1. Robert Nozick and Wilt Chamberlain: how patterns preserve liberty

Let us now suppose that I have sold the product of my own labour for money, and have used the money to hire a labourer, i.e., I have bought somebody else's labour-power. Having taken advantage of this labour-power of another, I turn out to be the owner of value which is considerably higher than the value I spent on its purchase. This, from one point of view, is very just, because it has already been recognized, after all, that I can use what I have secured by exchange as is best and most advantageous to myself... (George Plekhanov, The Development of the Monist View of History)

1. Robert Nozick occupies the point of view Plekhanov describes, and his Anarchy, State, and Utopia is in good measure an ingenious elaboration of the argument for capitalism that Plekhanov adumbrates. The capitalism Nozick advocates is more pure than the one we have today. It lacks taxation for social welfare, and it permits degrees of poverty and of inequality far greater than most apologists for contemporary bourgeois society would now countenance.

This chapter is only indirectly a critique of Nozick’s defence of capitalism. Its immediate aim is to refute Nozick’s major argument against a rival of capitalism, socialism. The refutation vindicates socialism against that argument, but no one opposed to socialism on other grounds should expect to be converted by what is said here.

Nozick’s case against socialism can be taken in two ways. He proposes a definition of justice in terms of liberty, and on that basis he argues that what socialists consider just is not in fact just. But even if his definition of justice is wrong, so that the basis of his critique, taken in this first way, is faulty, he would still press a claim against socialism, namely, that, however

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1 And others, such as American liberals, but my concern is with the application of the argument to socialism.
just it may or may not be, it is incompatible with liberty. Even if Nozick is mistaken about what justice is, he might still be right that the cost in loss of liberty imposed by what socialists regard as just is intolerably high. (Hence the title of the section of the book on which we shall focus: ‘How Liberty Upsets Patterns’ – patterns being distributions answering to, for example, a socialist principle of justice.) So it is not enough, in defending socialism against Nozick, to prove that he has not shown that it is unjust. It must also be proved that he has not shown that it frustrates liberty.

2. A full definition of socialism is not required for our purposes. All we need suppose is that a socialist society upholds some principle of equality in the distribution of benefits enjoyed and burdens borne by its members. The principle need not be specified further, since Nozick’s argument is against the institution of any such principle.

Let us now imagine that such an egalitarian principle is instituted, and that it leads to a distribution of goods and bads which, following Nozick, we shall call D1. Then Nozick argues by example that D1 can be maintained only at the price of tyranny and injustice. The example concerns the best basketball player in the imagined society.

... suppose that Wilt Chamberlain is greatly in demand by basketball teams, being a great gate attraction ... He signs the following sort of contract with a team: In each home game, twenty-five cents from the price of each ticket of admission goes to him .... The season starts, and people cheerfully attend his team’s games; they buy their tickets, each time dropping a separate twenty-five cents of their admission price into a special box with Chamberlain’s name on it. They are excited about seeing him play; it is worth the total admission price to them. Let us suppose that in one season one million persons attend his home games, and Wilt Chamberlain winds up with $250,000, a much larger sum than the average income ... Is he entitled to this income? Is this new distribution D2, unjust? If so, why? There is no question about whether each of the people was entitled to the control over the resources they held in D1; because that was the distribution ... that (for the purposes of argument) we assumed was acceptable. Each of these persons chose to give twenty-five cents of their money to Chamberlain. They could have spent it on going to the movies, or on candy bars, or on copies of Dissent magazine, or of Monthly Review. But they all, at least one million of them, converged on giving it to Wilt Chamberlain in exchange for watching him play basketball. If D1 was a just distribution, and people voluntarily moved from it to D2, transferring parts of their shares they were given under D1 (what was it for if not to do something with?), isn’t D2 also just? If the people were entitled to dispose of the resources to which they were entitled (under D1), didn’t this include their being entitled to give it to, or exchange it with, Wilt Chamberlain? Can anyone else complain on grounds of justice? Each other person already has his legitimate share under D1. Under D1, there is nothing that anyone has that anyone else has a claim of justice against.
After someone transfers something to Wilt Chamberlain, third parties still have their legitimate shares; their shares are not changed. By what process could such a transfer among two persons give rise to a legitimate claim of distributive justice on a portion of what was transferred, by a third party who had no claim of justice on any holding of the others before the transfer?²

According to Nozick

(1) 'Whatever arises from a just situation by just steps is itself just.'³

Nozick holds that steps are just if they are free of injustice, and that they are free of injustice if they are fully voluntary on the part of all the agents who take them. We can therefore spell (1) out as follows:

(2) Whatever arises from a just situation as a result of fully voluntary transactions on the part of all the transacting agents is itself just.

So convinced is Nozick that (2) is true that he thinks that it must be accepted by people attached to a doctrine of justice which in other respects differs from his own. That is why he feels able to rely on (2) in the Chamberlain parable, despite having granted, for the sake of argument, the justice of an initial situation patterned by an egalitarian principle.

Even if (2) is true, it does not follow that pattern D1 can be maintained only at the price of injustice, for people might simply fail to use their liberty in a pattern-subverting manner. But that is not an interesting possibility. A more interesting one is that they deliberately refuse to use their liberty subversively. Reasons for refusing will be adduced shortly. But is (2) true? Does liberty always preserve justice?

