like daily corrections page, reflect a similar rhetorical strategy underneath. The comical excesses of this elaborate ritual of self-debasement, which chronicled, for days on end, every signpost on the road to the *Times*'s ruin, seem intended to communicate simultaneously the overwhelming social importance of the *Times*—why else would one possibly care?—and the unprecedented nature of its fall from grace.

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For that not insignificant number of concessions that are not trivial, managing the fallout is a trickier business. Broadly speaking, Nozick proceeds on two rhetorical fronts here: he derides his opponents as infantile, in bad faith, etc., so as to suggest that whatever the problems with his own theory of distributive justice, it is the only intellectually respectable game in town; and he reasserts his affirmative argument unequivocally, as if those concessions had never been made, deploying a battery of rhetorical devices to protect it from any further attack. I take up both tacks in turn, in Sections III and IV respectively.

III. Fools and Knaves All

Partnered with his Mutt—Nozick the Humble, the earnest, patient toiler in the vineyards of truth—is the doppelganger Jeff—Nozick the Supercilious, writing off his intellectual antagonists as (variously) childish, grown intellectually soft from years of complacency induced by running the show, stupid, or in bad faith.[18] The attack on the opposition stands on its own as a rhetorical performance, but gains strength from playing off the confidence earned by Nozick the Humble.

Nozick sets the patronizing tone toward his antagonists right from the start, when he declares in the preface that "many people will reject our conclusions instantly, knowing they don't want to believe anything so apparently callous towards the needs and suffering of others," and he acknowledges that by being willing to face those hard truths, "I run the risk of offending doubly: for the position expounded, and for the fact that I produce reasons to support this position" (*ASU,* ix–x). The statement combines, with admirable economy, (a) the representation of the opposi-

[18] Most of Nozick's contempt in the book is reserved for egalitarians of various stripes. Utilitarianism comes in only for sporadic floggings. What accounts for this disproportionate allocation of critical attention is itself an interesting question, but one outside the scope of this essay. For what it's worth, I think it has a couple of possible explanations. One is simply occasion. The book was written partly as a response to Rawls's *A Theory of Justice,* which had been published just three years earlier, a motivation that leaves its imprint in the disproportionate attention given to egalitarian theories. Another explanation, I think, has to do with the close (and unacknowledged) kinship that Nozick's own theory has to utilitarianism. In particular, the basic intuition of utilitarianism that Nozick would like to reject (that the interests of the individual may sometimes be sacrificed for the general good) is essential to getting his own argument to go through at various critical junctures. That unacknowledged kinship would, I think, surface were Nozick to push hard on his criticisms of utilitarianism, and may partly explain his reticence to do so. In addition, one of the frequent criticisms of utilitarianism—the pragmatic problems with implementing it, given the difficulties of measuring welfare so as to make appropriate trade-offs—could be levied with as much force against Nozick's argument. Consider, for example, the difficulties entailed in ascertaining the counterfactual histories necessary to implement his principle of rectification, his particular interpretation of the Lockean proviso, and the requirement that "full market compensation" be paid for permissible boundary crossings. Some realization that his own argument might not fare much better than does utilitarianism against the charge of being held hostage to unresolvable empirical issues may explain Nozick's lack of enthusiasm for pushing this particular criticism hard.

tion (at least in the egalitarian wing) as weak-brained sentimentalists, who are offended even by the attempt to educate them out of their error through reason, and (b) the presentation of self as the weary but wise Wordsworthian realist, who (in contrast to his antagonists) has slowly come, with maturity, to assume the burdens of truth. The latter pose is struck more overtly in the succeeding paragraph: "Over time, I have grown accustomed to the views and their consequences, and I now see the political realm through them." But Nozick segues at the end into lofty, arch arrogance: "(Should I say that they enable me to see through the political realm?)" (*ASU*, x).[19] Nozick's tarring of the egalitarian camp alternates between a kind of patronizing sympathy for their pursuit of a utopian vision that they, in their childlike innocence, understandably yearn for, and imputations of intellectual laziness or plain bad faith.

A. Fools

Pity the poor children. . . . Mining the first vein, consider this Nozickian paraphrase of the egalitarian's case for equality: "Wouldn't it be *better* if the person with less opportunity had an equal opportunity? If one could so equip him without violating anyone else's entitlements (the magic wand?) shouldn't one do so? Wouldn't it be fairer?" (*ASU*, 236). So we might be tempted to think, suggests Nozick the Realist, until we are reminded of the cold, hard, grown-up truth that the only way to give more to those who have less is to seize holdings from those who have more to which they are "entitled," or to persuade those with more voluntarily to give it away to those with less (*ASU*, 235). It is worth pausing not just on Nozick's choice of the word "fairer" and even more unmistakably the term "magic wand" here to characterize the opposition as childlike moral simples, but (more subtly) on the use of the italicized "*better*." Quotation marks would have expressed straightforward dismissive contempt for the opposition's failure to define and defend "better." Italics are a much more inspired choice, expressing a subtler form of contempt—the condescending, if sympathetic, adult contemplating the touching plea of the wide-eyed, innocent child for world peace. ("Why can't we all just be friends?")

In the same vein, consider the following passage on the purported shortcomings of the minimal state: "But doesn't the idea, or ideal, of the minimal state lack luster? Can it thrill the heart or inspire people to struggle or sacrifice? Would anyone man barricades under its banner? It seems pale and feeble in comparison with, to pick the polar extreme, the hopes and dreams of utopian theorists" (*ASU*, 297). Obviously, the intent of this speech, like Mark Antony's somewhat subtler version ("I come to

[19] Probably not. This is another point at which I think Nozick is slightly tone-deaf and risks turning his audience against him by overplaying his hand rhetorically.

