

SOME RUMINATIONS ON RIGHTS

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In *Anarchy, State, and Utopia*, Robert Nozick says that a government which imposes taxes for the purpose of redistribution violates the rights of its citizens.¹ The word "imposes" perhaps needs no stress: Nozick could hardly object to a government's withholding a percentage of income for this purpose if its citizens had unanimously requested it to do so. What he objects to—on the ground of its constituting a violation of rights—is forcing payment for this purpose on those who do not wish to pay. What we might expect Nozick to give us, then, is a theory of rights, or at least a clear picture of why this should be so. In fact, we get neither.

Nozick makes two quite general points about rights, both of them important. He says, first, that the fact that if we bring about that such and such is the case there will be more good in the world than there otherwise would be does not by itself justify our bringing about that it is the case, and this on the ground that to bring it about may be to violate a right. This seems to me to be wholly right. Suppose, for example, that if we bring about that Alfred takes a certain aspirin tablet there will be more good in the world than there otherwise would be. This does not by itself justify our bringing about that Alfred takes it, for it might be that to do so would be to violate a right. For example, it might be that Bert owns that aspirin tablet and does not wish Alfred to take it; in that case, to bring about that Alfred takes it would be to violate a right of Bert's. Indeed, it might be that Alfred himself owns it but does not wish to take it; in that case, to bring about that he does would be to violate, paternalistically, a right of Alfred's.

This point, though important, is familiar enough. What is perhaps

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1. R. NOZICK, *ANARCHY, STATE, AND UTOPIA* 171-74 (1974).

less familiar is Nozick's second point: That the fact that if we bring about that such and such is the case there will be more good in the world than there otherwise would be does not by itself justify our bringing about that it is the case—even if we require that in assessing how much good there will be in the world account be taken of which rights, if any, will be infringed and of how "stringent" those rights are. This point too seems to me to be wholly right. If we do opt for this requirement on an assessment of how much good there will be in the world, then it seems to me we may suppose that if we bring about that Alfred takes a certain aspirin tablet there will *not* be more good in the world than there otherwise would be, however bad Alfred's headache may be: for there would have to be considered in arriving at the assessment, not merely the fact that if we bring about that Alfred takes the aspirin his headache will go away, but also (as it might be) the fact that a right of Bert's will be infringed, or (as it might be) the fact that a right of Alfred's will be infringed. If so, this is not really a case in which, even though there will be more good in the world if we act than there otherwise would be, it is not morally permissible for us to act. But there are other cases. Suppose that a villain threatens to kill five people if you will not kill Charles. Even *prima facie* it seems that if you act, there will be more good in the world than there otherwise would be since five lives are four more than one life. And now let us include in our assessment infringements of rights. If you act, fewer rights will be infringed than if you do not, for five violations of the right to not be killed are four more than one violation of the right to not be killed. Therefore, if we require that in assessing how much good there will be in the world account be taken of which rights, if any, will be infringed and of how stringent those rights are, *this* is a case in which there will be more good in the world if you act than if you do not. Yet you surely cannot act, since you surely cannot kill in response to such a threat.

This kind of case has been appearing fairly often in recent literature.² The kind of case I mean is this: For the agent to act would require him to infringe a right, but he is under threat that if he does not act, others will infringe more, equally stringent rights. Most people agree that the agent in such a case cannot act. What is particularly good in Nozick's treatment of these matters is the connection he makes between cases of this kind on the one hand, and the case of Alfred on the other hand. Nozick's discussion brings out that if a utilitarian

2. A typical example is the following: You are a sheriff in a small southern town. A murder has been committed, and you do not have the least idea who committed it, but a lynch mob will hang five others if you do not fasten the crime on one individual.

saves his theory in face of putative counter-cases such as that of Alfred by claiming that right-infringements themselves have disvalue, which disvalue must be counted in assessing how much good there will be in the world if the agent acts, he thereby ensures that cases where the agent must infringe a right to avoid greater right infringement on the part of others *will* be counter-cases.

