

Demoktesis

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E have justified the minimal state, overcoming individualist anarchist objections, and have found all of the major moral arguments for a more extensive or powerful state inadequate. Despite this, some readers will continue to find the minimal state frail and insubstantial.¹ Robustness, in their view, would consist of some asymmetry in rights between the (individuals jointly composing the) state and an individual who remains in a state of nature with respect to it (and them). Furthermore, a robust state would have more power and a larger legitimate domain of action than defensive functions. There is *no* legitimate way to arrive at the asymmetry in rights. Is there some way to *continue* our story of the origin of the (minimal) state from the state of nature to arrive, via only legitimate steps which violate no one's rights, at something more closely resembling a modern state? ² Were such a continuation of the story possible, it would illuminate essential aspects of the more extensive states people everywhere now live under, laying bare their nature. I shall offer a modest effort in that direction.

CONSISTENCY AND PARALLEL EXAMPLES

But first something must be said about the difficulties in convincing someone to change his evaluation of a case by producing a parallel example. Suppose that you are trying to convince me to change my evaluation of a case in this way. If your parallel example is not close, I can accept your evaluation of it while maintaining my original evaluation of the case in question. The closer the parallel example, the more will I be prone to see *it* through the filter of my original evaluation. ("That's not so bad after all, for it's just like. . .") There is a similar difficulty with deductive arguments, because a person can reject one of the premisses he previously accepted rather than accept an unwelcome conclusion; but the difficulty often is less pressing. For a long chain of deductive reasoning enables one to start considerably far off, with premisses the person is sure of and won't see through the filter of his rejection of the conclusion. Whereas an example, to be a convincing parallel, must be very close by. (Of course, the longer the chain of reasoning the more prone the person will be to doubt that the conclusion *does* follow; and a person can reconsider his acceptance of statements after he sees what follows from them.)

You might try to isolate my judgment or evaluation about your starting place from my judgment or evaluation of the thing to be affected (thereby achieving the effect of a long chain of reasoning) by presenting a *chain* of examples. You begin with an example far off and step by step arrive at one exactly parallel in structure to the one under dispute. The challenge would be for me, who agrees with you about the far-off initial example (whose distance from the case in question has isolated it from the contamination of being seen through that case's perspective), to explain where and why, in the step-by-step sequence of pairwise similar examples, I change my judgment. But such challenges to draw the line rarely convince anyone. ("It's a problem to draw the line, I admit, but wherever it gets drawn it must be on the other side of my clear judgment about the case in question.")

Your strongest case would be made by an exactly parallel example that was glowingly clear in its own right, so my initial judgment about it wouldn't be shaped or controverted by my

judgment about the case under dispute. It is enormously difficult to find such lovely examples. Even with one, you would face the task of explaining wherein it differs from its parallel (under dispute), so that I make one judgment about it and another about the parallel; *and* also the task of showing that *this* difference does *not* make the cases, for the purposes of the argument, *nonparallel*.³

There is a more general puzzle about consistency arguments which lean heavily on the question, "How do you distinguish this case from that?" Philosophers of science often claim that for any given body of data there are an infinite number of possible explanations; for the explanatory relation E and any body of data d , an infinite number of alternative potential explanations stand in the relation E to d . We shall not linger long over why this is said. (Is it *really* enough merely to say that through any finite number of points an infinite number of different curves can be drawn?) There has not, to my knowledge, been any argument presented to show that for each body of data there exists at least *one* explanation, much less an infinite number! It is difficult to know whether the claim is true (one would like to see it proven as a theorem) in the absence of an adequate account of the relation E . If all we yet possess are necessary conditions for E , perhaps the imposition of further conditions to attain sufficiency will so restrict E that there won't be an infinite number of things standing in E to d . (Though perhaps there is a general argument to show how one can always get new things standing in E to d , out of old ones that so stand, without repetitions, on *any* plausible construal of E .)

