

THE INVISIBLE HAND STRIKES BACK*

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Surely one of the most significant occurrences on the intellectual scene during the past few years has been the emergence of a professor of philosophy at Harvard University as an eloquent and forceful spokesman for the doctrine of Libertarianism. Indeed, so much attention and praise has been lately showered upon the man, Robert Nozick, and his National Book-Award-winning treatise, *Anarchy, State and Utopia*, that all who uphold the doctrine of human liberty have been cheered.

If they have been cheered by the reception given to the book, however, and to the new concern of portions of the intellectual establishment with libertarianism, they have not been equally cheered by the content of the book itself. For amidst the book's subtle and wide ranging critiques of doctrines such as Marx's theory of exploitation, egalitarianism, and John Rawls' theory of justice (so hailed by intellectuals in recent years), appears an argument so central to Nozick's thinking that it dominates the first third of the treatise itself: a defense of the "minimal State" against the claims and arguments of anarchism.

Part of the consternation caused by this section is due to the fact that Nozick's argument is often of brain-cracking complexity, using against the reader all of the techniques and tools of contemporary philosophy — with not a few other technical insights from other fields, such as economics, thrown in for good measure — giving the reader oftentimes the feeling of being on a merry-go-round moving at a dizzying pace, changing speed and direction in unpredictable ways.

But part of the consternation is caused equally by the nature of the arguments themselves, with their seemingly anti-libertarian bent; arguments resting on notions such as the "compensation principle", the principle of "risk," and the alleged "right" to prohibit certain risky activities of others.

It is no accident, then, that *Anarchy, State and Utopia* has raised a storm of controversy in Libertarian circles. While the media and the intellectual world in general have focused, appropriately enough, on Nozick's persuasive critiques of the conventional wisdom, particularly the section devoted to examining Rawls' theory of justice, and to Nozick's defense of "capitalist acts between consenting adults," Libertarians have focused more on Nozick's frame of reference, the absence of a theory of rights (upon which much of the book tacitly rests its case), and the attack on anarchism.

It is obvious that any persuasive and comprehensive critique of this profound and complex work would have to be as long as the book itself. We aspire to no such grandiose heights here. What we shall do instead is to attempt to answer Nozick's main argument in defense of the "minimal state". Nozick begins with the Lockean "state-of-nature" to show how, by means of a series of "invisible hand" processes which violate the rights of no one, a legitimate "minimal state" may arise. We shall, on the contrary, maintain that, beginning with a "minimal state," and moving through a series of stages (which process violates the rights of no one), we may properly arrive back at a state of anarchy. In short, we shall maintain that the only good minimal state is a dead minimal state, one which allows those processes to operate which would, if continued over a period of time, dissolve the minimal

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state into anarchism.

In clarifying this, we shall have to discuss Nozick's concept of "risk," his principle of "compensation," and his view that the explanation offered for the origin of the state is an "invisible hand" explanation. We shall see that, on the contrary, there is instead a very *visible* hand: in fact, a veritable iron fist.

Professor Nozick's defense of the minimal state unfolds in three stages. Firstly, he argues that, "given" an anarchistic system of competing protective associations within a free market, one *dominant agency* will emerge, through market procedures and by economic necessity. This "dominant agency" will in turn "evolve" into an "*ultramiminal state*" by an invisible hand process in a morally permissible way which violates the rights of no one. This "ultramiminal state" differs from the dominant agency in that it maintains a monopoly on force in a given geographical area (except that necessary in immediate self-defense). It therefore "excludes private (or agency) retaliation for wrong and exaction of compensation; but it provides protection and enforcement services *only* to those who purchase its protection and enforcement policies." Professor Nozick then shows how this ultramiminal state evolves into a *minimal state*, which is "equivalent to the ultramiminal state conjoined with a (clearly redistributive) Friedmanesque voucher plan, financed from tax revenues. Under this plan all people, or some (for example, those in need) are given tax-funded vouchers that can be used only for their purchase of a protection policy from the ultramiminal state." Professor Nozick holds that "the operators of the ultramiminal state are morally obligated to produce the minimal state," since "it would be morally impermissible for persons to maintain the monopoly in the ultramiminal state without providing protective services for all..."