A standard way of testing the claim would be to look for states of affairs which would be accounted unjust but which might be generated by the route (2) endorses. Perhaps the strongest counter-example of this form would be slavery. We might then say: voluntary self-enslavement is possible. But slavery is unjust. Therefore (2) is false. Yet whatever may be the merits of that argument, we know that Nozick is not moved by it. For he thinks that there is no injustice in a slavery that arises out of the approved process.⁴

² Anarchy, State, and Utopia, pp. 161–2.
³ Anarchy, p. 151.
⁴ A putative example of justly generated slavery: A and B are identical in talents and tastes. Each would so like to own a slave that he is willing to risk becoming one in exchange for the same chance of getting one. So they toss a coin, B loses, and A clamps chains on him. (For discussion of this case, see subsection 1d of Chapter 2 below. For penetrating remarks on Nozick's toleration of slavery, see Attracta Ingram's Political Theory of Rights, pp. 38–9. For a reply to Ingram, see Hillel Steiner, An Essay on Rights, pp. 232–3.)
Though Nozick accepts slavery with an appropriate genesis, there is a restriction, derived from (2) itself, on the kind of slavery he accepts: (2) does not allow slave status to be inherited by offspring of the self-enslaved, for then a concerned party’s situation would be decided for him, independently of his will. ‘Some things individuals may choose for themselves no one may choose for another.’ Let us remember this when we come to scrutinize the Wilt Chamberlain transaction, for widespread contracting of the kind which occurs in the parable might have the effect of seriously modifying, for the worse, the situation of members of future generations.

Should we say that in Nozick’s conception of justice a slave society need be no less just than one where people are free? That would be a tendentious formulation. For Nozick can claim that rational persons in an initially just situation are unlikely to contract into slavery, except, indeed, where circumstances are so special that it would be wrong to forbid them to do so. This diminishes the danger that (2) can be used to stamp approval on morally repellent social arrangements.

I attribute some such response to Nozick on the basis, _inter alia_, of this passage:

it must be granted that were people’s reasons for transferring some of their holdings to others always irrational or arbitrary, we would find this disturbing … We feel more comfortable upholding the justice of an entitlement system if most of the transfers under it are done for reasons. This does not mean necessarily that all deserve what holdings they receive. It means only that there is a purpose or point to someone’s transferring a holding to one person rather than to another; that usually we can see what the transferrer thinks he’s gaining, what cause he _thinks_ he’s serving, what goals he _thinks_ he’s helping to achieve, and so forth. Since in a capitalist society people often transfer holdings to others in accordance with how much they _perceive_ these others benefiting them, the fabric constituted by the individual transactions and transfers is largely reasonable and intelligible.

Accordingly, Nozick emphasizes the motives people have when they pay to watch Chamberlain, instead of stipulating that they do _so_ freely and leaving us to guess why. It is important to the persuasive allure of the example that we should consider what the fans are doing not only voluntary but sensible: transactions are disturbing (even though they are entirely just?) when we cannot see what the (or some of the) contracting parties _think_ they are gaining by them.

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5 Anarchy, p. 331. 6 Anarchy, p. 159, my emphases.
7 Nozick does not say whether or not our finding a transaction ‘disturbing’ should affect our judgement of its justice.
Yet we should surely also be disturbed if we can indeed see what the agent \textit{thinks} he is gaining, but we know that what he \textit{will} gain is not that, but something he thinks less valuable; or that what results is not only the gain he expects but also unforeseen consequences which render negative the net value, according to his preferences and standards, of the transaction. We should not be content if what he \textit{thinks} he is getting is good, but what he actually gets is bad, by his own lights. I shall assume that Nozick would accept this plausible extension of his concession. It is hard to see how he could resist it.

Accordingly, if we can show that Chamberlain’s fans get not only the pleasure of watching him minus twenty-five cents, but also unanticipated disbenefits of a significant order, then, even if, for Nozick, the outcome remains just, it should, even to Nozick, be disturbing. We shall need to ask whether we do not find Chamberlain’s fans insufficiently reflective, when we think through, as they do not, the \textit{full} consequences of what they are doing.

But now we can go further. For, in the light of the considerations just reviewed, (2) appears very probably false. Nozick says that a transaction is free of injustice if every transacting agent agrees to it. Perhaps that is so. But transactional justice, so characterized, is supposed – given an initially just situation – to confer justice on what results from it. (That is why (2) is supposed to follow from (1).) And that is questionable. Of each person who agrees to a transaction we may ask: \textit{would he have agreed to it had he known what its outcome would be?} Since the answer may be negative, it is far from evident that transactional justice, as described, transmits justice to its results.

Perhaps the desired transmission occurs when the answer to the italicized question is positive. Perhaps, in other words, we can accept (3), which increases the requirements for steps to be justice-preserving:

(3) Whatever arises from a just situation as a result of fully voluntary transactions which all transacting agents would still have agreed to if they had known what the results of so transacting were to be is itself just.