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bury Caesar, not to praise him . . ."), is the opposite of the announced one: to drive the reader to conclude that the apparent vice of the minimal state—that it is not the stuff to set revolutionary hearts apatter—is its greatest virtue, and that critics' inability to see this point is merely a symptom of their greatest failing, which is their childish psychological attachment to utopianism.[20]

B. Knaves

The first half of Nozick's one-two punch (characterizing egalitarians as childlike utopians) is delivered in a voice tinged "more with sorrow than anger." The second (suggesting their intellectual complacency and/or bad faith) is delivered with straightforward, often snide, contempt. Again, Nozick sets the tone in the preface, when he suggests that those on the other side have grown complacent from their long domination of the academy, and that it falls to Nozick to remind them what a real defense of an argument entails:

> A codification of the received view or an explication of accepted principles need not use elaborate arguments. It is thought to be an objection to other views merely to point out that they conflict with the view which readers wish anyway to accept. But a view which differs from the readers' cannot argue for itself merely by pointing out that the received view conflicts with *it!* Instead, it will have to subject the received view to the greatest intellectual testing and strain, via counterarguments, scrutiny of its presuppositions, and presentation of a range of possible situations where even its proponents are uncomfortable with its consequences. (*ASU,* x)

By the end of this passage, the reader cannot help but be impressed with the Herculean labors that await the author in the balance of the book, by contrast to what his opponents have gotten away with. Segueing from imputations of laziness to imputations of bad faith, Nozick reminds his readers that "intellectual honesty demands that, occasionally, at least, we go out of our way to confront strong arguments opposed to our views" (read, the occasion is long overdue in this case), and that "[o]nly the refusal to listen guarantees one against being ensnared by the truth" (*ASU,* x and xi, respectively).

C. Are you still beating your wife?

The charges of bad faith sprinkled throughout the book are often explicit, as they are in the preface. So, for example, after stating that he is going to

[20] See also *ASU,* 328 and 330, on the same childish yearnings for a "sleek, simple utopian scheme" that everyone will accept, that is complete enough in theory "to cover all problems which actually will arise" (ibid., 330), and that will operate in practice exactly as predicted in theory (ibid., 328).

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focus his critique on Bernard Williams's version of equality, Nozick concludes (with what one hears as an almost imperceptible sneer): "No doubt many readers will feel that all hangs on some other argument; I would like to see *that* argument precisely set out, in detail" (*ASU,* 233). The clear implication here, of course, is that egalitarians will resist doing so at all costs, so as to avoid the sort of withering (Nozickian) critique that inevitably awaits them if they do. In a similar vein, consider the not-too-subtle "intentionally" planted in the following defense of methodological individualism in political theory: "There are only individual people . . . with their own individual lives. . . . Talk of an overall social good covers this up. (Intentionally?)" (*ASU,* 33).[21]

At other times, Nozick conveys his antagonists' bad faith indirectly, through a careful choice of descriptors. Consider, for example, Nozick's deployment of the term "redistributionist" to describe end-state theorists, holding it out at arm's length for our inspection like three-day-old fish, his moral disgust at uttering the word barely contained: "[I]sn't it surprising that redistributionists choose to ignore the man whose pleasures are so easily attainable without extra labor, while adding yet another burden to the poor unfortunate who must work for his pleasures?" (*ASU,* 170). In addition to reducing his subjects to specimen-like objects, Nozick's choice to label them "redistributionists" rather than (say) egalitarians focuses attention on the means that end-state theorists might find it necessary to employ to achieve their desired end, rather than the desired end itself. This seems like an odd rhetorical choice on substantive grounds. (Would one describe libertarians as prison enthusiasts because they would throw in jail those who steal from their fellow citizens via redistributive taxation?) But it may well be a shrewd choice on strategic grounds, since it invites readers to confuse means with ends—to think that what really turns these people on is not the prospect of helping the poor, but the prospect of taking away *your* money in order to do it.[22]

[21] For yet another example, consider Nozick's insinuation that advocates of end-state distributive principles have deliberately sought out redistributive mechanisms that will obscure what they are up to: "Whether it is done through taxation on wages . . . or through seizure of profits or through there being a big *social pot* so it's not clear what's coming from where and what's going where, patterned principles of distributive justice involve appropriating the actions of other persons" (*ASU,* 172).

[22] There is some irony in Nozick's rhetorically loading the dice through this particular device, given the fuss he makes elsewhere in *ASU* about the use of the term "distributive justice." By using the word "distributive" in this context, argues Nozick, end-state theorists smuggle into the argument over who gets what the (undefended) presupposition that there is some "person or group entitled to control all the resources" to begin with, and by extension therefore to *re*distribute them at any time (*ASU,* 149). Instead, Nozick suggests, we should use the neutral word "holdings." As deployed by Nozick in the balance of the book, the word "holdings" comes to mean, roughly, "That which you, as a matter of fact, possess, which (in my view, for reasons I don't care to spell out or defend, though they have something to do with Lockean entitlement theory) it would violate your rights to take away from you."

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The word "redistributionist" in Nozick's hands has a slight whiff of red-baiting about it—not substantively, but rhetorically, in the sense of describing one's enemies by a trait that is likely to elicit readers' reflexive, enflamed reactions. That tactic is more overt at various other points in the book, when (for example) Nozick matter-of-factly describes redistributive taxation as a form of slavery,[23] or treats egalitarianism as necessarily implying absurd conclusions that no egalitarian would embrace.