This last is, of course, especially interesting. The successful transformation of the ultramiminal state into the minimal state is dependent upon the ultramiminal state's allegiance to Professor Nozick's principle of compensation. The ultramiminal state is obligated to "compensate" those whose risky

activities they forcibly prohibit. Adequate compensation is taken to be, quite without reason, as we shall see, the provision of protective services. Professor Nozick grants that the ultramiminal state "might fail to provide this compensation," but he assumes that "generally people will do what they are morally required to do." This assumption, unfortunately, is *only* made by Professor Nozick in considering the actions of the state apparatus, not in pausing to consider the actions of competing protective associations. This naiveté is charming indeed, but not very heartwarming, reassuring or realistic. That such an assumption should find its way to make a crucially important bridge in Professor Nozick's argument is, in many ways, symptomatic of the book, and of much of contemporary philosophical discussion of the state.

Why must one "dominant agency" develop, within the free market system of competing protection agencies? "Initially," Professor Nozick writes, "several different protective associations or companies will offer their services in the same geographical area. What will happen when there is a conflict between clients of different agencies?" We learn that "only three possibilities are worth considering:"

1. In such situations the forces of the two agencies do battle. One of the agencies always wins such battles. Since the clients of the losing agency are ill protected in conflicts with clients of the winning agency, they leave their agency to do business with the winner.
2. One agency has its power centered in one geographical area, the other in another. Each wins the battles fought close to its center of power, with some gradient being established. People who deal with one agency but live under the power of the other either move closer to their own agency's home headquarters or shift their patronage to the other protective agency...
3. The two agencies fight evenly and often. They win and lose about equally, and their interspersed members have frequent dealings and disputes with each other. Or perhaps without fighting or after only a few skirmishes the agencies realize that such battling will occur continually in the absence of preventive measures. In any case, to avoid frequent, costly and wasteful battles the two agencies, perhaps through their executives, agree to resolve peacefully those cases about which they reach differing judgments. They agree to set up, and abide by the decisions of, some third judge or court to which they can turn when their respective judgments differ. (Or they might establish rules determining which agency has jurisdiction under which circumstances.) Thus emerges a system

of appeals courts and agreed upon rules about jurisdiction, and the conflict of laws. Though different agencies operate, there is one unified federal judicial system of which they are all components.

What is the significance of this? "In each of these cases," we are told, "all the persons in a geographical area are under some common system that judges between their competing claims and *enforces* their rights,"

"Out of anarchy, pressed by spontaneous groupings, mutual-protection associations, division of labor, market pressures, economies of scale, and rational self-interest there arises something very much resembling a minimal state or a group of geographically distinct minimal states."

According to Professor Nozick, then, if competing protection associations make arrangements between themselves to settle disputes, we have a type of "federal judicial system," a variant of government. This is surely metaphorical and unjustified. Surely, if we take all the protective devices in use in a given society and lump them together, then the total has what some might call a "monopoly" on protection. Similarly, all farmers taken collectively have a "monopoly" on growing food. But this is tautological.

The real point which Professor Nozick wishes to make is that if either of these alternative courses result, then we have a "legal system" resulting. Now, no one has ever denied that there would indeed be a "legal system" under anarchism. Many prominent anarchists have claimed that they advocate that structures and processes (even content, in some cases), be *separated from* the state, and the state abolished entirely. If one is going to term *any* "legal system" in this broad sense a "state," then there is little point in pursuing the matter.

Discussion may proceed along more productive lines if we distinguish between two radically different *types* of legal systems: a "market legal system" and a "state legal system." A "market legal system" could be designated as a system of rules and enforcement procedures which arises from the processes of the market economy: competition, bargaining, legal decisions, and so forth; a legal system whose order is "spontaneous" in the Hayekian sense. A "state legal system" on

the other hand, could be designated as a system of rules and enforcement procedures which are designed by the state apparatus, as a result of political procedures, and imposed by force upon the rest of society.