(3) looks plausible, but its power to endorse market-generated states of affairs is, while not nil, very weak. Stronger\textsuperscript{8} principles may also be

\textsuperscript{8} In the sense that they endorse a larger set of market-generated states of affairs. Notice that the weaker the conditions for justice in steps are in a principle of the form of (2) and (3), the stronger, in the specified sense, that principle is.
plausible, but (2), Nozick's principle, is certainly too strong to be accepted without much more defence than he provides.

3. Let us now apply this critique of Nozick's principles to the parable which is supposed to secure (or reveal) our allegiance to them.

Before describing the Chamberlain transaction, Nozick says: 'It is not clear how those holding alternative conceptions of distributive justice can reject the entitlement conception of justice in holdings.' There follows the Chamberlain story, where we assume that D1 is just, and are then, supposedly, constrained to admit that D2, into which it is converted, must also be just; an admission, according to Nozick, which is tantamount to accepting the entitlement conception. But how much of it must we accept if we endorse D2 as just? At most that there is a role for the entitlement principle. For what the transaction subverts is the original pattern, not the principle governing it, taken as a principle conjoinable with others to form a total theory of just or legitimate holdings. The example, even if successful, does not defeat the initial assumption that D1 is just. Rather, it exploits that assumption to argue that D2, though it breaks D1's pattern, must also be just. The Chamberlain story, even when we take it at its face value, impugns not the original distribution, but the exclusive rightness of the principle mandating it.

Now Nozick is certainly right to this extent, even if we do not accept everything he says about the Chamberlain story: there must be a role for entitlement in determining acceptable holdings. For unless the just society forbids gifts, it must allow transfers which do not answer to a patterning principle. This is compatible with placing restraints on the scope of gift, and we shall shortly see why an egalitarian society might be justified in doing so. But the present point is that assigning a certain role to unregulated transactions in the determination of holdings is compatible with using an egalitarian principle to decide the major distribution of

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9 Some might say that this is one of them, but I would disagree:

(4) Whatever arises from a just situation as a result of fully voluntary transactions where the transacting agents know in advance the probabilities of all significantly different possible outcomes is itself just.

I raise doubts about (4) in subsection 1e of Chapter 2 below.

10 Anarchy, p. 160.

11 For an investigation of the concept of entitlement that is deeper and more general than Nozick's own, see Robert J. van der Veen and Philippe Van Parijs, 'Entitlement Theories of Justice'. Pages 70-4 of that article are particularly instructive in the present connection: the authors show both that all theories of justice have an entitlement component and that no theory of justice is a pure entitlement theory.
goods and to limit, for example by taxation, how much more or less than what he would get under that principle alone a person may come to have in virtue of transactions which escape its writ. I think socialists do well to concede that an egalitarian principle should not be the only guide to the justice of holdings, or that, if it is, then justice should not be the only guide to policy with respect to holdings.\(^{12}\)

Among the reasons for limiting how much an individual may hold, regardless of how he came to hold it, is to prevent him from acquiring, through his holdings, an unacceptable amount of power over others: the Chamberlain transaction looks less harmless when we focus on that consideration.\(^{13}\)

The fans 'are excited about seeing him play; it is worth the total admission price to them'. The idea is that they see him play if and only if they pay, and seeing him play is worth more to them than anything else they can get for twenty-five cents. So it may be, but this fails to cover everything in the outcome which is relevant. For, once Chamberlain has received the payments, he is in a very special position of power in what was previously an egalitarian society. The fans' access to resources might now be prejudiced by the disproportionate access Chamberlain's wealth gives him, and the consequent power over others that he now has. For all that Nozick shows, a socialist may claim that this is not a bargain informed people in an egalitarian society will be apt to make: they will refrain from so contracting as to upset the equality they prize, and they will be especially averse to doing so because the resulting changes would profoundly affect their children. (This may seem an hysterical projection of the effect of the Chamberlain transaction, but I take it that we have to consider the upshot of general performance of transactions of that kind, and then the projection is entirely realistic.)

It is easy to think carelessly about the example. How we feel about people like Chamberlain getting a lot of money as things are is a poor index of how people would feel in the imagined situation. Among us the ranks of the rich and the powerful exist, and it can be pleasing, given that they

\(^{12}\) I prefer the second formulation, being persuaded that distributive justice, roughly speaking, is equality. (See Christopher Ake, 'Justice as Equality'.) For more on trade-off between equality (be it justice or not) and other desiderata, see section 2 of my 'On the Currency of Egalitarian Justice'.

\(^{13}\) My near-exclusive emphasis on this consideration in the sequel does not mean that I think that there are no other important ones, including the sheer unfairness of substantial differences in people's purchasing power. But swollen purchasing power, as such, which is not immediately the same thing as power over others, is less likely than the latter to worry those who are not already principled egalitarians.
do, when a figure like Chamberlain joins them. Who better and more innocently deserves to be among them? But the case before us is a society of equality in danger of losing its essential character. Reflective people would have to consider not only the joy of watching Chamberlain and its immediate money price but also the fact, which socialists say that they would deplore, that their society would be set on the road to class division. In presenting the Chamberlain fable Nozick ignores the commitment people may have to living in a society of a particular kind, and the rhetorical power of the illustration depends on that omission. At a later stage, Nozick takes up this point, but, so I argue in section 4 below, he says nothing interesting about it.

