

Nozick's Flawless Libertarianism? A Book Review

(*On Nozick*, by Edward Feser.)

J C Lester

This is an excellent though largely uncritical introduction to, and defence of, Robert Nozick's *Anarchy, State and Utopia* (New York: Basic Books, 1974). It is also quite a good introduction to libertarianism. It is full of good arguments. I shall confine myself to critical remarks. My responses are mainly in the order that matters arise in the book.

First, three brief linguistic points. Which proof reader of Wadsworth's allowed "30's", etc., (p. 11 and throughout) without striking out the otiose apostrophe? As an anarchist, I should rather say that liberty ought to be the highest *social* value (or rule) rather than "political value" (p. 11). Feser apparently uses, as do many libertarians, the English word 'coercion' to mean not coercion (the use, or threat, of force to constrain or compel some person—possibly in libertarian self-defence or rectification) but to mean any liberty/rights violation even where no coercion is involved (p. 14). He does not do this persistently, though.

In explaining the "impossibility of socialism" Feser does not mention that this is usually known as the economic calculation argument (p. 18). Neither does he quite spell out what the problem is: that the planners have no way of determining the *relative* scarcity of resources. Then, having apparently argued for the "impossibility of socialism", Feser writes of "the socialist economies of the communist world" finally collapsing in the 1980s: "Mises and Hayek predicted, as far back as the 1920's, that this is exactly what would happen" (p. 20). This is a confusion. Mises argued that Marxian socialism is, as Feser earlier noted, *impossible*. There is no known substitute for the price system to determine relative scarcity in an advanced industrial society. Socialism did not collapse after many decades, it was a non-starter. The USSR had a price system, albeit even more state-interfered-with than our own, and thus was not socialist in the sense that Mises was criticising. Of course, there are other senses of 'socialism' and Mises's argument when generalised applies to them as being inefficient *to the extent that* they override the price system. But they are not what Mises's argument was primarily about. And though Mises's book on socialism was published in 1922, the Hayek-edited *Collectivist Economic Planning: Critical Studies on the Possibilities of Socialism* did not appear until 1935.

Feser objects that "Classical utilitarianism ... leaves open the possibility that some people may be appropriately sacrificed ..." (p. 32). This is a logical possibility, but is it a real one? Correctly interpreted, I do not think so. A utilitarian might equally well reply that 'libertarian rights leave open the possibility that some people may be left to starve.' That does not seem to be very likely either. And if observing rights is supposed to accord with "respect for human dignity" then so can promoting human welfare. The practical point is that there does not seem to be a real clash between the two. Defenders of rights through most of history would think it strange to attempt to divorce human rights from human welfare and then take sides.

We are told that "unless we assume the thesis of self-ownership, we have no way of explaining *why* certain things are wrong that clearly are wrong. The thesis of self-ownership is, then, as plausible and fundamental a moral principle as there could be" (p. 33). It is not much of an 'explanation' to insist that the explanation has to stop at the assumption of self-ownership. We can go on to explain how not allowing self-ownership leads to disastrous "moral hazards" (mentioned by Feser [p. 35]) for both liberty (more abstractly defined than just being self-ownership, of course^[1]) and welfare. We might even concede that in special extreme cases where self-ownership can harm either liberty or welfare, the case for absolute self-ownership might be morally weakened.^[2] Thus we can derive general self-ownership from both liberty^[3] and welfare.^[4] So self-ownership is not itself "as plausible and fundamental a moral principle as there could be."

It sounds quasi-Marxist and slightly misleading to say that if self-ownership is true "I also own the *products* of my abilities, talents, and labor, that is, whatever wealth I produce in using them" (p.

34). For if I produce something for you under contract, then I need not at any point own the thing I physically produce or all the wealth it brings. And though I own the money that you pay me for the contractual work, I did not really produce that money and neither did you (unless, perhaps, at least one of us literally produces notes or coins).