As I say, I think these points are wholly correct. Nozick does not argue for them; nor shall I. But to have arrived here is to be miles away from Nozick's thesis about government and taxation for the purpose of redistribution. What we have so far is that the fact that if we bring about that such and such is the case there will be more good in the world than there otherwise would be does not by itself justify our bringing about that it is the case. Thus suppose redistribution is, in one way or another, a good, and that if we make a certain redistributive move there will in fact be more good in the world than there otherwise would be. What we have is that that fact does not by itself justify our making that redistributive move. However, this leaves it wide open that something which includes—or even something entirely other than—that fact *does* justify our making it.

Let us begin with a point of terminology. Suppose that someone has a right that such and such shall not be the case. I shall say that we infringe a right of his if and only if we bring about that it is the case.³ I shall say that we violate a right of his if and only if *both* we bring about that it is the case *and* we act wrongly in so doing. The difference I have in mind comes out in the following case, which I shall call *A*:

- (A) There is a child who will die if he is not given some drug in the near future. The only bit of that drug which can be obtained for him in the near future is yours. You are out of town, and hence cannot be asked for consent within the available time. You keep your supply of the drug in a locked box on your back porch.

In this case the box is yours, you have a right that it not be broken into without your consent; since the drug is yours, you have a right that it shall not be removed and given to someone without your consent.

3. This is a simplified account of what I mean by "infringe a right." For example, someone might have a right that such and such shall be the case, and we might bring about that it is not the case, but our act might at one and the same time bring about both that it is not the case and that he no longer has a right that it is the case. It is possible that in some cases (that is, those in which we infringe no other right of his in bringing about that he no longer has that right), no right of his is "infringed," in the sense I mean this word to have. But the difficulties I point to here are of no interest for present purposes, so I ignore them.

So if we break into the box, remove the drug, and feed it to the child, we thereby infringe a number of rights of yours. But I take it that a child's life being at stake, we do not act wrongly if we go ahead; that is, though we infringe a number of your rights, we violate none of them.

It might be said that we do violate one or more of your rights if we go ahead, but that our act, though wrongful, is excusable. In other words, although we act wrongly if we go ahead, we are not to be blamed for doing so. It is true that for clarity about rights we need, and do not have, a general account of when one should say "a non-wrongful infringement of a right" and when one should instead say "a wrongful, but excusable, infringement of a right." I think (but without great confidence) that the difference lies in this: The former may not be said where, and the latter may only be said where the agent ought not act or ought not have acted. If so, then the proposal we are considering is false: For it surely is plain that a third party would not speak truly if he said to us, given we are in (A): "You ought not go ahead."

In any case, the proposal in a certain sense hangs in mid-air. What I have in mind is this. It is presumably agreed universally that if we go ahead in (A), we are not to be blamed, punished, scolded, or the like, for doing so. Now the question is: Why? One possible answer is: If we go ahead in (A) we do not act wrongly, and that is why we are not to be blamed for doing so. That this is my answer shows itself in the paragraph in which I first set out (A). But how is a proponent of the proposal we are now considering to answer? On his view, we act wrongly if we go ahead; what, on his view, is the reason why we are not to be blamed for doing so? There are cases in which there is an answer to an analogous question. Thus if I break your box in a rage which you provoked, than I acted wrongly, but perhaps excusably, and the reason why I am not to be blamed (if I am not) is at hand: you yourself provoked the rage out of which I acted. Again, a reason why I am not to be blamed in another case might be: I was not fully aware of what I was doing; or I was so frantic with worry I could not think clearly; or I was so frantic with worry, nothing else seemed to matter. If (A) had read: "*Our* child will die if he is not given . . .," then there might have been a toehold for an answer of the kind just pointed to. But (A) says: "There is a child who will die if he is not given . . ."; and it is possible to suppose that we go ahead in (A)—break the box, and give the drug to the child—calmly, coolly, carefully weighing all the relevant considerations. If so, just what is a proponent of the proposal we are now considering to give as an answer to the question of why we are not to be blamed for doing so?

