

Person I	C	0, 10	0, 10	$x, x$	$x, x$
	D	0, 10	0, 10	$x, x$	$x, x$

This matrix is wrong. An effort to block one's opponent from joining any protective association must have some nonzero probability of success,  $p$ . If it succeeds, and if one does not oneself attempt to join a protective association, then the outcome (ignoring costs of the effort) will be a mutual state of nature. Hence the true payoff matrix, including the expected utility calculations thus generated, should be:<sup>25</sup>

		Matrix II'			
		Person II			
		A'	B'	C'	D'
Person I	A	5, 5	4, 6	10, 0	$(p'x + (1-p')10),$ $p'x$
	B	6, 4	5, 5	10, 0	$(p'x + (1-p')10),$ $p'x$
	C	0, 10	0, 10	$x, x$	$x, x$
	D	$(px + (1-p)10)$	$(px + (1-p)10)$	$x, x$	$x, x$

Various assumptions about the values of  $x$ ,  $p$ , and  $p'$  will yield matrices with differing solutions. Consider, very briefly, the following three cases, concocted entirely out of imagination:

- i. Let  $x = 9$   
 $p = .1$   
 $p' = .8$

In other words, the state of nature is really quite pleasant, individual I has very little chance of stopping individual II from joining a protective association, but II has a very good chance of stopping I. If one substitutes the numbers into Matrix II' and computes the values, it is found that strategy B dominates for I. II, recognizing this, chooses strategy D'. The payoff is (9.2, 7.2), and the strategy pair is that I attempts to join a protective association, while II does not, but II attempts to stop I from joining.

- ii. Let  $x = 8$

25. Where  $p$  = the probability that I will stop II from joining an association.  
 $(1-p)$  = the probability that II will succeed despite I's efforts.  
 $p'$  = the probability that II will stop I.  
 $(1-p')$  = the probability that I will succeed despite II's efforts.  
 $px + (1-p)0 = px$  = the expected value to I of the effort to stop II.  
 $px + (1-p)10$  = the expected value to II of an attempt to join an association in the face of I's opposition.

$$p = .9$$

$$p' = .2$$

The state of nature is a trifle less attractive. I has a very good chance of blocking II, while II has a slender chance of blocking I. Under these assumptions, I has no dominant strategy. II's dominant strategy is *B'*. I, recognizing this, chooses *D*. The payoff is (7.2, 8.2), and the strategy pair is that II attempts to join a protective association while I tries to stop him.

iii. Let  $x = 6$

$$p = .4$$

$$p' = .7$$

The state of nature is not so hot. I has a fair chance of stopping II, and II has a good chance of stopping I. I's dominant strategy is *B*; II's dominant strategy is *B'*; the outcome is (5.5), and the strategy pair is that each attempts to join and attempts to prevent the other from joining a protective association. This is a "prisoner's dilemma," since any of the state of nature outcomes is mutually preferable.

However, all of this is utterly irrelevant to questions of serious political philosophy! It is also very odd-sounding to anyone who has been brought up, theoretically speaking, on the great traditions of Western political writing. In the last section of this Article, I shall try to come to terms with the deeper meaning of that oddness. Now let us turn to some considerations of greater moment. In the next section of my discussion, I shall stand off a bit from the detail of Nozick's argument, and raise objections to certain of the assumptions that seem to underlie his approach to political philosophy.<sup>26</sup>

#### AN EXTERNAL CRITIQUE OF THE ARGUMENT

Perhaps the most irritating weakness of Nozick's book is its complete failure to take account of the most obvious and well-known facts of human motivation and social experience. For example, much of his discussion of the workings of a protective association seems to presuppose that the serious rights-violations against which one needs protection, are committed, by and large, by the sorts of solid citizens who will have joined a competing association, will be paid up on their premiums, and will have known addresses where they can be found. This may indeed be so in a small, rural society—one in which everyone knows

26. For the purpose of organizing my remarks in this Article, I have distinguished in the titles of my sections between "internal" and "external" criticisms of *Anarchy, State, and Utopia*. The distinction, however, is scarcely fixed, and certainly not of any philosophical importance, so readers who do not find it intuitively clear are urged to ignore it.

everyone else, and in which an act of barn-burning or cattle-rustling can pretty certainly be laid at the door of those no-account Finkelstein brothers. But in the context of big-city street crime, Nozick's model is simply irrelevant. To put the point more generally, Nozick presupposes a society so settled, so orderly, that one might never feel the need for a protective association at all, let alone a state!