Nozick tacitly supposes that a person willing to pay twenty-five cents to watch Wilt play, is ipso facto a person willing to pay Wilt twenty-five cents to watch him play. It is no doubt true that in our society people rarely care who gets the money they forgo to obtain goods. But the tacit supposition is false, and the common unconcern is irrational. Nozick exploits our familiarity with this unconcern. Yet a person might welcome a world in which he and a million others watch Wilt play, at a cost of twenty-five cents to each, and consistently disfavour one in which, in addition, Wilt rakes in a cool quarter million.

Accordingly, if a citizen of the D1 society joins with others in paying twenty-five cents to Wilt to watch Wilt play, without thinking about the effect on Wilt’s power, then the result may be deemed ‘disturbing’ in the sense of p. 159 of Anarchy (see p. 22 above). Of course a single person’s paying a quarter makes no appreciable difference if the rest are anyway going to do so. But a convention might evolve not to make such payments, or, more simply, there could be a democratically authorized taxation system which maintains wealth differentials within acceptable limits. Whether Wilt would then still play is a further question on which I shall not comment, except to say that anyone who thinks it obvious that he would not play misunderstands human nature, or basketball, or both.

4. In defending the justice of the Chamberlain transaction, Nozick glances at the position of persons not directly party to it: ‘After someone transfers something to Wilt Chamberlain, third parties still have their legitimate shares; their shares are not changed.’ That is false, in one relevant sense. For a person’s effective share depends on what he can do with what he has, and that depends not only on how much he has but on what others

14 Anarchy, p. 161.
have and on how what others have is distributed. If it is distributed equally among them he will often be better placed than if some have especially large shares. Third parties, including the as yet unborn, may therefore have an interest against the contract. It is roughly the same interest as the fans themselves may have in not making it. (But, unlike third parties, a fan gets the compensation of watching Wilt play, which—I have not ruled this out—might be worth a whole lot of inequality, as far as a particular individual fan is concerned.)

Nozick addresses this issue in a footnote:

Might not a transfer have instrumental effects on a third party, changing his feasible options? (But what if the two parties to a transfer independently had used their holdings in this fashion?)\textsuperscript{15}

He promises further treatment of the problem later, and, although he does not say where it will come, he presumably has in mind his section on ‘Voluntary Exchange’, which I shall address in section 7 below. Here I respond to Nozick’s parenthetical rhetorical question.

First, there are some upshots of transfers of holdings, some effects on the options of the other parties, which will not occur as effects of the unconcerted use of dispersed holdings by individuals, because those individuals could not, or would not, use them in that way. The Chamberlain fans, acting independently, are less likely than Chamberlain is to buy a set of houses and leave them unoccupied, with speculative intent. Sometimes, though, a set of fans, acting independently, could indeed bring about effects inimical to the interests of others, of just the kind one may fear Chamberlain might cause. But whoever worries about Chamberlain doing so will probably also be concerned about the case where it results from the independent action of many. The rhetorical second question in the Nozick passage should not silence those who ask the first one.\textsuperscript{16}

As an argument about justice\textsuperscript{17} the Chamberlain story is either question-begging or un compelling. Nozick asks:

\textsuperscript{15} Anarchy, p. 162.

\textsuperscript{16} The purpose of the second question, so I take it, is to suggest this argument:

1. The fans might have so used their several quarters with the same effect on third parties that one asks the first question fears Wilt’s use of his quarter million might have.

2. No one could object to the fans so using their quarters.

3. No one can object to what Wilt does with his quarter million.

Whether or not the stated premisses imply that argument’s conclusion, the present point is that an alert rejecter of its conclusion will also reject its second premiss.

\textsuperscript{17} Recall the two ways of taking Nozick, distinguished at pp. 19–20 above.
If the people were entitled to dispose of the resources to which they were entitled (under D1), didn't this include their being entitled to give it to, or exchange it with, Wilt Chamberlain? ¹⁸

If this interrogative is intended as a vivid way of asserting the corresponding indicative, then Nozick is telling us that the rights in shares with which people were vested are violated unless they are allowed to contract as described. If so, he begs the question. For it will be clear that their rights are violated only if the entitlement they received was of the absolute Nozickian sort, and this cannot be assumed. Whatever principles underlie D1 will generate restrictions on the use of what is distributed in accordance with them. ¹⁹

The other way of taking the quoted question is not as an assertion but as an appeal. Nozick is then asking us whether we do not agree that any restrictions which would forbid the Chamberlain transaction must be unjustified. So construed the argument is not question-begging, but it is inconclusive. For considerations which might justify restrictions on transactions are not canvassed. It is easy to think that what happens afterwards is that Chamberlain eats lots of chocolate, sees lots of movies and buys lots of subscriptions to expensive socialist journals. But, as I have insisted, we must remember the considerable power that he can now exercise over others. ²⁰ In general, holdings are not only sources of enjoyment but, in certain distributions, sources of power. Transfers which look unexceptionable come to seem otherwise when we bring into relief the aspect neglected in 'libertarian' apologetic.