In a society with a "market legal system," the shape of the legal system is determined by the processes set in motion by the actions of a number of independent agencies whose plans may conflict, and therefore cause some adjustment in the means-ends structure of themselves and others. Independent agencies, then, can make agreements, reach decisions, set precedents, bargain and so forth, producing a legal "order" which is not designated by anyone. The resulting system is not a "federal system" in the traditional manner: we may have *ad hoc* decisions for individual disputes, procedures agreed upon in advance, such as drawing the names of arbitrators out of a hat, alternating arbitrators chosen by each agency, *ad infinitum*. We need not suppose that any *permanent*, distinct, appeals system has been erected. (If one had, it would not change our essential argument.) Anarchism, then, can have a legal system, a "market legal system" as opposed to a "state legal system." The analogy is to the distinction drawn between state-economic systems and unhampered market economic systems. Both are *systems*, but not of the same sort; they are built on different principles of organization and are the manifestations of different processes altogether. What we shall conclude, then, is that if the third of Professor Nozick's three alternatives results, then there will *not* be a state apparatus as the result.

Several other objections to this reasoning arise here; Professor Nozick's argument that "maximal competing protective services cannot coexist" lacks force, because he merely assumes that violent conflicts between agencies will be the norm. Now, if such conflicts do begin to develop, economics gives us every reason to assume that it will be more in the interest of competing parties to develop a means of arbitrating disputes rather than to engage in violent actions. Finally, there is no reason to regard the concept of "protective services" with holistic awe. An infinite variety

of institutions can develop in society, concerned with as many different aspects of protection. Some institutions may patrol the neighborhood block, some might focus on copyrights, some on violations of contracts, some merely on insuring against crime, rather than on apprehending criminals (for cases where customers in society do not think that retribution or punishment is justified or worthwhile). Here again, there is no reason to expect a single agency to dominate the field.

The "invisible hand" has indeed gotten itself entangled in a very strong web. Let us examine the process by which the "dominant agency" would evolve into an "ultraminimal state," which is in turn morally obliged to become the "minimal state."

"An ultraminimal state", writes Nozick, "maintains a monopoly over all use of force except that necessary in immediate self-defense, and so excludes private (or agency) retaliation for wrong and exaction of compensation; but it provides protection and enforcement services *only* to those who purchase its protection and enforcement policies."

"The minimal (night watchman) state", on the other hand is, as he writes, "equivalent to the ultraminimal state conjoined with a (clearly redistributive) Friedmanesque voucher plan, financed from tax revenues. Under this plan all people, or some (for example, those in need), are given tax-funded vouchers that can be used only for their purchase of a protection policy from the ultraminimal state."

Professor Nozick assumes the existence of a dominant protection agency in a field of competitors, and shows how it might evolve into the ultraminimal state, which is in turn morally obligated to become the minimal state. The key question to ask is: how may the dominant agency act towards independents? To answer this, we must briefly consider the notions of risk, prohibition, and the principle of compensation.

In Professor Nozick's view, one is morally justified in prohibiting certain acts, provided one compensates those who are so prohibited. What actions may be prohibited? In *Anarchy, State and Utopia*, there is no clear and unambiguous line drawn between classes of human actions which one may justifiably prohibit, and those which one may not. One class can be identified, however: we may prohibit certain *risky* actions, providing those so prohibited are compensated. Which risky

actions? It is not too clear, but the answer seems to be: those presenting "too high" a probability of harm to others. The dominant agency may justifiably prohibit enforcement procedures of independent agencies, by this reasoning, since these risk harming others, whether by punishing wrongly, using unreliable procedures, or anything else. In asking the question "How may the dominant agency act?" or "What...may a dominant protective association forbid other individuals to do?" Professor Nozick answers:

"The dominant protective association may reserve for itself the right to judge any procedure of justice to be applied to its clients. It may announce, and act on the announcement, that it will punish anyone who uses on one of its clients a procedure that it finds to be unreliable or unfair."

This is based in turn on the notion of "procedural rights." "The person who uses an unreliable procedure, acting upon its results," he writes, "imposes risks upon others, whether or not his procedure misfires in a particular case." Nozick articulates the general principle that "*everyone* may defend himself against the unknown or unreliable procedures and may punish those who use or attempt to use such procedures against him," and does not in principle reserve this "right" to a monopoly agency. *However:*

"Since the dominant protective association judges its own procedures to be both reliable and fair, and believes this to be generally known, it will not allow anyone to defend against *them*; that is, it will punish anyone who does so. The dominant protective association will act freely on its own understanding of the situation, whereas no one else will be able to do so with impunity. *Although no monopoly is claimed*, the dominant agency does occupy a unique position by virtue of its power... It is not merely that it *happens* to be the only exerciser of a right it grants that all possess; the nature of the right is such that once a dominant power emerges, it alone will actually exercise that right." (my emphasis)

Hence: a *de facto* monopoly. Ergo: the ultraminimal state.