D. The parade of horribles

On the latter front, consider the conclusion to which Nozick pushes his observation that patterned principles will call into question intrafamily transfers (true enough in some situations): "Either families themselves become units to which distribution takes place . . . (on what rationale?)[24] or loving behavior is forbidden" (*ASU*, 167). Or consider the following: After implying that anyone who supports forced redistribution is logically compelled to bar dissidents to the program from exiting, Nozick concludes with this parenthetical: "(Would it also support, to some extent, the kidnapping of persons living in a place without compulsory social provision, who could be forced to make a contribution to the needy in your community?)" (*ASU*, 173–74). Well, no, it wouldn't, and no sane "redistributionist" would take it to do so (although some might take it to support international obligations of justice, which they will insist are not morally equivalent to kidnapping). But, obviously, the rhetorical point is scored just by posing the question.

Finally, there is Nozick's famous (and admittedly "slightly hysterical" sounding) suggestion that Rawls's difference principle implies forced eyeball transplants from the two-eyed to the blind: "On what grounds are

Consider, too, this passage, in which Nozick implies that ownership of others is not merely the by-product of end-state theories but their motivation: "End-state and most patterned principles of distributive justice institute (partial) ownership by others of people and their actions and labor. These principles involve a shift from the classical liberals' notion of self-ownership to a notion of (partial) property rights in *other* people" (*ASU*, 172). The slippery word "institute" here implies (without outright stating) that end-state principles are chosen in order to create partial ownership of others. This impression is underscored by the word "shift" here, which implies a parallelism in the intentions of "classical liberals" (undeniably to institute "self-ownership") and redistributionists.

[23] "This process whereby they take this decision from you makes them a *part-owner* of you; it gives them a property right in you. Just as having such partial control and power of decision, by right, over an animal or inanimate object would be to have a property right in it" (*ASU*, 172).

[24] There is an answer to this question, which Nozick treats as rhetorical. The rationale for treating families as the units to which distribution takes place is that families themselves tend to pool income and make consumption decisions jointly—the same rationale that explains why, since 1948, the U.S. income tax system has treated traditional families (married couples and their minor children), rather than each member of a family, as the taxpaying unit, and why the U.S. estate and gift tax system exempts from taxation all transfers of property between spouses.

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such cases, whose detailed specifications I leave to the ghoulish reader, ruled inadmissible [in the Rawlsian scheme]?" challenges Nozick (*ASU,* 206–7). Again, there is no shortage of answers to this question, which Nozick treats (mistakenly) as a rhetorical one. But again, Nozick has probably gotten most of the rhetorical advantage he could hope for here just by posing the question and leaving it hanging there as a grim reminder of where egalitarianism might lead.

E. Are you still not beating your wife?

Sometimes Nozick's insinuation of intellectual laziness or dishonesty on the part of his opponents is simply perplexing, as when it catches out the opposition (gotcha!) doing (ostensibly nefarious) things that one assumes they would more than happily cop to in broad daylight.

Consider here Nozick's discussion of the failures of utilitarianism in the context of punishment theory. Nozick starts out as Reasonable Man here, acknowledging (as utilitarians would insist) that "[r]etributive theory seems to allow failures of deterrence," since its requirement that the punishment be proportionate to the crime does not take into account the probability (which is less than 1) of a boundary crosser's apprehension, conviction, and punishment (*ASU,* 60–61). This is, of course, a serious objection. It is really an instance of one of the principal objections that utilitarians have voiced against deontological theories: that the latter's fixation on the "rightness" of action at the individual level (focusing on the difference between nonfeasance and malfeasance, individual desert, etc.) prevents the state from acting so as to optimize interests that deontologists themselves hold paramount (protecting the innocent, etc.).[25] But, instead of engaging that complaint, Nozick the Reasonable Man gives way to Nozick the Contemptuous. Maybe deterrence theorists "would be in a position to gloat at retributivists' squirming over this," says Nozick, "if they themselves possessed another theory" (*ASU,* 61).

One would think that the one thing that utilitarians possess is another theory. Why don't they, in Nozick's view? Nozick's answer (*ASU,* 61–62) is a tour de force of slippery prose, which I leave to the reader to inspect up close for herself. Here is a rough (but I think fair) paraphrase: Well, actually, utilitarians do have another theory, but that theory says we should set punishment so as to maximize overall happiness. I consider this "bizarre" because it requires us to care as much about the happiness of the criminal as about that of the victim. ("Constructing counterexamples to this bizarre view is left as an exercise for the reader" [*ASU*, 62].) "Utilitarian deterrence 'theory'" (note the quotation marks, suggesting

[25] For an exhaustive catalogue of these arguments by two enthusiasts, see Louis Kaplow and Steven Shavell, *Fairness versus Welfare* (Cambridge, MA: Harvard University Press, 2002).

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the author's disdain for the very prospect of dignifying this argument by that appellation) could avoid this result I consider bizarre only if utilitarians weighted happiness by reference to the virtue of different classes of individuals. But (aha!) that would make them desert theorists, and moreover, require them to figure out "proper" weights (let's see them do that!).[26] We retributivists don't have to do any of that because we don't give a damn about happiness to begin with.

Well, okay. But look at what has happened here: Nozick has parried utilitarians' weighty objection to retributivism by accusing utilitarians of being, well, utilitarians, which he points out that they could avoid only by becoming retributivists. But they can't do that, because they themselves forswore that possibility when they became utilitarians. To which utilitarians of the world could hardly be blamed for responding: Is this a joke? As to the rest of Nozick's audience, however, this barrage of arguments that carry themselves for all the world as if they were dispositive creates the general impression (reinforced by the dismissiveness of his tone) that, after two centuries of philosophers' phumphing around, Nozick has expeditiously dispatched utilitarianism in two pages.