5. Let us turn, now, from justice to liberty: is it true that a 'socialist society would have to forbid capitalist acts between consenting adults'? ²¹ Socialism perishes if there are too many such acts, but it does not follow that it must forbid them. In traditional socialist doctrine capitalist action wanes not primarily because it is illegal, but because the impulse behind it atrophies, or, less Utopianly, because other impulses become stronger, or because people believe that capitalistic exchange is unfair. Such expectation rests on a conception of human nature, and so does its denial. Nozick

¹⁸ Anarchy, p. 161.
¹⁹ Thomas Nagel construes Nozick as I do in the paragraph above, and my reply to Nozick, so construed, follows Nagel. See his 'Libertarianism Without Foundations', pp. 201–2.
²⁰ Once again – see p. 25 above – this assessment will seem hysterical only if we fail to take the Chamberlain transaction as we must for it to pose a serious challenge, namely as an example of something which occurs regularly, or will occur regularly in the future.
²¹ Anarchy, p. 163.
has a different conception, for which he does not argue, one that fits many twentieth-century Americans, which is no reason for concluding that it is universally true. The people in Nozick’s state of nature are intelligible only as well-socialized products of a market society. In the contrary socialist conception, human beings have and may develop further a (non-instrumental) desire for community, a relish of cooperation, and an aversion to being on either side of a master/servant relationship. No one should assume without argument, or take it on trust from the socialist tradition, that this conception is sound. But if it is sound, then there will be no need for incessant invigilation against ‘capitalist acts’, and Nozick does not argue that it is unsound. Hence he has not shown that socialism conflicts with freedom, even if his unargued premiss that its citizens will want to perform capitalist acts attracts the assent of the majority of his readers.

How much equality would conflict with liberty in given circumstances depends on how much people would value equality in those circumstances. If life in a cooperative commonwealth appeals to them, they do not have to sacrifice liberty to belong to it.

This banal point relates to the first of what Nozick says are the three ‘unrealistic’ presuppositions of the moral and practical possibility of socialism:

(5) that all will most want to maintain the [socialist] pattern
(6) that each can gather enough information about his own actions and the ongoing activities of others to discover which of his actions will upset the pattern
(7) that diverse and far-flung persons can coordinate their actions to dovetail into the pattern.22

Something like the first presupposition is made by socialists in the light of the idea of human nature which informs their tradition. It is, of course, controversial, but its dismissal as ‘unrealistic’ contributes nothing to the controversy.

Socialists presuppose only something like (5), because they need not think that everyone will have socialist sentiments, but only a preponderant majority, especially in the nascency of socialism. If (5) itself is unrealistic, three possibilities present themselves: very few would lack enthusiasm for socialism; very many would; some intermediate proportion would. What I mean by these magnitudes emerges immediately.

In the first possibility, there remain a few capitalistically minded

22 Anarchy, p. 163.
persons, meaning by ‘a few’ that their capitalist acts would not undermine the basic socialist structure. No sane socialist should commit himself to the suppression of capitalist activity on the stated scale. (It might even be desirable to allocate to capitalistophiles a territory in which they can bargain with and hire one another.)

Suppose, though, that the disposition to perform capitalist acts is strong and widespread, so that socialism is possible only with tyranny. What socialist favours socialism in such circumstances? What socialist denies that there are such circumstances? Certainly Marx insisted that it would be folly to attempt an institution of socialism except under the propitious conditions he was confident capitalism would create. A socialist believes that propitious conditions are accessible. He need not proclaim the superiority of socialism regardless of circumstances.

Could a socialist society contain an amount of inclination to capitalism of such a size that unless it were coercively checked socialism would be subverted, yet sufficiently small that, in socialist judgement, socialism, with the required coercion, would still be worthwhile? Marxian socialists believe so, and that does commit them to prohibiting capitalist acts between consenting adults in certain circumstances, notably those which follow a successful revolution. But why should they flinch from that prohibition? They can defend it by reference to the social good and widened freedom that it promotes. Nozick would object that the prohibition violates moral ‘side constraints’: certain freedoms, for example of contract, ought never to be infringed, whatever the consequences of allowing their exercise may be. We shall look at side constraints in the next section.

But first we must treat presuppositions (6) and (7) (see p. 29 above). Unlike (5), these are red herrings. At most, they are preconditions of realizing socialist justice perfectly. But justice is not the only virtue of

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23 Or ‘socialism’: scare-quotes would be added by those who think that socialism is, by definition, incompatible with tyranny; but, contrary to what some socialists seem to think, such a definition, even if it is correct, provides no argument against those who say that the (extensively non-market) form of economy that many socialists favour required tyranny.

24 According to Marx, socialist revolution will not succeed unless and until ‘capitalist production has already developed the productive forces of labour in general to a sufficiently high level’ (Theories of Surplus Value, Vol. II, p. 580), failing which ‘all the old filthy business would necessarily be restored’ (The German Ideology, p. 49) in the aftermath of revolution. See sections (6) and (7) of Chapter VII of my Karl Marx’s Theory of History. See also Chapter 5, section 6, below.