It is at this point that the principle of compensation rears its ugly head.

Professor Nozick has stated that one has a right to prohibit certain excessively risky actions of others *provided they are compensated*. What constitutes "compensation"?

"Something fully compensates a person for a loss if and only if it makes him no worse off than he other-

wise would have been; it compensates person *X* for person *Y*'s action if *X* is no worse off receiving it, *Y* having done *A*, than *X* would have been without receiving it if *Y* had not done *A*. (In the terminology of economists, something compensates *X* for *Y*'s act if receiving it leaves *X* on at least as high an indifference curve as he would have been on, without it, had *Y* not so acted.)"

Professor Nozick then proceeds to "shamelessly" ignore certain key questions surrounding the central issues concerning the meaning of "compensation." His final formulation is as follows:

"*Y* is required to raise *X* above his actual position (on a certain indifference curve *I*) by an amount equal to the difference between his position on *I* and his original position. *Y* compensates *X* for how much worse off *Y*'s action would have made a reasonably prudent acting *X*."

This is the meaning, then, of "compensation". "The principle of compensation requires that people be compensated for having certain risky activities prohibited to them." What "risky" activities does Professor Nozick wish to prohibit? The enforcement procedures of the non-dominant protection agencies. That is, he wishes to prohibit us from turning to any of a number of competing agencies, other than the dominant protection agency.

What is he willing to offer us as *compensation* for being so prohibited? He is generous to a fault. He will give us nothing less than *the State*.

Should one wish to reject this admittedly generous offer, it would be responded that he *cannot* reject it. It is foisted upon one whether one likes it or not, whether one is *willing* to accept the State as compensation or not. It is *this* which should give us pause, and lead us to think a bit. Let us consider the nature of Professor Nozick's State, and then consider a few of the weak links in the chain of arguments which will, in the end, bind us to the State. With a good yank or two, perhaps we can snap some of these weak links, and save ourselves from what some of us, at least, regard as certain doom. In the meantime, though, let it be realized that we have arrived at the minimal state. The ultraminimal state arose when non-dominant agencies were prohibited from certain activities. The minimal state was reached when the ultraminimal state

was combined with the extension of protective services to those who were so prohibited.

(We should note that the only thing binding the minimal state to pay such compensation is a moral principle. Professor Nozick "assumes" in this case, that they [those in the ultraminimal state] will act as they ought, even though they might not acknowledge this moral obligation.)

Consider the nature of the Nozickian state itself. The Randian "limited government" has a rather interesting economic form: it is in essence a consumer's co-op, with all coming under its power being "consumers," having the right to vote, and so on. *But Professor Nozick's State is private property*. It was, one recalls, a private firm, an agency, which developed by a series of specifiable steps, into a State. It remains private property, then, since nothing was done to change matters. Since it was once upon a time ago a dominant agency, and got that way through the free market, one is justified in assuming that its owners, the board of directors, (stockholders or whatever) are aggressive businessmen, driving towards "expansion" of their business. There is no question of a constitution, of course, merely the contracts with its clients, which in case of conflicts it alone can judge and interpret. There is no voting. There is no separation of powers, no checks and balances, and no longer any market checks and balances, either. There is merely a private agency, now with a monopoly on power, on the use of physical force to attain its ends.

This, we are told, is an agency which is going to follow certain moral principles and (a) extend protection to those whose risky activities are prohibited (or whose agencies were prohibited from functioning), and (b) stop with the functions of a "minimal state." What is to check its power? What happens in the event of its assuming even more powers? Since it has a monopoly, any disputes over its functions are solved exclusively by itself. Since careful prosecution procedures are costly, the ultra-minimal state may become careless without competition. Nevertheless, only the ultraminimal state may judge the legitimacy of its own procedures, as Professor Nozick explicitly

tells us.

One might find Nozick's argument as to why *this* should be taken as a less "risky" situation than that of competing agencies, less than totally convincing. Let us take up some of those weak links in the chain of reasoning, and see if they can be snapped.

The fact that, as we saw, we cannot reject the State's "protection" as justifiable "compensation" for being prohibited from patronizing competing agencies, should lead us to question Professor Nozick's view of compensation. A similar critical glance will lead us to re-examine his view of risk as well.