The usual conditions on explanation require that what stands in E to d essentially contain some lawlike or theoretical statement. In the moral case, what correspond to lawlike statements are moral principles. Isn't it equally plausible (or implausible) to suppose that *any* given set of particular moral judgments can be accounted for by an infinite number of alternative moral principles (not all of them correct)? The usual requirement that moral principles not contain proper names, indexical expressions, and so on, corresponds to the requirement of the philosopher of science that fundamental lawlike statements not contain positional predicates.⁴ The hope of using generalization conditions to reach the result that only one general moral principle is compatible with a large number of particular moral judgments seems akin to supposing

that only one fundamental lawlike statement would account for a given body of data. And, hoping to shift someone off a particular moral judgment by challenging him to distinguish it from another judgment he refuses to make, that is to reconcile it with the opposite judgment he makes, seems akin to supposing that for some logically consistent body of data there is *no* fundamental lawlike statement or set of fundamental lawlike statements that would account for it.

These suppositions are very strong and go far beyond anything anyone has shown. What then can anyone hope to prove by generalization arguments in ethics? More plausible than the belief that no fundamental moral statement at all (satisfying generalization conditions) accounts for both of the judgments a person makes is the belief that no fundamental moral statement does so which uses only concepts available to *that* person. And one may think one reasonably can demand, if not that the person *come up* with the fundamental moral statement which accounts for his judgments, at least that there *be* one in his moral universe; that is, one using only *his* moral concepts. There is no guarantee that this will be so; and it is plausible to claim that he may not merely reply: "Well, some moral genius could think up new moral concepts and theoretical terms, as yet undreamt of, and in terms of them account for all of my particular judgments via only fundamental principles." One would have to explain and explore the reasons why a person cannot just rest content with the belief that some fundamental moral law or laws (using some concepts or other) account for all of his judgments. This would appear to be a manageable task.

The difficulties about parallel examples mentioned above apply to our current procedure. In the probably vain hope that something can be done about the contamination of judgment when one case is seen through a settled view about another, I ask the reader to catch and check himself if he finds himself thinking, "But that's not so bad, because it's just like. . . ." Now for the derivation of a more extensive state from our minimal one.

THE MORE-THAN-MINIMAL STATE
DERIVED

In the state of nature, property is acquired initially, let us suppose, in accordance with the principle of justice in acquisition, and thereafter in accordance with the principle of justice in transfer, by exchange of owned property for owned property or for services or commitments, or by means of gifts. Perhaps the precise contour of the bundle of property rights is shaped by considerations about how externalities may be most efficiently internalized (with minimum cost, and so on).⁵ This notion merits some examination. The property rights of others internalize negative externalities of your activities insofar as you are required to compensate these others for your activities' effects on their property; your property rights internalize positive externalities of your activities insofar as these activities raise the value of things that you can first acquire property rights in. Given boundaries drawn, we can see, roughly and abstractly, what a system that internalized all negative externalities would be like. What, though, would the full internalization of all *positive* externalities involve? In its strong form, it would involve your (each person's) receiving the full benefits of your (his) activities to others. Since benefits are hard to create, let us imagine this involves the transfer of benefits from others to you, returning the others to the same indifference curve they would have occupied if not for your activities. (In the absence of unrestrictedly transferrable utility, there is no guarantee that this internalization will lead to the agent's receiving the same amount of benefit as the recipient would have without this internalization.) At first, it strikes one that such strong internalization would eliminate *all* benefits of living in society with others; for each benefit you receive from others is removed and transferred (insofar as possible) back to these others. But since people will desire receiving this payback for benefits rendered, in a free society there will be competition among people to provide benefits for others. The resulting market price for providing these benefits will be lower than the highest price the recipient would be willing to pay, and this consumers' surplus would be a benefit of living in a society with others. Even if the society were not free and did not

allow price competition among potential providers of a benefit (but instead used some other selection device to determine who would provide the benefit) there still would be benefit to living in a society with others. In each situation of full payback for benefits received, there also is full receipt for benefits provided to others. So the advantages of living in society under this scheme would not be the benefits others provide you, but rather the payback they give you for the benefits you provide them.

Here, however, the scheme becomes incoherent if pushed to another level. For you benefit from living in a society where others repay you for the benefits you provide them. Is *this* benefit that the presence of others provides you to be internalized as well, so that you pay back fully for that? Do you, for example, pay back your expected payback from others? Clearly this question can be iterated an indefinite number of times, and since receiving payback is a benefit of coexisting with others, there can be no stable result of internalizing *all* positive externalities. Considerations about drawing forth the activities would lead to a system of person X's paying back Y for "ordinary" benefits Y provides, instead of one in which Y pays X back for the benefits Y receives from X by X's being present and paying Y under the "ordinary" system. For under the latter system the benefits would not get provided initially. Also, since it rides piggyback on the "ordinary" one, it cannot *replace* it. In the absence of the "ordinary" system and *its* payback benefits, there is nothing for the latter system to operate upon.