Nozick seems to me equally insensitive to the psychological, social, and institutional problems involved in creating and staffing a responsible, controllable police force, whether "public" or "private." The problem begins as soon as one introduces the notion of an *agent*. An agent is a private individual who adopts a social role. As an occupant of that role, he has rights, powers, responsibilities, and duties which he would not have were he not occupying the role, and which he puts aside when he steps out of the role. Thence—given the limits of the power of reason—comes the function of uniforms, titles, oaths of office, and similar accoutrement. They serve both to inform others of the role one is playing and to strengthen one's identification with the role. From this follows also the importance of internalizing the norms associated with a role, as opposed merely to making the appropriate adjustments in one's expected utility calculations. Nozick knows all of this, of course. He simply ignores it in the construction of his model of the rational individual and his analysis of the moral relationships between individuals.

Perhaps we can develop the philosophical underpinnings of these observations more systematically by examining the protective association on which Nozick erects his justification of the state. Following the standard libertarian account, Nozick represents such associations as companies that offer a service in the market, advertise for customers, promote sales by such devices as 13 weeks free protection with a 2-year subscription, money-back guarantees, and so forth. As he repeatedly insists, these companies are *groups of individuals*, and they have only individual rights and aggregates of individual rights which they, as individuals, exercise either directly or through their agents. There are no emergent rights, attaching only to corporate bodies and incapable of being decomposed into component individual rights.

The possibility of a protective association (that is to say, of a morally legitimate protective association) rests on four supposed moral facts, asserted (but not shown) to be facts by Nozick:

1. Each person in the state of nature has the right to enforce his (other) rights in a morally proper manner, and to exact suitable com-
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pensation in an appropriate manner from those who have violated his rights.

2. Each person has the right—suitably hedged around—to punish rights violations against third parties.

3. Several persons may, through free and mutual agreement, do collectively in the way of rights enforcement and infraction punishment whatever they may do severally and singly.

4. An individual, and hence a group of individuals, may assign the tasks of enforcement, punishment, and so forth, to other persons *as their agents* (perhaps, but not necessarily, as their employees). These agents will act *not* in their own right as persons, but in their role as the authorized representatives of others. Rights are transferable in such manner that one person might, through a number of such transfers, come to be the bearer of many rights, just as one representative might bear many proxies in a committee election, or one lawyer represent the property interests of many clients in a suit.<sup>27</sup>

The operative assumption is clearly assumption 4, which underlies the moral legitimacy of protective associations as opposed to mere mutual aid societies. Let us assume that I can assign my rights to an agent, hire him to represent me, to do in my name what I have a right to do but what he, merely as an individual, might not have the right to do. Even granting all that, it must be obvious that I would stand under an obligation to monitor the actions of my representative, to ascertain that he has done only what I have authorized him to do, and *that* only in permissible ways. This obligation follows from the fact that I have the same obligation when I act as my own agent. If my agent violates the rights of others, I as well as he can be held responsible.<sup>28</sup>

Although it may be a relatively simple matter to monitor the behavior of my personal bodyguard, my personal lawyer, or the holder of my personal proxy, it very quickly becomes impossible in practice for me to exercise effective oversight as the protective association grows. Bureaucratic rationalization and institutionalization take over. It is not I who hire the association's enforcers (or private policemen); bureaucrats in the association's employment office do. I merely write out a

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27. To see the force of this assumption, we need only observe that even though *A*, in a state of nature, has a right to punish *B*'s violation of *C*'s rights, he may *not* have the same right that *C* does to punish *B*. *C* may have the right to use riskier methods of defense or of compensation; he may have a right, that *A* does not have, to forgive *B* for the infraction, or to offer *B* alternative modes of compensation. Should *A* become the agent of a protective association to which *C* has transferred his rights of retaliation and enforcement, however, he would then acquire in his role as *C*'s agent the rights that *C*, but not he, possessed in the state of nature.

28. This is a point on which Nozick's mentor, Locke, lays heavy emphasis. See J. LOCKE, *supra* note 2, at 365-66.