So I shall simply assume that this proposal is false, and I shall take it, then, that while we infringe some of your rights if we go ahead, we do not violate them.⁴

A second way of responding to what I said of our act if we go ahead in (A) is this: True, we violate no rights if we go ahead, but we also infringe no rights if we go ahead. What I have in mind is the possibility of saying that you do not have either of the rights it might have been thought you had—that you do not have a right that your box not be broken into without your consent, and that you do not have a right that your drug not be removed and given to someone without your consent—on the ground that it is morally permissible for us to go ahead in (A). What rights do you have over your box and drug on this view? Well, I suppose it would be said that what you have is at most a right that your-box-not-be-broken-into-and-your-drug-not-taken-without-your-consent-when-there-is-no-child-who-needs-that-drug-for-life. The inclination to take, everywhere, either the view discussed just above, or the view indicated here, is the inclination to regard all rights as “absolute.” That is, it is the inclination to take it that if a man has a right that such and such shall not be the case, then if we bring about that it is the case, we act wrongly in so doing. As the point might be put, every infringing of a right is a violation of a right. So if a man really does have a right that such and such shall not be the case (as it might be, that his drug not be removed from his box), then we act at best excusably if we bring about that it is the case—as in the view discussed just above. If we do not act wrongly in bringing it about, then he did not really have a right that it not come about, but at most a right that it-not-come-about-when-the-circumstances-are-so-and-so—as in the view indicated here.

It seems to me, however, that you do have a right that your box not be broken into without your consent and a right that your drug not be removed and given to someone without your consent, and that what shows this is the fact that if we go ahead in (A)—break into your box and give some of the drug to the child—we shall have later to pay you some, if not all, of the cost we imposed on you by doing so. We shall have to pay some, if not all, of the cost of repairing or replacing the

4. It is worth noticing, in passing, that for present purposes it would not matter if I were wrong to make this assumption. There are acts which Nozick says are violations of rights. I shall say that some of them, anyway, are nonwrongful infringements of rights. Suppose I am mistaken in this way: That what I should have said is that they are wrongful, though excusable, infringements of rights. Since Nozick plainly thinks those acts are not merely wrongful, but inexcusable, what I shall say would still conflict with what he thinks.

box and of replacing the drug we removed.⁵ You may reject payment: you may say, on your return, that, the circumstances having been what they were, all is well, and that you do not mind bearing the costs yourself. But we must at least offer. If you had no right that we not do these things without your consent, why would we have to pay you some of the costs we imposed on you by doing them?

It is sometimes said⁶ that if we go ahead in (A) we shall have to *compensate* you for the costs we imposed on you by doing so, and that *that* is what shows that we infringed some of your rights by going ahead—for compensation is repayment for a wrong. But I think that this is not a good way to put the point, and will bring out my reason for thinking so below.⁷

In any case, it seems to me we do well to agree that rights are not all absolute: There are rights which can be infringed without being violated. In particular, it seems to me that if we go ahead in (A), we infringe some of your property rights, but do not violate any of them.

What people who would agree with me on this matter would say is this: If we go ahead in (A), we will infringe your property rights, but we would not violate them, since those rights are "overridden" by the fact that the child will die if we do not go ahead.

A more stringent right than your property-rights over your box and drug might not have been overridden by this fact. For example, if it had been necessary for the saving of the child's life that we kill you, then it would not have been morally permissible that we go ahead. Your right to not be killed is considerably more stringent than any of your property rights, and would not have been overridden by the child's need.

The question just how stringent our several rights are is obviously a difficult one. It does not even seem to be obvious that there is any such thing as *the* degree of stringency of any given right. Perhaps a right may be more or less stringent, as the rightholder's circumstances vary, and also, in the case of special rights, as the means by which he acquired the right vary. One thing only is plain: Only an absolute right is infinitely stringent. For only an absolute right is such that every possible infringement of it is a violation of it. Indeed, we may re-express the thesis that all rights are absolute as follows: all rights are infinitely stringent.

5. It is of the greatest interest whether or not we have to pay *all* this back, a question to which I shall return later. See text & note 19 *infra*.