IV. Nevertheless . . .

As I suggested at the outset, what makes Nozick's professions of intellectual modesty a rhetorical device rather than a straightforward description of method is the distance between those professions and what are, finally, the imperialist ambitions of the book. Those ambitions are put on the table right at the start, in Nozick's famous assertion that "Individuals have rights, and there are things no person or group may do to them. . . . 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,* ix). We encounter those ambitions again at the end, when Nozick declares them to have been met, planting the libertarian flag, as it were, on the entire realm of political philosophy:

> In this chapter and in the previous one we have canvassed the most important of the considerations that plausibly might be thought to justify a state more extensive than the minimal state. When scrutinized closely, none of these considerations succeeds in doing so (nor does their combination); the minimal state remains as the most extensive state that can be justified. . . . We have justified the minimal state, overcoming individualist anarchist objections, and have found all of

[26] "One would suppose that considerations of desert, which deterrence theorists had thought avoidable if not incoherent, would play a role here; one would suppose this if one weren't bewildered at how to proceed, even using such considerations, in assigning the 'proper' weight to different persons' (un)happiness" (*ASU,* 62).

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> the major moral arguments for a more extensive or powerful state inadequate. (*ASU,* 273–74, 276)

As I suggested earlier, sustaining these imperial claims in the face of the conceded (and very real) problems with his argument is a tricky rhetorical business. I turn now to the various strategies employed to accomplish it.

A. Pay no attention to the man behind the curtain

The most frequent strategy Nozick employs to neutralize his self-critique is simply to disregard it. This strategy has all the advantages of the heist in broad daylight in the public square. It seems so brazen, so certain not to work, that bystanders simply do not believe their eyes when all appearances suggest that that is precisely what is going on.

Sometimes problems are dispatched in this fashion by the flat-footed non sequitur, which, following hard upon some acknowledged difficulty, seems by virtue of its placement and rhetorical structure to respond to the difficulty, but in fact does no such thing.[27] At other times, problems are neutralized by being encapsulated as a minor qualification on an otherwise impregnable argument. For sheer economy, it is hard to beat the following example, trumpeting the efficacy of a dominant protective association's prohibitions on others' use of unfair or unreliable procedures of justice: "Leaving aside the chances of evading the system's operation, anyone violating this prohibition will be punished" (*ASU,* 103).

Most often, however, Nozick deals with the problems he has conceded to exist by waiting a discreet interval after his concession, and then pro-

[27] See, for example, Nozick's response to his (apt) concern that his attempt to justify the minimal state by showing that it *could* in theory come into being through a just (invisible-hand) process may be morally irrelevant: "[O]ne would feel more confidence if an explanation of how a state *would* arise from a state of nature [Nozick's emphasis] also specified reasons why an ultraminimal state *would* be transformed into a minimal one [my emphasis], in addition to moral reasons, if it specified incentives for [people doing what they ought, including providing compensation where required]." Instead of answering this objection, Nozick follows it up with this caveat: "We should note that even in the event that no nonmoral incentives or causes are found to be sufficient for the transition from an ultraminimal to a minimal state, and the explanation continues to lean heavily upon people's moral motivations, it does not specify people's objective as that of establishing a state. Instead, persons view themselves as providing other persons with compensation for particular prohibitions they have imposed upon them. The explanation remains an invisible-hand one" (*ASU,* 119). A fair paraphrase of this whole paragraph would go roughly as follows: I've shown how we could in theory get a just minimal state through an invisible-hand process. You might rightly object that I haven't shown we ever could in practice. But I'd like to point out that even if your objection is apt, the process I've shown you is an invisible-hand one.

I hesitate to include the "non sequitur" as a rhetorical device, as that description implies some subtlety and charm that maneuvers like this lack, at least to my ear. They are likely merely to irritate the close reader, raising the question whether Nozick is asleep at the switch here, or is simply counting on his readers to be so.

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ceeding as if it had never been made, as if the very survival of his affirmative argument in the face of the prior onslaught testifies to its veracity. The typical life cycle of a Nozickian self-critique starts with the elaborate presentation of self-doubts (often accompanied by handwringing of various sorts, as we saw in Section II above), segues to equivocation, and then departs silently from the scene some pages later, leaving not a trace behind.

As an example of this technique, consider Nozick's argument in Part I of *Anarchy, State, and Utopia* as to how a dominant protective agency could establish a monopoly on coercive powers (thereby metamorphosing into the minimal state) without violating anyone's rights. Nozick the Reasonable takes the floor first, conceding at some length that it is very hard to come up with any natural rights theory of procedural justice (*ASU,* 96–101, 141). In particular, Nozick suggests, it is very hard to figure out what would be an optimal level of false positives and false negatives in conviction rates, and it is hard to come up with any other norms about required procedures. A little later, he acknowledges that reasonable people may disagree as well on questions of substantive justice—that is, which boundary crossings deserve punishment at all (*ASU,* 141–42).