We are justified in prohibiting the actions of competing agencies because they are alleged to be "risky". How "risky" does an action have to be before it can be prohibited? Professor Nozick does not say. Nor does he give us any indication of how risk of the kind he deals with can be calculated. As Murray Rothbard wrote in *Man, Economy and State*:

"'Risk' occurs when an event is a member of a class of a large number of homogeneous events and there is fairly certain knowledge of the frequency of occurrence of this class of events."

In his masterwork *Risk, Uncertainty and Profit*, Frank Knight uses the term "risk" to designate cases of *measurable uncertainty*. As applied to human action, this becomes very dubious indeed. In fact, it involves us in innumerable difficulties.

As Professor Knight writes, "We live only by knowing *something* about the future; while the problems of life, or of conduct, at least, arise from the fact that we know so little." This is why we cannot calculate the risks from future human actions. (We shall restrict the concept of "risk" to the cases of the probability of harm resulting from certain actions.) In dealing with questions of probability of consequences of human actions, our calculations must of necessity be vague and inexact. While in some cases, certainly, we can say that a probability is greater or less, a *quantitative* calculation is impossible. Not dealing with homogeneous units, or with accidents distributed throughout a large number of cases with some frequency, we lack the preconditions of quantitative calculation. This

is particularly the case with such institutions as "competing protection agencies," since they may differ vastly in scope of activities, procedures, or any number of other attributes. If Nozick provided a criterion of what degree of "risk" was permissible, and what not, then we might be able to separate those agencies which are "too risky" from those which are not, prohibiting only the former. No criterion is given, however. Moreover, Nozick is not even simply concerned with "harm," but extends his concern to a much more subjective element, namely, *fear*. How much "fear" justifies what response is not discussed. It is very difficult, then, to see how one can arrive at any objective cut-off level. Not only can "fear" not be calculated or measured, it is so subjective that it cannot even be said to be a simple response to any one set of objective conditions. There may be psychological and ideological factors, as well. For instance, the person in question might at one time have had to live under a State apparatus, and that experience might have left deep fears in his subconscious.

Since man anticipates the future without knowing what will happen, since he modifies his plans and actions continually as new knowledge accumulates, how can anyone predict that competing agencies will automatically and inevitably supersede any given level of "risk" in society? Uncertainty and fear on some level seem to be an essential (or at least central) part of the human condition; Professor Nozick has given us no reason to believe that any one category of uncertainty, such as the risk of unjustifiable punishment, or unreliable enforcement procedures, should morally lead us to establish one set of institutions over another. Why isn't fear of tyranny an equally valid reason for prohibiting something? And who is to say that the procedures of the dominant protection agency are not among the most *unreliable*? Only *given* the *assumption* of reliability can we even begin to consider as "morally justifiable" any judgment and prohibition of the activities of others. Certainly a dominant agency whose procedures were among the least reliable would be in the same position as one with

reliable procedures with respect to its *power* to prohibit other procedures and agencies. But we would not defend the *moral permissibility* of this prohibition. In the absence of criteria, Professor Nozick has given us few guides here.

Moreover, while there is an extent to which people can correctly anticipate the future in human actions, including the risk of harm, there is no means of objectively discovering, in the present, which people will *correctly* anticipate the future, and which not. The best chance we have of picking those whose expectations are likely to be most in harmony with future reality, in the area of "risk of harm," would be to look at objective tests. But in the realm of human action, the closest we can come is not any science of risk-calculation, but through a record of profit-making, that their expectations have been historically more in harmony with reality than those of other market participants. Entrepreneurship is the general category of such risk-taking in the area of producing goods and services in society. But even in the case of entrepreneurs, there is no way of predicting that those whose abilities in forecasting the future *have been* historically more accurate, *will be* more accurate in the future.

If we are concerned with risk and uncertainty, there is therefore no reason to focus our attention on the political channel of attaining ends. If, in a free society, there were sufficient concern with the risk imposed by some actions of members of a market economy (or market processes or market institutions), institutions would be developed to deal with and alleviate the fear and the risk. The insurance firm is one such institution. We know from market analyses that prices are more stable in those areas where futures markets exist than when they do not. Now "prices" are merely exchange ratios between buyers and sellers of a given commodity. Thus, insurance markets, and futures markets in related fields, would in an unhampered market economy most probably provide the greatest stability of the level of risk in a society, that is: risk as seen through the eyes of a participant of the market economy. Moreover, an unhampered market economy would provide for the optimal degree

of present provision for future risk in society. Any intervention by a minimal state would, therefore, *increase* risk, and lead to a sub-optimal allocation devoted to provision for risk. It would lead to a shift *away from* the optimum societal provision for risk. The minimal state would thus create *discoordination* of resources in the vitally important market of provision for risk.