6. See J. THOMPSON, *SELF-DEFENSE AND RIGHTS* (1976).

7. See discussion at conclusion of text.

There are passages in *Anarchy, State, and Utopia* which suggest that Nozick thinks all rights are infinitely stringent. He says: "[O]ne might place [rights] as side constraints upon the actions to be done: don't violate constraints C. The rights of others determine the constraints upon your actions The side-constraint view forbids you to violate these moral constraints in the pursuit of your goals" ⁸ If you use "violate" in the way I suggested we should use it, this "side-constraint view" does not amount to much—under that reading of the term, all Nozick says is that we may not wrongly infringe a right. Of course we may not. But I think he does not mean so to use the term "violate", in this passage at any rate: I think that in this passage all he means by it is "infringe." Thus I think that we are to take this "side-constraint view" to say that we may not ever infringe a right. Accordingly, every infringing of a right is wrong. Compare what Nozick says a few pages on:

A specific side constraint upon action toward others expenses the fact that others may not be used in the specific ways the side constraint excludes. Side constraints express the inviolability of others, in the ways they specify. These modes of inviolability are expressed by the following injunction: "Don't use people in specified ways."⁹

Now Nozick does not in fact say that his view is the "side-constraint view," so interpreted, but he implies that it is. Certainly his thesis about redistribution suggests it: for according to that thesis it is not morally permissible to tax people for the purpose of redistribution, however dire the human need which makes redistribution seem called for, and if dire human need does not override a right, what on earth would?

There are also passages which suggest that Nozick thinks that rights *may* be overrideable, and thus not infinitely stringent, though *very* stringent all the same. He says that it is an open question "whether these side constraints are absolute, or whether they may be violated in order to avoid catastrophic moral horror."¹⁰ Catastrophic moral horror is pretty horrible moral horror; so even if rights are overrideable, as the passage suggests is possible, it is likely to be a rare occasion on which they are overridden. Unfortunately, Nozick leaves the question unanswered; he says it "is one I hope largely to avoid."¹¹

8. R. NOZICK, *supra* note 1, at 29.

9. *Id.* at 32.

10. *Id.* at 30n.

11. *Id.*

There are also passages which suggest that Nozick thinks that some rights at least are overrideable even where catastrophic moral horror is not in the offing. In the course of a discussion of what may be done to animals, he asks: "Can't one save 10,000 animals from excruciating suffering by inflicting some slight discomfort on a person who did not cause the animals' suffering?"¹² And he adds: "One may feel the side constraint is not absolute when it is *people* who can be saved from excruciating suffering. So perhaps the side constraint also relaxes, though not as much, when animals' suffering is at stake."¹³ Of course Nozick does not say the side constraint relaxes when animals' suffering is at stake, but he seems to think so, and it would surely be mad to think it did not. Well, perhaps 10,000 animals suffering excruciating pain counts as catastrophic moral horror. But does it require 10,000 of them, in excruciating pain, to override your right to not be caused some slight discomfort? I take it you have a right to not be pinched without your consent. But surely we can pinch you without your consent, if doing so is required to save even one cow from excruciating suffering. Indeed I should have thought we could do so if doing so is required to save just one cow from suffering which is considerably less than excruciating.

This wobbling about the degree of stringency of rights makes a reader feel nervous. It also makes it very unclear just how Nozick is to get from his starting point, which is that we have rights, to his thesis that a government which imposes taxes for the purpose of redistribution violates the rights of its citizens. I am inclined to think that what happens is this: At the outset, he is unclear what degree of stringency should be assigned to rights (and hopes to avoid having to take a stand on the matter), but by the time he gets to government, all is forgotten, and rights—at any rate, property rights—are infinitely stringent. It is my impression that his argument for his thesis rests entirely on the supposition that they are.

But surely it is plain as day that property rights are not infinitely stringent. I suppose it hardly needs argument to show they are not. In any case, the fact that it is morally permissible for us to go ahead in (A) would show—if it needed showing—that they are not.

Consider, now, a case (B) which is in an interesting way different from (A):

- (B) There is a child who will die if he is not given some drugs in the future. The only bit of that drug which can be obtained

12. *Id.* at 41.

13. *Id.* (emphasis in original).

for him in the near future is yours. You are out of town, so we telephone you to ask. You refuse consent. You keep your supply of the drug in a locked box on your back porch.