But establishing the existence of some norms of procedural justice is critical to Nozick's argument that a dominant protective agency that complies with such norms thereby earns the right to extinguish other competing agencies (*ASU,* 140, 141). Here is how Nozick moves (silently) from skepticism about the possibility of establishing such principles, to equivocation, and finally, to the stipulation of such principles. First the equivocation:

> The natural-rights tradition offers little guidance on precisely what one's procedural rights are in a state of nature, on how principles specifying how one is to act have knowledge built into their various clauses, and so on. Yet persons within this tradition do not hold that there are *no* procedural rights; that is, that one may not defend oneself against being handled by unreliable or unfair procedures. (*ASU,* 101)

As a substantive matter, the last sentence would not seem to be any sort of rejoinder to the penultimate one. That natural-rights types mistakenly believe that there are such things as "procedural rights," such that one can justly defend oneself against others acting as though there are not, would hardly seem to be responsive to Nozick's prior arguments as to why they are wrong in thinking so. Yet, using this nonresponsive equivocation as a kind of rhetorical demilitarized zone, in the next section Nozick tentatively reasserts the claim that the dominant protective agency has a right to prohibit "unreliable or unfair" procedures, and implies we

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can take it as given that we all know what this category includes and can therefore evaluate whether a given protective agency has complied with the requirement.[28]

Finally, fifteen pages later, we have the Nozickian declaration of victory: "We have discharged our task of explaining how a state would arise from a state of nature without anyone's rights being violated. The moral objections of the individual anarchist to the minimal state are overcome. It is not an unjust imposition of a monopoly; the *de facto* monopoly grows by an invisible-hand process and *by morally permissible means,* without anyone's rights being violated and without any claims being made to a special right that others do not possess" (*ASU,* 114–15).[29]

The same maneuver is deployed at various critical junctures throughout the book. Probably the boldest and most important example is Nozick's treatment of the three principles on which his theory of just distribution is built: justice in acquisition, justice in transfer, and rectification. Nozick the Reasonable again takes the floor first, acknowledging that supplying defensible content to any of the three principles is a tricky matter, and one that he does not propose to undertake in the book. Justice in acquisition is sidestepped in a subsidiary clause/aside: "We shall refer to the complicated truth about this topic, *which we shall not formulate here,* as the principle of justice in acquisition" (*ASU,* 150; italics added). Justice in transfer is sidestepped in the concessionary adjective "complicated" and a parenthetical: "The complicated truth about this subject (with placeholders for conventional details) we shall call the principle of justice in transfer" (*ASU,* 150). The principle of rectification actually gets more than a half-dozen signature, probing, Nozickian questions, gesturing at the many difficulties that lay buried here, before we are invited to sidestep them as well: "Idealizing greatly, let us suppose theoretical investigation will produce a principle of rectification" (*ASU,* 152).

Well, suppose it doesn't? All moral arguments must take certain things as given. Nozick's matter-of-fact openness about doing that here borrows its presumptive respectability from that reality, while reinforcing his bona fides as an honest man (at least *he* is willing to acknowledge what every other philosopher does behind our backs). The problem, of course, is that without any content supplied for those three principles, Nozick's theory of just distribution rules out almost nothing, as virtually any substantive theory of distributive justice can be fit within its rhetorical structure. Nozick the Diffident concedes as much: "To turn these general outlines into a specific theory we would have to specify the details of each of the

[28] See Nozick's discussion of "How May the Dominant Agency Act?" (*ASU,* 101 ff.).

[29] For a similar declaration of triumph on this point, see *ASU,* 132–33: "[My invisible-hand argument] differs from views that '*de facto* might makes state (legal) right' in holding that . . . the process of accumulating sole effective enforcement and overseeing power may take place without anyone's rights being violated; that a state may arise by a process in which no one's rights are violated."

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three principles of justice in holdings. . . . I shall not attempt that task here" (*ASU*, 153).[30]

But in the very next sentence, Nozick the Diffident signals his imminent departure from the scene, ceding the floor to Nozick the Equivocator, who hints that he will draft Locke as a stand-in for himself until such time as he is ready to supply his own views: "(Locke's principle of justice in acquisition is discussed below.)" (*ASU*, 153). Less than ten pages later, the imperial Nozick has taken command, offering up a full-blown version of his theory of justice (sometimes coyly attributing it to his doppelganger Locke, sometimes taking responsibility himself). Without the slightest hint of self-doubt, Nozick pulls out of that theory a string of controversial, concrete policy conclusions: "On an entitlement view, . . . [w]hoever makes something, having bought or contracted for all other held resources used in the process . . . is entitled to it" (*ASU*, 160); "[e]ntitlements to holdings are rights to dispose of them" (*ASU*, 166); and taxation, which "violate[s] . . . a side constraint against aggression," amounts to "forced labor . . ." (*ASU*, 169). By the start of Part III, we confront the astonishing declaration of total victory: "No state more extensive than the minimal state can be justified" (*ASU*, 297). So much for Nozick the Diffident.

B. When in doubt, say it loud

Flat-footed, brash declarations pop up throughout the book, setting forth Nozick's major claims without elaboration or defense. ("Political philosophy is concerned only with *certain* ways that persons may not use others, primarily, physically aggressing against them" [*ASU*, 32]. Oh?) The function of this rhetorical posture seems to be to persuade the reader that the author's very confidence in his assertions dispenses with any need for argument.[31]

Where explanation would normally follow, one often instead gets paraphrase, acting for all the world like explanation but in fact amounting only to repetition.[32] Consider, for example, Nozick's elaboration of his famous assertion at the start that "Individuals have rights . . ." (*ASU*, ix):

[30] Indeed, when he makes a later appearance in his critique of Rawls, Nozick the Reasonable concedes that the principle of rectification could, in practice, demand adjustments that would swamp all other considerations of justice and in the end justify some system of distribution that looks a lot like the Rawlsian scheme (*ASU*, 231).

[31] The reigning muse for Nozick here might be E. B. White's Will Strunk. Strunk, said White, "scorned the vague, the tame, the colorless, the irresolute. He felt it was worse to be irresolute than to be wrong. I remember a day in class when he leaned far forward, in his characteristic pose—the pose of a man about to impart a secret—and croaked, 'If you don't know how to pronounce a word, say it loud! . . .' This comical piece of advice struck me as sound at the time, and I still respect it. Why compound ignorance with inaudibility? Why run and hide?" E. B. White, introduction to William Strunk, Jr. and E. B. White, *The Elements of Style* (New York: Macmillan, 1959), xi.