What we have seen here is that risk-calculation cannot be quantitative, but only qualitative: indeed, even then the concept is vague when we deal with the *possible* consequences of precisely *unknown future actions*. Moreover, insofar as there can be calculation of risks, entrepreneurs and other market participants are the only ones we have a right to expect to be successful in their expectations. The unhampered market economy is the only means of setting institutions and processes in society free, to deal effectively with risk and fear. Any movement away from the purely free market, from the choices and decisions of market participants, each with limited knowledge, learning through market processes, is a shift *away from* an optimal situation in the area of expectations of and provision for risk of future harm. In short, in the very process of forming a network of competing market agencies, differentiating each from the other, risk would be provided for tacitly, by the preferences and choices of market participants.

All of this gives us reason to believe that any attempt to prohibit certain actions of independent agencies is *not* morally permissible, and cannot be motivated by any concern with risk or fear.

The problems with the principle of compensation are much more difficult.

Professor Nozick's notion of compensation rests upon the concept of an "indifference curve". The "indifference curve" is one of the saddest plagues to hit economic science since the concept of "macroeconomics" first reared its ugly head. Indifference curve analysis is based on interviewing people about their relative preferences between two or more alternatives. Points of "indifference" between different quantities of certain goods or services

are placed on a "map". When many such points of indifference are reached, all placed neatly on a map, the noble indifference curve analyst connects the points by a line, and applies the techniques of mathematics to analyzing varying things.

Very little of this has anything to do with reality. A person's value scale is a constantly fluctuating thing, ranks shifting constantly, sometimes violently. Even if some useful information were imparted by interviewing people in this way, it could not be the basis of any action or expectation on our part. We need not go into this further. Professor Nozick is a new Platonist or Rousseauian, and is really developing a new version of "real" or "rational" interests or values, to supplant our "actual" or concrete interests.

To "compensate" someone, we must place him, according to this view, at a point on his indifference curve at least as high as he would have been without any interference. The point should be made that we are talking about the individual's own view of things, about his evaluations, not any objective state of affairs. It is therefore not possible to judge what would constitute full compensation merely by looking at such states of affairs. We must look at the value hierarchies of the individuals involved.

Professor Nozick, however, does not look at the actual evaluations of individuals. Instead, he *assumes* that everyone prohibited from taking certain risky actions *may be compensated in the same way*, namely, by providing protective services for them through the minimal state. The basis for this assumption is hard to determine. *Why* does provision of protection constitute full compensation? Apparently, because Nozick thinks that it comes close to "copying" the initial situation (objective), where the oppressed victim of the minimal state could still buy alternative protection from independent agencies. But this is entirely unjustified.

What this actually amounts to is saying that we are to judge what makes a person "at least as well off," rather than the person himself, through choosing and acting. But this is *paternalism*, which Professor Nozick rejects

elsewhere in *Anarchy, State and Utopia*.

If we take the point of view of the person whose actions are prohibited, then we can concern ourselves only with his own value scale. This places matters in a different light.

The only ways in which we could tell if someone was justly compensated then would be:

- (1) If they will accept A in exchange for B, i.e. if they exchange one for the other on a free market. This exchange, if it occurs, tells us that A was worth at least as much as B to the relevant party. Obviously, this exchange needs to be made in the absence of force, violence, aggression, or threats of either.
- (2) If, after the relevant agent has been aggressed against, he agrees to accept A as compensation from an aggressor or aggressor's agent. Again, this acceptance must be in the absence of force, violence, aggression or the threats of them.

Apart from these, there are *no* objective means of measuring justifiable or "full" compensation. The minimal state however makes both of these impossible, for it does threaten such violence or punishment. Moreover, the argument rests on a variant of the "just price" doctrine, applied to compensation. But this is not justified anywhere.