25 I say ‘at most’ because even that is probably false. Given the truth of (5), people could form a Pattern Maintenance Association and appoint experts to watch over and correct the pattern. With popular willingness to do what the experts said, and a properly sophisticated technology for detecting deviations, (6) and (7) would be unnecessary to pattern
social orders (and it is not even 'the first virtue' of socialism, for most socialists). Even if we identify justice with equality, as socialists, broadly speaking, do, we may tolerate deviations from equality consequent on perturbations caused by gift, small-scale market transactions, and so on. Considerations of privacy, acquired expectations, the moral and economic costs of surveillance, etc. declare against attempting a realization of justice in the high degree that would be possible if (6) and (7) were satisfied. We let justice remain rough, in deference to other values.

Accordingly, socialism tolerates gift-giving, and 'loving behaviour' is not 'forbidden'. Gift is possible under a system which limits how much anyone may have and what he may do with it. Relatively well-endowed persons will sometimes not be fit recipients of gifts, but we are assuming a socialist psychology whose natural tendency is not to give to them that hath. And the notion that the institutions we are contemplating fetter the expression of love is too multiply bizarre to require comment.

6. Any but the most utopian socialist must be willing under certain conditions to restrict the liberty of a few for the sake of the liberty of many. But, so Nozick would charge, such a socialist would thereby violate 'moral side constraints' that apply to all human action. For Nozick thinks that we may never restrict one person's freedom in order to enhance the welfare or the freedom of very many others, or even of everyone, that person included (where we know that the restriction will redound to his benefit).

If children are undernourished in our society, we are not allowed to tax millionaires in order to finance a subsidy on the price of milk to poor families, for we would be violating the rights, and the 'dignity' of the millionaires. We cannot appeal that the effective liberty of the children

maintenance without coercion (unless doing what the experts say counts as a way of coordinating action, in which case (7) is required in the above fantasy — but it is easily satisfied).

26 Anarchy, p. 167.
27 See Chapter 2, subsection 2c, on how socialist restriction on private property rights may enhance general freedom.
28 Anarchy, p. 334. "But isn't justice to be tempered with compassion?" Not by the guns of the state. When private persons choose to transfer resources to help others, this fits within the entitlement conception of justice' (ibid., p. 348). 'Fits within' is evasive. The choice 'fits' because it is a choice, not because of its content. For Nozick there is no more justice in a millionaire's giving a five dollar bill to a starving child than in his using it to light his cigar while the child dies in front of him.

For subtle comments on Nozick's falsely exclusive and exhaustive distinction between compulsory and voluntary donation, see Nagel, 'Libertarianism Without Foundations', pp. 199-200.
(and the adults they will become) would be greatly enhanced at little expense to the millionaires’ freedom, for Nozick forbids any act which restricts freedom: he does not call for its maximization. (This means that if it were true that certain exercises of freedom would lead to totalitarianism, Nozick would still protect them. Market freedom itself would be sacrificed by Nozick if the only way to preserve it were by limiting it.)

If Nozick argues for this position, he does so in the section called ‘Why Side Constraints?’, which begins as follows:

Isn’t it irrational to accept a side constraint C, rather than a view that directs minimizing the violations of C? . . . If nonviolation of C is so important, shouldn’t that be the goal? How can a concern for the nonviolation of C lead to the refusal to violate C even when this would prevent other more extensive violations of C? What is the rationale for placing the nonviolation of rights as a side constraint upon action instead of including it solely as a goal of one’s actions?

Side constraints upon action reflect the underlying Kantian principle that individuals are ends and not merely means; they may not be sacrificed or used for the achieving of other ends without their consent. Individuals are inviolable.

The second paragraph is lame as a response to the questions of the first, for they obviously reassert themselves: if such sacrifice and violation are so horrendous, why should we not be concerned to minimize their occurrence? There is more appearance of argument in the final paragraph of the section:

Side constraints express the inviolability of other persons. But why may not one violate persons for the greater social good? Individually, we each sometimes choose to undergo some pain or sacrifice for a greater benefit or to avoid a greater harm . . . Why not, similarly, hold that some persons have to bear some costs that benefit other persons more, for the sake of the overall social good? But there is no social entity with a good that undergoes some sacrifice for its own good. There are only individual people, different individual people, with their own individual lives. Using one of these people for the benefit of others, uses him and benefits the

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29 It is, indeed, a reasonable conjecture that market freedom is less than it was, partly because, had the bourgeois state not imposed restrictions on it, its survival would have been jeopardized.

30 Anarchy, pp. 30-1.

31 Since 1977 (when what is substantially the text of this chapter was first published), many philosophers have offered challenging answers to this question, especially in response to Samuel Scheffler’s relentless pressing of it in his Rejection of Consequentialism. I cannot address those answers here. (For an attempt to show that Nozick’s invocation of Kant is unjustified, see section 4 of Chapter 10 below.)