[32] Here, again, Nozick takes a page from White's Strunk. See White's charming description of Strunk's device for filling up the time he had created by following his own advice to "omit needless words": "In those days when I was sitting in his class, he omitted so many

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> There are particular rights over particular things held by particular persons, and particular rights to reach agreements with others. . . . No rights exist in conflict with this substructure of rights. Since no neatly contoured right to achieve a goal will avoid incompatibility with this substructure, no such rights exist. The particular rights over things fill the space of rights, leaving no room for general rights to be in a certain material condition. (ASU, 238)

The thought here may be to exhaust the skeptic, or lull him into acquiescence, through sheer redundancy. Like many of the rhetorical strategies employed in this book, repetition can backfire if not done with a deft touch, since it always runs the risk of conveying, instead of self-confidence, desperation. To my ear, the foregoing quote has a hint of such desperation. The hint is somewhat stronger in the following attack on equal opportunity egalitarianism: "No centralized process judges peoples' use of the opportunities they had; that is not what the processes of social cooperation and exchange are *for*" (*ASU,* 236). The artless reiteration here, topped off by the italicized "*for,*" lends the statement a kind of plaintive air, betraying rather than obscuring what one hears as Nozick's own unease about the threadbareness of the argument.

C. The factitious (chimerical) world

The odd, pseudo-Lockean world in which Nozick's argument is lodged belongs in the bestiary of Greek chimerae, half beast (the fabulist half) and half man (grounded in reality). Every time we think we are happily ensconced in the world of fable, some odd fact about how people actually behave intrudes. Nozick is hardly alone in helping himself to the best of both worlds—the ideal and the real—as needed to see the argument through. But he is, as an absolute matter, a heavy user of the device, routinely plucking out empirical claims to get him over some pretty rough patches in his theoretical argument.

Examples of Nozick's factitious universe at work abound in *Anarchy, State, and Utopia*. We already saw one at the start of this essay. When Nozick realizes he has gotten himself into something of a jam by conceding that communities have a right to regulate the lives of their members as long as their members are not formally prevented from exiting—suggesting the obvious question, why not nation-states as well?—he bails

needless words, and omitted them so forcibly and with such eagerness and obvious relish, that he often seemed in the position of having shortchanged himself—a man left with nothing more to say yet with time to fill, a radio prophet who had outdistanced the clock. Will Strunk got out of this predicament by a simple trick: he uttered every sentence three times. When he delivered his oration on brevity to the class, he leaned forward over his desk, grasped his coat lapels in his hands, and, in a husky, conspiratorial voice, said, 'Rule Thirteen. Omit needless words! Omit needless words! Omit needless words!'" Strunk and White, *The Elements of Style,* viii.

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himself out by plucking out from the vast universe of possible social facts the following: people are annoyed by what others do if they meet them face to face, but not if they are far removed physically (*ASU*, 321–23).

Alternatively, consider Nozick's account in Part I of how the minimal state could (would?) evolve from a private protective agency through a just (invisible-hand) process. The entire fable is a confused amalgam of pure fantasy (how people in theory *could* behave), moralized fantasy (how they *would* behave if they behaved morally), psychological conditional reality (how they *are likely* to behave if placed in certain contexts), and prediction (how some actually existing protective agency will actually behave in the future).

Consider as well the following example, a variant on the exit problem. After stipulating to people's broad rights to extract, through voluntary contract, whatever concessions their legitimate bargaining power gives them, Nozick raises the possibility that a majority could justly coerce a minority into consenting to a more-than-minimal state by just such a process—that is, by threatening a boycott, which amounts to a collective agreement not to deal with others unless they accede to certain terms. How does Nozick contain this exception, which—like Nozick's harm-based justification for regulating nosy preferences—has the potential to swallow his entire libertarian worldview? He does so *not* by arguing that such a boycott would be morally impermissible. Indeed, he concedes that it does not violate any rights (*ASU*, 292). Instead, he contains it by offering reasons why, as a matter of empirical fact, "[i]t is highly unlikely that in a society containing many persons, an actual boycott such as the one described could be maintained successfully" (*ASU*, 292–93). Maybe, but maybe not. More importantly, it is not clear what moral relevance that empirical claim would have, even if right. In Part I, Nozick takes it as sufficient to justify the minimal state that one could imagine a just process by which it *might* have come into being. Why is it not sufficient to justify a more-than-minimal state that one could similarly imagine a just process by which it might have come into being? What's reality got to do with it?

Nozick's easy transit between the ideal and real worlds raises a substantive issue more than a rhetorical one. But at least one rhetorical aspect of his performance is worth noting. Nozick blurs the line between these two worlds, often making it impossible to decipher which world we are supposed to be in at any given moment, by casually slipping between the indicative and subjunctive moods, and by employing an indicative mood whose claims to facticity are ambiguous at best. Both moves serve to obscure (without outright denying) the counterfactual, speculative nature of his enterprise. The following passage from Nozick's account of how the minimal state could (would?) evolve is a perfect illustration of both devices:

> Will protective agencies *require* that their clients renounce exercising their right of private retaliation . . . ? Such retaliation may well lead

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> to counterretaliation by another agency or individual, and a protective agency would not wish *at that late stage* to get drawn into the messy affair by having to defend its client against counterretaliation. . . . Initially, several different protective associations or companies will offer their services in the same geographical area. What will occur when there is a conflict between clients of different agencies? (*ASU*, 15)

After wobbling between the future-indicative "will" and the subjunctive "would," Nozick finally settles into the repeated use of "will" in a fashion that invites us to imagine that the hypothetical is real, and that his claims as to what "will" occur are themselves a factual refutation of all the other, less salutary hypothetical scenarios one could dream up.[33] I take up another example of the rhetorical blurring of fact and fiction in subsection D.