"They did it without Jones' consent" covers two interestingly different kinds of cases: In the one kind, they were unable to get Jones' consent because he was not available to be asked for his consent; in the other kind, they were unable to get Jones' consent because he refused to give it. In the latter kind of case they acted, not merely without Jones' consent, but against his wishes. (A) is a case of the first kind; we cannot reach you to ask for consent. (B) is a case of the second kind; if we go ahead in (B) we act, not merely without your consent, but against your wishes. I said it is morally permissible for us to go ahead in (A); Is it morally permissible for us to go ahead in (B)?

The fact is that our going ahead in (B)—our breaking into the box and removing the drug to give it to the child—seems morally suspect in a way in which our going ahead in (A) does not. Why? And should it?

Anyone who thinks that it is morally permissible for us to go ahead in (A) but not in (B) must think that there is at least a good chance that in (A), you would give consent if we were able to reach you to ask for consent. Surely if it were known that if we were to ask for consent in (A) you would refuse to give it, then it would be no better to go ahead in (A) than it is to go ahead in (B). For then (A) too would be a case in which going ahead would be acting against your wishes—though not against any wish that was in fact given expression.

Anyone who thinks that it is not morally permissible for us to go ahead in (B) must think that the box and the drug in it are in some way very important to you—that you place a very high value on the box not being broken into, and on the drug not being taken away from you. Suppose, however, that there is a toothpick on your desk, and it is in no way special to you. By virtue of some peculiarity in nature, we can save a life if we snap it in two. We ask if we can, but you are feeling refractory and say "No." Can we not go ahead and snap it in two, despite your expressed wish that we not do so? By contrast, suppose what is on your desk is the last remaining photograph of your dead mother, and what we need to do to save the life is to burn it. Well, some people would say we can go ahead all the same. Suppose that what we need to do is to destroy *all* the now existing beautiful works of art, and that their owners (individuals, museums, governments) say, "Alas no, we are very sorry, but no." Could we go ahead all the same?

If (X), "The box and drug are, at most, of little value to you," is true, then we may surely go ahead in both (A) and (B). If (X) is true and we are in (A), then in the absence of information to the contrary, we shall rightly assume you would consent if we were able to ask. But even if we have information to the effect that you would not consent—even if we were in (B) instead of (A)—it is morally permissible for us to go ahead all the same. Why? Because if (X) is true, then it would be indecent for you to refuse consent in (A), and it is indecent for you to refuse consent in (B). I said you might be feeling refractory; alternatively, you might think: "What is that child to me?" There are other possible sources of refusal, but none of them bears looking at.

What if, instead, (Y), "The box and drug are of immense value to you," is true? Some would say we can go ahead all the same. I feel considerable sympathy for this view, but I do not hold it myself. It seems to me that if (Y) is true, we may not go ahead in (B), and in the absence of reason to think you would consent despite the truth of (Y), we may not go ahead in (A) either. I hope that when I first produced (A) above, your intuition agreed with mine; if so, I think that was because you were assuming that nothing so strong as (Y) was true. Why may we not go ahead if (Y) is true? It is not morally splendid to value bits of property more than human lives; but if there are some which you do—and this for no morally suspect reason—then it seems to me that there are cases, and that this is one of them, in which we must withdraw.

There are all manner of possibilities between (X) and (Y), but it is not necessary for our purposes that we attend to them.

It is also not necessary for our purposes that we attend to a very interesting question which is raised by consideration of the difference (which I take there to be) between what we may do if (X) is true and what we may do if (Y) is true, but I suggest we have a brief look at it all the same. What I have in mind is the question in precisely what way the difference between (X) and (Y) makes such a difference. One way of explaining it is this: If (Y) is true, then your rights that your box not be broken and drug not be taken are more stringent than they would be if (X) were true. More generally, that

- (T) The stringency of A's right that *x* not be broken and *y* not taken away from him varies with the degree to which he values *x*'s not being broken and *y*'s not being taken away from him.

If so, then more is required to override your rights over your box and

drug if (*Y*) is true than is required to override them if (*X*) is true. In particular, the fact that a human life may be saved by going ahead overrides your rights if (*X*) is true, but not if (*Y*) is true.