32 Note, though, that what Nozick initially contends against is violating rights in order to reduce the violation of rights, whereas in what follows his target is violating rights to expand aggregate welfare. He is unconvincing on both counts, but one who agrees with him about ‘overall social good’ could still press the questions in the first paragraph of the text to footnote 30.
others. Nothing more. What happens is that something is done to him for the sake of others. Talk of an overall social good covers this up . . . 33

This passage is hard to construe. In one interpretation what is says is correct but ineffectual, in the other what is says is pertinent, but wrong, and anyone who is impressed has probably failed to spot the ambiguity. For it is unclear whether Nozick is only arguing against one who puts redistribution across lives on a moral par with a person’s sacrificing something for his own greater benefit, or arguing for the moral impermissibility of redistribution. In other words, is Nozick simply rejecting argument A, or is he (also) propounding argument B?

\[ A \text{ since } \text{persons compose a social entity relevantly akin to the entity a single person is } (p), \text{ redistribution across persons is morally permissible } (q). \]

\[ B \text{ since } \text{it is false that } p, \text{ it is false that } q. \]

If Nozick is just rejecting argument A, then I agree with him, but side constraints remain unjustified. Unless we take Nozick to be propounding argument B, there is no case to answer. And then the answer is that the truth of \( p \) is not a necessary condition of the truth of \( q \). A redistributor does not have to believe in a social entity.34

According to Nozick, the redistributive attitude ignores the separateness of persons. But what does it mean to say in a normative tone of voice (for it is uncontroversial, descriptively speaking) that persons are separate? Either it means that who gets what is morally relevant, or it means that it is morally forbidden to redistribute across persons. If the first (moral relevance) is what is meant, then all patterned principles (as opposed to, for example, the unpatterned end-state principle of utilitarianism)35 embody the requirement, and even an unpatterned egalitarianism manifestly presupposes the moral separateness of persons. If the second (prohibition on redistribution) is what is meant, then the separateness of persons is no argument against redistribution.

Side constraints remain unjustified, and socialists need not apologize for being willing to restrict freedom in order to expand it.

33 Anarchy, pp. 32–3.
34 For elaboration of this point, see Nagel (‘Libertarianism Without Foundations’, pp. 197–8), who takes Nozick to be propounding B.
35 For the differences among non-entitlement principles between ones that are and ones that are not patterned, see pp. 153ff. of Anarchy. (Nozick is not careful in his application of this distinction.)
7. I now examine Nozick's section on 'Voluntary Exchange', which I presumed (see p. 27 above) to be his more extended treatment of the problem of the effect of market transactions on persons not party to them, including the as yet unborn. Nozick allows that agreed exchanges between A and B may reduce C's options, but he implies that they do not thereby reduce C's freedom. He explicitly says that they do not render involuntary anything that C does. And since what C is forced to do he does involuntarily, it follows that, for Nozick, the actions of A and B, though reducing C's options, cannot have the result that C is forced to do something that he might not otherwise have done.

The last claim entails a denial of a thesis central to the socialist critique of capitalism, which may usefully be expressed in the terms of Nozick's doctrine of natural rights, without commitment to the truth of the latter.

For Nozick, every person has a natural right not to work for any other. If one is a slave, then, unless one contracted freely into slavery (see p. 21 above), one's rights were violated, as they are in slave states, which do not confer on everyone as a matter of civil right the rights that he enjoys naturally. And natural rights would remain violated if the law permitted slaves to choose for which master they should labour, as long as it forbade them to withhold their services from all masters whatsoever.

One difference between a modern capitalist state and a slave state is that the natural right not to be subordinate in the manner of a slave is a civil right in modern capitalism. The law excludes formation of a set of persons who are legally obliged to work for other persons. That status being forbidden, everyone is entitled to work for no one. But the power matching this right is differentially enjoyed. Some can live without subordinating themselves, but most cannot. The latter face a structure generated by a history of market transactions in which, it is reasonable to say, they are forced to work for some or other person or group. Their natural rights are not matched by corresponding effective powers.

This division between the powerful and the powerless with respect to the alienation of labour power is the heart of the socialist objection to claims on behalf of the justice and freedom of capitalist arrangements. The rights Nozick says we have by nature we also have civilly under capitalism, but the matching powers are widely lacking. That lack is softened in contemporary rich capitalist countries, because of a hard-won

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36 The concept of a power which matches a right is explicated in section (2) of Chapter VIII of my Karl Marx's Theory of History. The basic idea: power p matches right r if and only if what X is de jure able to do when X has r is what X is de facto able to do when X has p.
institutionalization of a measure of protection for working-class people. In Nozick’s capitalism such institutionalization would be forbidden on the ground that it was coercive, and the lack would be greater.

But Nozick, in the course of his full reply to the problem of ‘third parties’, denies that even the most abject proletarian is forced to work for some capitalist or other. Addressing himself to ‘market exchanges between workers and owners of capital’, he invites us to reflect on the situation of a certain Z (so-called because he is at the bottom of the heap in a twenty-six-person economy) who is ‘faced with working [for a capitalist] or starving’:

the choices and actions of all other persons do not add up to providing Z with some other option. (He may have various options about what job to take.) Does Z choose to work voluntarily? ... Z does choose voluntarily if the other individuals A through Y each acted voluntarily and within their rights ... A person’s choice among differing degrees of unpalatable alternatives is not rendered nonvoluntary by the fact that others voluntarily chose and acted within their rights in a way that did not provide him with a more palatable alternative ... [Whether other people’s option-closing actions] makes one’s resulting action non-voluntary depends on whether these others had the right to act as they did.37

One might think that people of necessity lack the right so to act that someone ends up in Z’s position, a view that I put forward later (see p. 37 below). But here we suppose, with Nozick, that all of A through Y acted as impeccably upright marketeers and therefore did nothing wrong. If so, says Nozick, Z is not forced to work for a capitalist. If he chooses to, the choice is voluntary.