D. The irresistible pull of the particular

Another of the recurring rhetorical features of Nozick's argument, often employed in moving through the factitious universe, is the vertiginous descent from broad general propositions to incredibly particularized examples and observations. Consider this description of what a good Lockean protective association will (would?) do for its clients, to protect them against independents' applying their own unfair legal procedures to punish acts the independents don't like:

> Th[e] dominant protective association will prohibit anyone from applying to its members any procedure about which insufficient information is available as to its reliability and fairness. It also will prohibit anyone from applying to its members an [actually] unreliable or unfair procedure. . . . The protective association will publish a list of those procedures it deems fair and reliable (and perhaps of those it deems otherwise); and it would take a brave soul indeed to proceed to apply a known procedure not yet on its approved list. Since an association's clients will expect it to do all it can to discourage unreliable procedures, the protective association will keep its list up-to-date, covering all publicly known procedures. (*ASU*, 102–3)

Now this is pretty hilarious stuff. First, there is the matter discussed above: the seamless blend of the hypothetical and the supposedly real. The "bravery" of the "brave" soul is real, I take it, along with the dom-

[33] Here, as elsewhere in this essay, I may be reading too much into something that reflects nothing more than the sort of careless writing that we are all guilty of from time to time. There isn't always providence in the fall of a sparrow.

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inant protective association's willingness to punish deviations from its edicts in a fashion that would necessitate that bravery. In contrast, its willingness to confine the list of procedures it prohibits to those that are actually unfair (by unspecified criteria), rather than prohibiting all those it doesn't like because they materially disadvantage its members, is apparently not. The "chances of evading the system's operation" are real; the assertion that, notwithstanding those (real) chances, "anyone violating this prohibition will be punished" is not. There is as well the bizarre specificity of the portrait of what a hypothetical (good Lockean) dominant protective agency would do in such a situation: the "up-to-date" lists it would post; the inclusion not only of actually unfair or unreliable procedures, but also of those "about which insufficient information is available as to [their] reliability or fairness."

Often, the choice of particular examples to pose or worries to chase down seems so random with respect to the main argument, so improbable or insignificant as compared to other problems never raised, as to be inexplicable or downright loopy. Consider here Nozick's fretting over the problem of checkerboard rival private protective agencies that forbid outsiders to enter their territory: "But this would leave acute problems of relations with independents who had devices enabling them to retaliate across the boundaries, or who had helicopters to travel directly to wrongdoers without trespassing upon anyone else's land, and so on" (*ASU*, 55). *Helicopters*?[34] Why not spaceships? Or for that matter, why not independents who, hot to retaliate against their opponents, don't stand on ceremony when they encounter a "No Trespassing" sign decorously posted at the intervening border?

Consider, too, Nozick's discussion of the circumstances under which a dominant protective association is justified in refusing to give full faith and credit to an independent's legal judgment:

> If the agency deems the procedure unreliable or doesn't know how reliable it is, it need not presume its client guilty, and it may investigate the matter itself. . . . This protection of its client against the actual imposition of the penalty is relatively straightforward, except for the question of whether the agency must compensate the prospective punishers for any costs imposed upon them by having to delay while the protective agency determines to its satisfaction its own client's guilt. It would seem that the protective agency does have to pay compensation to users of relatively unreliable proce-

[34] I note, on behalf of the legal sticklers out there, that helicopter travel won't help Nozick's legally fastidious marauders much, since it—as much as foot-travel across a neighbor's land—constitutes trespass under the common-law definition of ownership rights in the Anglo-American legal tradition: "cuius est solum eius est usque ad coelum et ad inferos" (he who owns the land owns everything reaching up to the very heavens and down to the depths of the earth).

> dures for any disadvantages caused by the enforced delay; and to the users of procedures of unknown reliability it must pay full compensation if the procedures are reliable, otherwise compensation for disadvantages. (*ASU,* 104)

Then comes the coup de grace: "(Who bears the burden of proof in the question of the reliability of the procedures?)" (*ASU,* 104).

This is a pretty odd tangent to find oneself out on. Nozick has not established that there is any such thing as procedural due process in the Lockean state of nature, let alone what it would require or whether a just state is required to give full faith and credit to another's fair determinations, and here we are worrying about whether the other side gets compensated for the delay in figuring out whether its judgment deserves full faith and credit, and who bears the burden of proof. Well, we are not worrying for long, because it turns out there are clear answers to the last two questions, even if there are not, by Nozick's admission, answers to any of the others.[35]

What on earth is going on here? Why these examples and worries, and not others? What is all this false particularity accomplishing?[36]

It is accomplishing a few things, I think. First, the meticulous attention to extraneous details distracts the reader from the threadbareness of the central proposition that Nozick is fleshing out.[37] The following is an unusually flagrant example. In his discussion of "Prohibition, Compensation, and Risk," after acknowledging that he is "shamelessly" (see Nozick the Charming Rogue) going to ignore the difficulty of answering the counterfactual question at the heart of his compensation scheme for involuntary border crossings—how well off would X have been without Y's action—Nozick states, "But one question must be discussed": whether X has an obligation to mitigate damage caused by Y's transgression (*ASU,* 57). A lengthy discussion ensues. This abrupt transition from the jugular

[35] For another example, see Nozick's discussion of why one can't leave to private contract the problem of coordinating among private protective agencies (*ASU,* 89–90).