I think, myself, that this is how we should explain the difference (which I take there to be) between what we may do if (*X*) is true and what we may do if (*Y*) is true. Indeed, I think we should adopt (*T*).¹⁴ But the question whether or not (*T*) is true is very important for the logic of rights; and so it should be noticed that there is yet another way of explaining the difference even if (*T*) is rejected. What might be said is this: The stringency of your rights that your box not be broken and your drug not be taken is no greater whether (*Y*) is true or (*X*) is true; and these rights are overridden by the fact that a human life may be saved by going ahead. But if (*Y*) is true, then it is less likely, perhaps even impossible, that we are going to be able to reimburse you for all of the costs we impose on you by going ahead; and if we take "immense" *very* seriously, it is less likely, perhaps even impossible, that we are even going to be able to pay you a meaningful part of those costs. Now it will be remembered that I said earlier that if we go ahead in (*A*) we are going to have to pay you some, if not all, of the costs we impose on you by going ahead. This means that you have a right, not merely that your-box-not-be-broken-and-drug-taken-without-consent, but also that your-box-not-be-broken-and-drug-taken-without-consent-without-reimbursement-for-some-if-not-all-of-the-costs-imposed-by-the-breaking-and-taking. The former, simpler right is overridden by the fact that a human life may be saved by going ahead; the latter, more complex, right is more stringent, and is not overridden by this fact—indeed, it would be violated if we went ahead without reimbursing you. If (*X*) is true we can easily make the required payment; but if (*Y*) is true we cannot. So if (*X*) is true we may go ahead without violating any right of yours, for we can pay later; but if (*Y*) is true, then if we go ahead we shall violate, not the simpler right, but the more complex one, for we cannot pay later. And *that* is why we may go ahead if (*X*) is true, but not if (*Y*) is.

I have no objection to the supposition that you do have this more complex right as well as the simpler one. And I imagine that it is more stringent than the simpler one.¹⁵ But, as I said, I think we should adopt (*T*), and if we do, we can explain the difference in the simpler manner

14. Or something like (*T*), for of course we shall want to allow for irrationality, preferences immorally inculcated, and so forth. I do not for a moment want to suggest that I think the proper spelling out of the thesis would be easy; it is merely that the difficulties are irrelevant for present purposes.

15. Surely, however, it is not infinitely stringent: I should imagine it is overrideable, even if not overridden in the cases at which we are looking.

I pointed to earlier. If (*T*) is *not* true, then the stringency of a right is independent of the value the rightholder places on its being accorded to him, and that makes the source of rights very dark indeed. If (*T*) is true, then we can understand *why* one's right to life is more stringent than one's right to not have, for example, an arm broken, and why one's right to not have an arm broken is more stringent than most of one's property rights; if (*T*) is not true, it is obscure why this should be so. The truth of (*T*) is just what you would expect if rights issue from interests in some way or another. And if they do not issue from interests, what on earth do they issue from?

However, this is no argument for (*T*). Fortunately it is not necessary for our purposes that we decide on the truth or falsity of (*T*). It is enough for our purposes that if (*X*) is true, then we may go ahead in (*B*) as well as in (*A*). For with that in hand we are in a position to return to Nozick's thesis that a government which imposes taxes for the purpose of redistribution violates the rights of its citizens.

I said that it is my impression that Nozick's argument for this thesis rests entirely on the supposition that property rights are infinitely stringent, and I said also that it is plain as day that they are not. Well, setting aside Nozick's argument for the thesis, what about the thesis itself?

The rights which Nozick thinks would be violated by a redistributive move are property rights. I shall make no criticism here of his account of the source and content of those rights. However, it is perhaps worth just drawing attention to the fact that Nozick allows that title to property is clouded in existing states: He grants that injustices lie behind their current property distributions.¹⁶ This means, then, that a redistributive move in an existing state may very well not really conflict with property rights, and in fact there is no practical moral lesson about redistributive moves in existing states to be learned from Nozick's book.