Is it true that the “negative” nature of rights means that there is no “danger that they might conflict” (p. 38)? To take only one classic example, what if person A buys all the land surrounding person B and then refuses to allow B to leave B’s land? Does A have an ‘inviolable’ right to refuse to allow B to cross his property? Or does B have an ‘inviolable’ right not to be arbitrarily imprisoned? It is such examples that, to my mind, require a libertarian theory of liberty that is anterior to, and more abstract than, both self-ownership and ownership of external property.

I do not know what it means to assert that persons are “free by nature” (p. 39). I certainly think that people ought to be free, in the libertarian sense, and that they are better off being so. I also think this moral principle withstands critical scrutiny. But why are people free “by nature”? Is this supposed to be a moral law that is discovered in nature like a natural law such as gravity? Feser later glosses “natural” as “not derived from or dependent on any human agreements or conventions” (p. 43). But in what way does that make human freedom part of ‘nature’? I know ‘natural law’ has a long history, but more needs to be said to make sense of, and defend, it than the few words Feser expends.

Does libertarianism need foundations? Feser considers various possibilities in addition to self-ownership (pp. 48-53). For the critical rationalist, however, the idea that respecting individual liberty is morally desirable remains a conjecture. It is sufficient that there is no known sound reason to interfere with individual liberty (in any systematic or institutional way, at least). Any search for positively justifying this view runs into the epistemological problem that we never know what refuting counter-instance or counter-argument we might have overlooked (or even which corroborating examples might convince some people). There is also the problem of an infinite regress if we try to support libertarianism by a more fundamental principle such as enabling humans to pursue ‘virtue,’ or ‘flourish,’ or be ‘project pursuers,’ or have ‘autonomy.’ In any case, surely libertarians allow that people have the right to be vicious (if at no one else’s imposed expense), to ‘wither,’ to do nothing much, or be heteronomous.

Feser also mentions the idea that the very use of one’s body presupposes self-ownership and so one cannot argue against it “without falling into a pragmatic self-contradiction” (p. 50). It seems to be true that in using one’s body one presupposes that one has a right to do so, but only if (as I accept, following Socrates and contradicting Aristotle) it is not possible to do what one genuinely believes to be wrong at the time. But it is not a logical inference that one does have the right just because one must presuppose it in a live argument. If there were an omnipotent god and he (decided that he) owned us, then he would own us whatever our arguments on the matter.

In the end, Feser concludes that the burden of proof lies with the critics, “It is not *Nozick* who needs to ‘provide foundations’ for or justify his libertarianism, then—it is his *critics* who need to justify themselves” (p. 54). And the typical welfare statist no doubt shares an equal and opposite view. So we would appear to have a stalemate of each side demanding justification from the other. But no one can provide foundations for their conjectures. When they think they are doing so they are at best explaining how they think their theory will usually apply. It is better to seek, and provide, and address criticism.

Feser sees that protection agencies will “settle disputes between clients by appealing to a neutral third party” (p. 58). But he appears to think that it must be the *same* “third party ... which numerous firms retain” for all disputes. This is an error: the fallacy of composition. It is sufficient that all protection agencies have bilateral contracts for settling disputes (possibly by some default procedure in the absence of a specifically named third agency; maybe even selecting one by lottery). There is no need for a single agency to arise as the one to which all must ultimately appeal. And any two agencies can change their chosen third party at any time they agree to do so. Thus there is no tendency “toward a kind of natural monopoly ... a single dominant agency or a single confederation of agencies ...” And so there is no need for “common arbitration procedures.” There can be healthy competition among procedures. Some people might still think that there is a sort of overall ‘monopoly system’ here. But it is no more a monopoly than exists among banks just because *all* banks have bilateral agreements on how to deal with each other concerning charges, accepting cheques, etc. Therefore, there is no reason for a minimal state to emerge by overruling competing agencies that are outside the ‘monopoly.’

It is not a “loss of one’s full *liberty*” (contra Feser) to become dependent on the state (p. 73). It is, rather, the gain of a licence. It is only a loss of liberty to be forced to pay for this dependence by others.