[36] It has been suggested to me again that historical context may supply an answer that the text alone does not. I quote: "Much of this silly argument is a response to hotly debated issues between individualist anarchists and minimalists that went on at a furious pace in the early 1970s. That's where the whole business about protective agencies comes from: the Rothbardian anarchists. But since mainstream political philosophy didn't know anything about this tempestuous (and often pretty wacky) debate, Nozick's arguments just look preposterous and unique to him. They may be preposterous, but they occurred in a context, now pretty much lost to interpreters. The Rothbardian anarchists argued in this (often ludicrous) way, including all the minutiae [quoted above], and Nozick responded in kind." Correspondence with Ellen Frankel Paul, 2003.

[37] Just for the record, among the difficulties skipped over in the last example are the assumption that state-of-nature theory has a position on unfair procedures; that, notwithstanding Nozick's own concession that it is quite unclear what those unfair procedures are, all honorable dominant protective associations would know them when they see them (and see them in the same places); and that even a good Lockean dominant protective association would regard it as required, rather than merely optional, to defer to extraterritorial judgments arrived at by "fair" procedures.

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to the capillary, introduced by the earnest and urgent "But one question must be discussed," seems designed to imply (contrary to what his "shamelessly" flamboyantly concedes) that what Nozick has chosen to explore in detail is in fact much more important than what he has "shamelessly" left by the wayside.

Second, like Nozick's fussy attention to small matters when giving the devil his due, the oddly concrete and specific nature of these details shores up his bona fides with respect to the central claims of his argument, reassuring us that we are dealing with someone who has really thought all this through. (If he hadn't, how would he ever have arrived at *this* obscure concern?) Finally, it aids in blurring the line between fact and fiction here. Even where Nozick does not overtly invite the reader to treat the hypothetical as real, the particularity of the tangents he chooses to run down invites that confusion. (Why is he telling us all this stuff about when and how lists will be posted, and whether they will be kept up-to-date, if it isn't real? Who could invent something like this, and who would bother?)

V. Conclusion

By this point, the reader will have detected more than a whiff of censoriousness in this essay's tone. Perhaps it is appropriate in closing to say something about the implicit ethical criticism that lies beneath it.

As I stated at the outset, I do not mean to suggest there is something inherently suspect about the use of rhetoric to enhance the persuasiveness of academic arguments. Since our arguments are communicated through the medium of words, we cannot avoid the rhetorical. Whether or not it is a virtue, it is a necessity. At the same time, it seems clear that rhetoric plays a different, and more problematic, role in academic arguments than in (say) literature. The difference, I think, largely has to do with the nature of truth content in the different enterprises. Upon reading the last stanza of Keats's "Ode on Melancholy," no one would think to take Keats to task for overstating the (empirical) claim that only those who know great pleasure can understand true sadness, or for confounding our judgment on the evidence by invoking an image so powerful that it overwhelms rational thought.[38] No one would think to say it, because it would so utterly misconceive the nature of truth in play in the poem.

[38] She dwells with Beauty—Beauty that must die;
And Joy, whose hand is ever at his lips
Bidding adieu; and aching Pleasure nigh,
Turning to poison while the bee-mouth sips:
Ay, in the very temple of Delight
Veil'd Melancholy has her sovran shrine,
Though seen of none save him whose strenuous tongue
Can burst Joy's grape against his palate fine;
His soul shall taste the sadness of her might,
And be among her cloudy trophies hung.

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When one turns to the academic project, however, the truth content differs (or so it usually seems to me) in important ways that bear on the legitimate uses of rhetoric. The creation of affective states in readers still plays a legitimate role—maybe more so in political philosophy than, say, in tax policy, and maybe very little in the hard sciences, but a legitimate role nonetheless. When one is arguing over matters of (say) distributive justice, it is impossible not to cook the data in a deep sense—impossible, in Robert Lowell's great phrase, to just "say what happened."[39] Moreover, it is not clear that, even if we *could* just say what happened, we would want to. Overstatement, simplification, insistence on treating most moving parts of the argument as fixed, are all essential to make any argument comprehensible and hence usable. At the same time, truth in some nonsubjective, nonaffective sense seems to be at play here, and to make demands on us that it does not in literature—demands that may put off-limits some of the more engaging finds in any rhetorician's bag of tricks. Whatever irritation with Nozick one might detect on the surface of this essay undoubtedly reflects my own sense that he has not always adequately met those demands.

I recognize, however, that one could take an entirely different view of the matter—of whether there is such a thing as "the truth," even in the academic enterprise, and, assuming there is, what allegiance we owe to it. And so, let me end with a more charitable interpretation of the enterprise Nozick was engaged in in writing *Anarchy, State, and Utopia,* and the role that rhetoric plays in it. The book can be read, not as an inadvertent manifesto, but as a quite deliberate one, in which Nozick set out to provoke, enrage, excite, and otherwise arouse his audience to engaged response. In sustaining that very different enterprise, the free-ranging, loose, and occasionally irresponsible rhetorical style of the book was not merely excusable, but essential. In short, to reconnect people to politics as we live them, Nozick had to reconnect philosophy to the art of the manifesto.[40] Judging the book from this vantage point, the implicit criticism of this essay might be thought to rest on a simple category error, and be more than a little prissy to boot. Why should we force Nozick, or any other philosopher, to speak always in the voice of sweet reason? Why shouldn't he assume the role of prophet or gadfly if it serves his argumentative purposes? But then, it is a somewhat different canon to which this book belongs, and a different set of virtues by which it should be judged and remembered.

Law, Stanford University

[39] "Epilogue," in Robert Lowell, *Day by Day* (New York: Farrar, Straus, and Giroux, 1975).

[40] I am grateful to both Seana Shiffrin and Gary Lawson for pushing me on this point, each in a different way.

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