In light of that fact we had better take Nozick to be speaking only of governments in "ideal" states—states in which property rights are not clouded; more precisely, states in which the distribution of property satisfies Nozick's principles of distributive justice.

One thing we know is that there are circumstances in which it is morally permissible, and hence no violation of any right, to take from Smith—even against his wishes—to give to Jones. Any case in which

16. See R. NOZICK *supra* note 1, at 152-53.

Jones needs something, and he needs it for *life*, and the only way of providing him with it is by taking it from Smith, and Smith places at most little value on it, is such a case. Suppose we live in an ideal state. Then there are circumstances in which agents of government can arrange this redistribution. Would that count as imposing a tax for the purpose of redistribution? It is hard to see why not.

Something of great interest comes out if we consider, now, a second kind of case. Suppose there is an "ideal" state of only eleven people. One person will die if he is not provided with a certain amount of a particular drug. Eight of the remaining ten people would very much like for him to get that amount of that drug. (I make it a large majority, though I have no very clear idea how its being a majority matters. I also made the sick one be a citizen of the state, though I have no very clear idea how his being so matters.) The eight can scrape together the needed amount of the drug from among their own supplies, but to do so would require each of them to deplete his supply drastically—not to the point at which any of their lives is at risk, but to the point at which they would have a bare sufficiency. By contrast, the remaining two people have ample supplies; each of them could, himself, easily supply the needed amount. But these two individuals refuse to contribute.

This case is different from (A) and (B): In this case, by contrast with those we have been looking at, the agents do not have to take anything from anyone else in order to meet the need of the eleventh. They can meet his need themselves. Is it the case that if they want his need met, they must meet it themselves? On Nozick's view they must. On Nozick's view, the meeting of human needs is a consumer good like any other. Or rather like any other expensive consumer good.¹⁷ If you want a color television set, and buying one will deplete your assets to the point at which you have a bare sufficiency to live on, well, so be it, it is up to you whether or not a color television is worth that much to you. You certainly cannot take from anyone else in order to be able to buy one without having to deplete your assets! Similarly for the meeting of human needs.

It is plain enough, however, that the meeting of human needs is not a consumer good like any other. I hasten to say I have no account of what marks needs off from mere wants. But certainly if a man will die unless he gets something, then that thing is something he needs. And we know that if we cannot provide him with that thing which he needs for life without taking from Smith, then—at least in such cases

7. See *id.* at 160-64, 168-72.

as Smith places at most little value on it—it is permissible for us to take from Smith. This marks a difference. For even if you cannot get a color television at all unless you take from someone else, then all the same you cannot take from him in order to buy one, even if he has plenty of money.

But is this difference relevant to the case at hand? Suppose Nozick were to grant it, and say: "Very well, the meeting of human needs is not a consumer good like any other—it differs from color televisions in the way you indicate. [He would thus acknowledge that property rights are not infinitely stringent.] Still, if the eight *can* meet the need of the eleventh by themselves, how can they presume to take from the two who do not care if the need is met?"

Nozick might go on: "In those cases you have been describing in which Jones needs something for life, and it is permissible to take it from Smith and give it to Jones, what overrides Smith's right that the thing not be taken from him is not the mere fact that Jones needs it for life, but the complex fact that Jones needs it for life *and* we can provide it in no other way than by taking it from Smith. Suppose what Jones needs for life is a drug which you have ample supplies of and Smith has only a little of; surely you cannot say: 'How nice! The fact that Jones needs that drug for life overrides Smith's right that his drug not be taken away from him, so I do not have to provide for Jones myself—I can take from Smith to provide for Jones.' Surely you cannot take from Smith if you have plenty yourself! But if it is the complex fact I pointed to which is doing the real work in the cases you describe—if it is that fact which really does the overriding—then those cases have no bearing at all on the case now at hand. So I repeat: Given the eight *can* meet the need of the eleventh by themselves, how can they presume to take from the two who do not care if the need is met?"

Nozick might go on: "And wouldn't it be like that in ideal states generally? In other words, that those who refuse to contribute would be few enough so that those willing to contribute could, by themselves, meet such needs as they wanted met?"¹⁸ If so, nothing so far said counts against my thesis that a government of an ideal state which imposes taxes for the purpose of redistribution violates the rights of its citizens."