Nozick argues, and Feser agrees, that taxation is “on a par with forced labor” (p. 77ff). Immoral and inefficient though taxation is, it is not on a par with forced labour. It is ‘only’ extortion (and only for those who really pay it; not those who are net tax-consumers, possibly by working for the state). It cannot be on a par with forced labour for the simple reason that no one is forced to labour. If you sit about doing no work then no one will make you work. Quite the reverse, you will in effect be paid by the welfare state for not working. If you do work—in the private sector, at least—then extortion by the state is difficult to avoid (but you should do your best). Anyway, it would be possible to abolish income tax and replace it with sales tax. Then the retailers alone would be forced to hand over money to the state, and not for working as such (though some work is thereby made necessary). Still less is the so-called welfare state, terrible though it is, a system of “*partial slavery*” (p. 79). There are countries that really do have forced labour and partial slavery. The victims there would rightly see that they are not on a par with those who merely pay income tax. The answer to Nozick’s “Tale of a Slave” question (p. 80) is that this is a form of the sorites problem (how many grains of sand make a pile?). Your situation becomes less and less slave-like until it is clearly hyperbole to assert that you are a slave. Otherwise, at a still farther extreme, you would still be a ‘slave’ if only the mildest imposition were to (threaten to) occur only once in your life. You remain, however, a *subject*—even if you think you are a ‘free citizen’—of aggressively imposed state rule. And that is bad enough.

Feser tries to muddle through with Nozick’s defence of the Lockean labour-mixing (or what-you-own-mixing) theory of initial acquisition. Feser thinks it is “*significantly* to alter a resource or bring it under one’s control that effectively turns it into property” (p. 83). Why can I not simply use or rely on some resource (such as a natural water hole, which example Feser later mentions) without significantly altering it or controlling it? What if I significantly alter and control a resource (maybe by damming a small stream in sport) but do not care a jot about it? How *exactly* does significant alteration or control relate to *liberty*? What is the explicit connection? We seem to have, rather, an appeal to a pre-existing vague intuition. If (interpersonal) liberty is more precisely conceived as not being proactively imposed on by other people (to take an example not entirely at random), then it is sufficient that I merely rely on the water hole for me to have some libertarian property claims not to be excluded by someone fencing it off—especially if it is the only water around. Feser later concedes a property claim here (p. 87) but does not square it with the labour-mixing that involves significant alteration or control. If it is true that reliance can be enough, then it is not true that ‘labor-mixing of some sort seems the only available way of getting property started’ (p. 83). And labour-mixed property can sometimes clash with liberty.

He goes further, however, and denies that there can be any injustice in *initial* acquisitions because no one has any libertarian rights until acquisition takes place (p. 86). Feser suggests that for A to be the *first* to monopolise a water hole and deny others access would be “callous, cruel and wicked” but not unjust because “it’s A’s water hole” (p. 87). Why should being there first *always* be trumps as regards *liberty*? A is here being a positive nuisance (or worse, if death by thirst ensues) to other people. He is not protecting the fruits of his labours in any way. So there is no sound analogy between this and merely failing to assist someone by, in Feser’s example, not helping him to start his car. The distinction between proactively imposing and merely failing to assist is the crucial abstraction that is required to make sense of the liberty of libertarianism.

In short, I think that Feser does not have adequate arguments to respond to contrary arguments in my own philosophical defence of anarcho-libertarianism as maximising liberty and welfare (despite citing my book in his bibliography). I hope I have not been unfair or unclear in attempting to restate some of my views in response to his defence of Nozick’s book. It was largely my perceived inadequacies of *Anarchy, State, and Utopia* that spurred me to write something rather different. But Feser is a bright libertarian who has merely fallen among justificationists, minarchists and Aristotelians.

Notes

[1] J C Lester, *Escape from Leviathan: Liberty, Welfare and Anarchy Reconciled*, Macmillan/St Martin's Press, 2000, 57-61.

[2] Ibid. 65-66.

[3] Ibid. 76

[4] Ibid. 185-187