Economists' discussions of internalizing positive externalities do not focus upon the *strong* principle of full payback of benefits. Rather, their concern is that there be more than sufficient payback to cover the costs to the agent of performing the activity with the positive externalities, so that the activity will be called forth. It is this *weak* form of payback, which suffices for economic efficiency, that constitutes the subject of the economic literature on internalizing (positive) externalities.

Returning to our derivation of a more-than-minimal state: people do not conceive of ownership as having a thing, but as possessing rights (perhaps connected with a thing) which are theoretically separable. Property rights are viewed as rights to determine which of a specified range of admissible options concerning some-

thing will be realized. Admissible options are those that do not cross another's moral boundary; to reuse an example, one's property right in a knife does not include the right to replace it between someone else's ribs against their will (unless in justified punishment for a crime, or self-defense, and so on). One person can possess one right about a thing, another person another right about the same thing. Neighbors immediately surrounding a house can buy the right to determine what color its exterior will be, while the person living within has the right to determine what (admissible thing) will happen inside the structure. Furthermore, several people can jointly possess the same right, using some decision procedure to determine how that right would be exercised. As for people's economic situation, the free operation of the market, some people's voluntarily uniting (kibbutzim, and so on), private philanthropy, and so on, greatly reduces private destitution. But we may suppose it either not wholly eliminated, or alternatively that some people are greatly desirous of even more goods and services. With all this as background, how might a state more extensive than the minimal one arise?

Some of these people desirous of more money hit upon the idea of incorporating themselves, of raising money by selling shares in themselves. They partition the rights that until that time each person alone possessed over himself into a long list of discrete rights. These include the right to decide which occupation he would have a try at making a living in, the right to determine what type of clothing he would wear, the right to determine whom of those willing to marry him he would marry, the right to determine where he would live, the right to determine whether he would smoke marijuana, the right to decide which books he would read of all those others were willing to write and publish, and so on. Some of this vast array of rights these people continue to hold for themselves, as before. The others they place on the market; they sell separate shares of ownership in these particular rights over themselves.

At first, solely as a joke or a novelty, people pay money to buy partial ownership of such rights. It becomes a fad to give another person gifts of ridiculous stock, either in oneself or in a third person. But even before the fad wears thin, others see more serious possibilities. They propose selling rights in themselves that might

be of real use or benefit to others: the right to decide from which persons they could buy certain services (which they call occupational licensure rights); the right to decide what countries they would buy goods from (import-control rights); the right to decide whether or not they would use LSD, or heroin, or tobacco, or calcium cyclamate (drug rights); the right to decide what proportion of their income would go to various purposes independently of whether they approved of these purposes (tax rights); the right to determine their permitted mode and manner of sexual activity (vice rights); the right to decide when and whether they would fight against and kill whom (draft rights); the right to decide the range of prices within which they could make exchanges (wage-price-control rights); the right to decide what grounds were illegitimate in hiring or selling or renting decisions (antidiscrimination rights); the right to force them to participate in the operation of a judicial system (subpoena rights); the right to requisition bodily parts for transplantation in the more needy (physical equality rights); *and so on*. For various reasons of their own, other people want these rights or want to exercise a say in them, and so enormous numbers of shares are bought and sold, sometimes for considerable sums of money.

Perhaps no persons completely sell themselves into slavery, or perhaps the protective associations do not enforce such contracts. At any rate, there are at most only a few complete slaves. Almost everyone who sells any such rights sells only enough to bring the total (though *very* extensive) up to ownership with some limits on its extent. Since there *are* some limits to the rights others hold in them, they are not completely enslaved. But many persons have the separate rights in themselves they put up for sale all bought up by one other individual or a small group. Thus even though there are some limits to the entitlement of the owner(s), considerable oppression is felt by these narrowly held people, subject to their shareholder's desires. Since this very extensive domination of some persons by others arises by a series of legitimate steps, via voluntary exchanges, from an initial situation that is not unjust, it itself is not unjust. But though not unjust, some find it intolerable.