Let us see if we can arrive at the minimal state by some legitimate method of "compensation." In a market society, anyone would have the right to approach anyone who is a client of an independent agency, and buy him off, strike some sort of a bargain with him. A certain number, no doubt, would go along with this. But what of those who will not? We may see the problem by considering a supply and demand chart. In this case, let "S" represent the supply of a given service, namely, foregoing the use of independent agencies and accepting state protection instead. Let "D" represent the demand for this service. Consider that portion of a supply-and-demand chart below the point where exchanges of these sorts would occur. In this situation, *there is no exchange*. The suppliers (those who subscribe to independent agencies) are not willing to settle for anything the demanders (the dominant agency) are willing to offer. Ergo, there is no point of contact between them at which compensation would be both offered and accepted. Even in the absence of threats of force, there would be

no settlement. Since there is nothing which the "S's" would accept *before* prohibition, why should one assume that compensation is possible *after* prohibition? If the supply and demand curves have not shifted, the dominant agency cannot offer more (or the non-dominant agencies accept less), than was offered before, and still there can be no meeting of the minds. How, then, can those whose risky activities are prohibited be compensated? How can they be raised to a situation equal in their eyes (on their own value scales) to that in which they would have found themselves without prohibition? It appears that we have reached a dead end.

(We should add that Professor Nozick makes things no less difficult by talking about compensating only those "disadvantaged" by the prohibition. The problems of compensation remain, and there is, to boot, no theory of "disadvantage" offered in *Anarchy, State and Utopia*.)

There are, in addition, other arguments which might be made against the principle of compensation. Professor Nozick does not deal with the problem of compensating those for whom the creation of the minimal state would be a vast moral and psychic trauma. What just compensation could be offered in *this* case? How could they be raised to a position equal to the situation they were in *before* the creation of the minimal state? Moreover, consider the case of the clients of the dominant agency, A. They may very well benefit (or perceive themselves as benefiting) from the existence of agencies B, C, D..., which they may perceive as a *probable check* on A's activities, fearing that A might supersede its contractual functions in the absence of B, C, D.... Must A, in the transition from dominant agency to minimal state, compensate its own clients after taking those actions which eliminate *this* benefit? If so, *what* compensation? If not, *why not*? Why aren't they as "disadvantaged" as anyone else?

If we cannot assume that providing protection¹¹ to clients of independent agencies constitutes full compensation, but suppose instead that compensation can be arrived at, perhaps, through higher costs to the agency, then

consider the chain of events which begins.

If the minimal state must protect everyone, even those who cannot pay, and if it must compensate those others for prohibiting their risky actions, then this must mean that it will charge its original customers *more* than it would have in the case of the ultraminimal state. But this would, *ipso facto*, increase the number of those who, because of their demand curves, *would have chosen* non-dominant agencies B, C, D... over dominant agency-turned ultraminimal state-turned minimal state. Must the minimal state then protect *them* (or subsidize them) at no charge, or compensate them for prohibiting them from turning to other agencies?

If so, then once again, it must either increase the cost of its service to its remaining customers, or decrease its services. In either case, this *again* produces those who, given the nature and shape of their demand curves, *would have chosen* the non-dominant agencies over the dominant agency. Must *these* then be compensated? If so, then the process leads on, to the point where no one but a few wealthy fanatics advocating a minimal state would be willing to pay for greatly reduced 'services' of government. If this happened, there is reason to believe that very soon the minimal state would be thrown into the invisible dustbin of history, which it would richly deserve.

What would more likely happen is that the state would turn instead to its old friend, robbery — otherwise known as "taxation" (which is, incidentally, treated altogether too slightly in Professor Nozick's tome). Hence, one sees the sinister invisible hand leading us from a defense agency... to a dominant agency... to an ultra-minimal state...to a minimal state...to the first trappings of tyranny. Moreover, it is a *private* tyranny, since the agency is privately owned. This being so, what can be our protection against a private company's monopoly on force in society? Surely the objective risks *here* are immensely greater than those which led to the hesitant creation of the minimal state.

The compensation principle, then, as is presently formulated, leads us into difficulties. Let us then make our remaining points

quickly.

Is the process which led to the creation of a minimal state an "invisible hand" process? We maintain that it is not. The reason is that while the state may not be *intended* as the end result, the *state-like action* of prohibiting competition is still the outcome of a *specific decision*. The dominant agency must *decide* to prohibit the actions, and punish offenders. At each step lies an insidious but rather explicit decision. If this is an "invisible hand," it nonetheless packs a mean wallop, threatening to crush liberty in its grasp.