It is hard to know what to say about people who would live in "ideal" states if there were any. What would they be like? But I join

18. See *id.* at 182, 265-68.

the many other readers of *Anarchy, State, and Utopia* who have their doubts.¹⁹

Moreover, the instability of the situation I invited you to imagine is obvious. Suppose that if only one of the eight ceased to be willing to contribute, then the remaining seven could no longer meet the need of the eleventh by themselves, so that the case would then collapse into a case of the kind we were looking at earlier. Would it not pay them to draw straws to choose one among them to volunteer to say he has changed his mind? Then, instead of the eight having to deplete their own supplies of the drug, the remaining seven could take from the two who are rich in it. Would they even need to draw straws to choose a liar? If the eight were given the information that if there were only seven, the seven could take from the two, would there not be at least one who would *really* change his mind? It would be an odd moral theory that yielded either the conclusion that the eight must not be given that information, or the conclusion that the eight must meet the need of the eleventh by themselves unless they are lucky enough to get that information, in which case they do not have to.

All the same, the question my hypothetical Nozick raises is a hard one. If the eight can meet the need of the eleventh by themselves, how can they presume to take from the two who do not care if the need is met? I am sure that the instability I pointed to should figure in the answer, but I do not see clearly how.

One's intuition, I think, is that it just is not *fair* that the eight should have to deplete their supplies so drastically in order to meet the need of the eleventh. The source of that intuition is, I think, this: One thinks of the need as *having* to be met by the citizens of that state, and therefore thinks that the burden of meeting it should be shared, as in the case of any other project which the citizens have to carry out.

Why does the need *have* to be met by the citizens of the state? By hypothesis, the need is one which can be met by them at little cost to any of them, for each of the two with ample supplies could easily meet the need by himself. But if a need can be met at little cost—remembering that it is a need for something to sustain life itself—then it is indecent that the need not be met. (I here say something of a community which would be true of an individual.) So it has to be met. So, as in the case of any other project which the citizens of a state have to carry out, it is only fair that the burden of doing so be shared. But

19. Thomas Nagel, in his review of Nozick's book, makes the interesting suggestion that insisting that contributions be voluntary is "an excessively demanding moral position" and that "excessive demands on the will . . . can be more irksome than automatic demands on the purse." Nagel, Book Review, 85 YALE L.J. 136, 145-46 (1975).

if the two with ample supplies give nothing at all, the entire burden falls on the remaining eight, who can least afford to share it. Hence it is not fair that it should fall on them alone.

If the two with ample supplies can each meet the need at very little cost, then it makes little difference whether or not one takes the whole amount needed from one, or takes half the needed amount from each, or imposes a proportional tax on all ten of them, under which the two pay the lion's share, and the remaining eight pay a grain or two each. Another possibility is that each of the two might be ordered to provide half, and the remaining eight suffer a comparable loss by having to pay the two, or the community at large, in some commodity other than the drug.

There are cases, however, in which it will make a difference. Let us look back again at case (4). I said that if we go ahead, and break into the box and give the drug to the child, we shall have later to pay you some, if not all, of the cost we imposed on you by doing so. Kind-hearted students sometimes look askance at this proposal—for if we go ahead, we do so to save the life of a child, after all. But the idea that the burdens must be fairly shared cuts both ways. If we go ahead, we must share, with you, the burden of meeting that child's need: We must not impose the entire burden of meeting its need on you. If I am right, it follows that we need not reimburse you for the entire cost of repairing or replacing the box and replacing the drug, but only such part of that cost as leaves you to pay the same amount as each of the rest of us. It is for this reason that I preferred not to speak of that payment as *compensation*: its point is not so much to compensate for a loss as to reduce that loss to the point at which it is no greater than ours.

I should stress, however, that the cases I have drawn attention to are all cases in which the redistribution aimed at is aimed at in order to meet human needs. None of them is a case in which the redistribution aimed at is aimed at simply in order that there be less inequality. Taxation for redistribution for that purpose is a wholly different matter.