Notice that Nozick is not saying that Z, although forced to work or starve, is not forced to work, since he may choose to starve. Rather, he would deny that Z is forced to work-or-starve, even though Z has no other alternative, and would accept that Z is indeed forced to work, if, contrary to what Nozick holds, he is forced to work or starve. For Nozick believes that

(8) if Z is forced to do A or B, and A is the only thing it would be reasonable for him to do, and Z does A for this reason, then Z is forced to do A.38

Nozick holds that

38 See Nozick, ‘Coercion’, p. 446. I derive (8) above from principle (7) of the ‘Coercion’ essay on the basis of Nozick’s commitment to: Z is forced to do A if and only if there is a person P who forces Z to do A. See (9) in the next sentence of the text above.)
(9) Z is forced to choose between working and starving only if human actions caused his alternatives to be restricted in that way, and that

(10) Z is forced so to choose only if the actions bringing about the restriction on his alternatives were illegitimate.

Both claims are false, but we need not discuss (9) here.\textsuperscript{39} For we are concerned with choice restriction which Nozick himself attributes to the actions of person, \textit{viz.}, some or all of A through Y. We need therefore only reject his claim that if someone is forced to do something, then someone acted \textit{illegitimately}: we need to refute (10) only.

Let me once again display the text in which (10) is affirmed:

Other people’s actions may place limits on one’s available opportunities. Whether this makes one’s resulting action non-voluntary depends upon whether these others had the right to act as they did.\textsuperscript{40}

But there is no such dependence, as the following pair of examples shows.

Suppose farmer Fred owns a tract of land across which villager Victor has a right of way. Then, if Fred erects an insurmountable fence around the land, Victor is forced to use another route, as Nozick will agree, since Fred, in erecting the fence, acted illegitimately. Now consider farmer Giles, whose similar tract is regularly traversed by villager William, not as of right, but because Giles is a tolerant soul. But then Giles erects an insurmountable fence around his land for reasons which justify him in doing so. According to Nozick, William may not truly say that, like Victor, he is now forced to use another route. But the examples, though different, do not so contrast as to make such a statement false. William is no less forced to change his route than Victor is. (10) is false even if – what I also deny – (9) is true, and the thesis that Z is forced to place his labour power at the disposal of some or other member of the capitalist class is sustained.

8. Nozick’s claim about Z is so implausible that it may seem puzzling, coming as it does from an extremely acute thinker. Can it be that he is driven to it because it occupies a strategic place in his defence of libertarian capitalism? How is libertarian capitalism \textit{libertarian} if it erodes the liberty of a large class of people?

Still, we can imagine Nozick granting that Z is forced to work for a

\textsuperscript{39} For criticism of (9), see Frankfurt, ‘Coercion and Moral Responsibility’, pp. 83–4.

\textsuperscript{40} \textit{Anarchy}, p. 262.
capitalist, and attempting to recoup his position by saying this: Z is indeed so forced, but, since what brings it about that he is forced is a sequence of legitimate transactions, there is no moral case against his being so forced, no injustice in it. (Cf. (1) and (2), at p. 21 above.)

That would be less impressive than the original claim. Nozick is in a stronger position – could he but defend it – when he holds that capitalism does not deprive workers of freedom than if he grants that the worker is forced to subordinate himself yet insists that, even so, his situation, being justly generated, is, however otherwise regrettable, unexceptionable from the standpoint of justice. For the original claim, if true, entitles Nozick to say, given his other theses, that capitalism is not only a just but also a free society; while the revised claim makes him say that capitalism is just, but not entirely free. When Z is accurately described capitalism is less attractive, whatever we may say about it from the standpoint of justice.

Turning to that standpoint, and bearing Z in mind, what should we say about Nozick’s important thesis (1)? It seems reasonable to add to the constraints on just acquisition a provision that no one may so acquire goods that others suffer severe loss of liberty as a result. We might, that is, accept thesis (1) but extend the conditions steps must meet to be just, and thus reject capitalism.41

Alternatively, we might grant, in concessive spirit, that there is no transactional injustice (no unjust step) in the generation of Z’s position, but reject (1), and contend that the generative process must be regulated, even, perhaps, at the cost of some injustice, to prevent its issuing in very unjust results. Nozick would invoke side constraints against that, but they lack authority (see section 6 above).

Whatever option we take – and there are others – it should now be clear that ‘libertarian’ capitalism sacrifices liberty to capitalism, a truth its advocates are able to deny only because they are prepared to abuse the language of freedom.42

41 It is immaterial here if this yields what Nozick would call a ‘gimmicky’ (see Anarchy, p. 157) reading of (1).
42 For an extended defence of that charge of abuse, see sections 2 and 3 of Chapter 2 below.