Finally, before we turn the Professor's argument around, what, in our view, *is* the dominant agency justified in doing? Nothing more than punishing those who can be shown to have initiated violence against its citizens or clients, and this only after the fact. Risks of harm in the case of human agencies cannot be calculated except by observing the actions of men (such as those who constitute competing protection agencies) over some considerable period of time. It is by means of their *policies* that we judge the reliability of their procedures, the threat that they do or do not constitute to innocent people, and thus decide how to respond to irresponsible or criminal agencies. There are difficult problems here, but there are more problems in assuming that a dominant agency is more virtuous, more reliable in its procedures or even, of all things, less threatening to the safety and liberty of the people than other agencies. Professor Nozick cannot even prove that those agencies which employ *reliable* procedures should be prohibited from acting along with those which do *not* employ such procedures.

But if that is the case, then the invisible hand returns:

Assume the existence of the minimal state. An agency arises which copies the procedures of the minimal state, allows the state's agents to sit in on its trials, proceedings, and so forth. Under this situation, it *cannot* be alleged that this agency is any more "risky" than the state. If it is still too risky, then we are also justified in saying that the state is too risky, and in prohibiting its activities, providing we compensate those who are disadvantaged by such

prohibition. If we follow this course, the result is *anarchy*.

If we do not, then the dominant agency-turned minimal state finds itself competing against an admittedly watched-over-competing agency.

But wait: the competing, legally subordinate, spied upon, oppressed second agency finds that it can charge a lower price for its services, since the minimal state is guaranteeing "risk" and has to compensate those who would have patronized agencies using risky procedures. It also has to pay the cost of spying on the new agency, which constitutes a greater capital expenditure.

Since it is only *morally* bound to provide such compensation, it is likely to cease doing so under competitive pressure. This sets two processes in motion: those formerly compensated because they would have chosen agencies other than the state, rush to subscribe to the maverick agency, thus partially reasserting their old preferences.

Alas, another fateful step has also been taken: the once proud minimal state, having ceased compensation, reverts to a mere ultraminimal state.

But the process cannot be stopped. The maverick agency must and does establish a good record, to win clients away from the mere ultraminimal state. It offers a greater variety of services, toys with different prices, and generally becomes a more attractive alternative, all the time letting the state spy on it, bugging its offices, checking its procedures, processes and decisions. Other noble entrepreneurs follow suit. Soon, the once mere ultraminimal state becomes a lowly dominant agency. It finds that the other agencies have established noteworthy records, with safe, non-risky procedures, and stops spying on them, preferring less expensive arrangements instead. Its executives have, alas, grown fat and placid without competition; their calculations of who to protect, how, by what allocation of resources to what ends (gathering information, courts, buildings, prisons, cops, etc.) are adversely affected, since they have taken themselves out of a truly competitive market price system. The dominant agency

grows inefficient, when compared to the dynamic, new, improved agencies.

Soon — lo! and behold! — the lowly dominant protection agency becomes simply one agency among many in a market legal system, or disappears altogether. The sinister minimal state is reduced, by a series of morally permissible steps which violate the rights of no one, to at best merely one agency among many. The evil black State apparatus dissolves into the utopia of anarchy. In short, the invisible hand strikes back. Justice is triumphant, and everyone lives happily ever after.

I should like to end with one quotation, from Benjamin R. Tucker, and one paraphrase, from Karl Marx, which express most clearly my own attitudes toward the matters we have been discussing. Tucker pointed to the anarchist definition of the State as the

“embodiment of the principle of aggression”.

“...we see,” he said, “that the State is antagonistic to society; and, society being essential to individual life and development, the conclusion leaps to the eyes that the relation of the State to the individual and of the individual to the State must be one of hostility, enduring till the State shall perish.”

And, paraphrasing Marx, we may say that “traditional political philosophers have sought only to explain and justify the State. The point, however, is to abolish it.”

NOTES

1. It is not clear whether this protection will be offered without cost or if the former customers will be forced to pay for it. My interpretation is that the “minimal state” can force clients to pay up to what they would have with another agency (what problems this raises in a world of shifting prices!). “Compensation” would then consist of picking up the tab for the *difference* between the cost with another agency and its own “price”.