Persons newly incorporating themselves write into the terms of each stock the provision that it not be sold to anyone already owning more than a certain number of shares of that stock. (Since the

more restrictive the conditions, the less valuable the stock, the number set is not very low.) Over time many of the original small holding companies in a person disintegrate, either because the owners sell their shares in scattered fashion when in economic need, or because many persons buy shares in the holding companies so that at the level of ultimate ownership there is enlarged and more widely dispersed shareholding in the person. As time goes on, for one reason or another just about everyone sells off rights in themselves, keeping one share in each right as their own, so they can attend the stockholders' meeting if they wish. (Given the minuscule power of their vote at these meetings, and the inattention with which their occasional speeches are heard, perhaps it is solely for reasons of sentiment that they retain shares in themselves.)

The enormous number of shares held and the dispersal in ownership of these shares leads to considerable chaos and inefficiency. Large stockholder meetings are constantly being held to make the varied decisions now subject to external determination: one about a person's hairstyle, another about his lifestyle, another about another's hairstyle, and so on. Some people spend most of their time attending stockholders' meetings or signing proxies over to others. Division of labor creates the special occupation of stockholders' representative, persons who spend all of their time at different meetings. Various reform movements, called "consolidation movements," come into being; two sorts are tried widely. There are the individual consolidating stockholders' meetings in which all who own any sort of stock in any right over some particular specified person meet together to vote. They vote one question at a time, with only those eligible on each question voting. (This consolidation increases efficiency because people who own some share in any right in a particular person tend to own shares in other rights in him as well.) Also there are the consolidated shareholders' meetings in which all persons holding shares in a given right in anyone meet together and vote; for example, the drug conventions, with votes taken on each person consecutively. (The increased efficiency here is gotten because people who buy a share of a particular right in one person tend to acquire shares in the same right in other persons.) Still, even with all of these consolidations it is an impossibly complex situation, taking inordinate

time. People try to sell off shares, holding onto one of a kind, "to have some say" as they put it. As people try to sell, the price of each share drops drastically, leading others to buy token shares of rights they don't yet hold. (Such shares are traded like baseball cards, with people trying to amass complete collections. Children are encouraged to collect as a way of preparing them for their future role of shareholder.)

This great dispersal of shares essentially ends the domination of one person *by another identifiable person or small group*. People are no longer under the thumb of *one* another. Instead almost everybody is deciding about them, and they are deciding about almost everybody. The *extent* of the powers others hold over an individual is not reduced; the change is in who holds it.

The system at this point is still much too time-consuming and unwieldy. The remedy is a great consolidational convention. Everyone gathers from far and wide, trading and selling shares, and by the end of a hectic three days (lo and behold!) each person owns exactly one share in each right over every other person, including himself. So now there can be just one meeting in which everything is decided for everybody, one meeting in which each person casts one vote, either by himself or by giving his proxy to another. Instead of taking up each person singly, general decisions are made for everyone. At first each person can attend the triannual stockholders' meeting and cast his votes: his own plus any he may have been given in proxy. But the attendance is too great, the discussion too boring and drawn out with everyone wanting to add his words. Eventually it is decided that only those entitled to cast at least 100,000 votes may attend the grand stockholders' meeting.

A major problem is how the children are to be included. A Great Corporation Share is a valuable and treasured holding, without which one is an isolated nonstockholder, powerless over others. For children to wait until their parents die so they could inherit shares would leave these children shareless for most of their adult lives. And not every family contains exactly two children. Shares cannot just be *given* to a youngster. Whose would be given, and would it be fair just to give away Great Corporation Shares when others had bought theirs? So splitting is introduced as a way of allowing young people to enter the guild of stockholders. In the time since each previous triannual stockholders' meeting, *m* stock-

holders have died and n persons have come of age. The m shares revert to the Board of Directors and are retired, and each of the s remaining shares outstanding splits $(s+n)/s$ for one, with the fractions being merged to form n new shares that are distributed to the entering youngsters. These are not distributed to them gratis (that would be unfair) but in exchange for their incorporating themselves and signing over all of the stock in themselves to the corporation. In exchange for the stock in themselves, they each receive a Great Corporation Share and become a member of the guild of stockholders, a sharer by right in the joint decisions of the corporation, a part-owner of each other person. Each old stock is in a position to split because the influx of new persons who join the guild means that each stock is a share in more people. So the people joining and the stock splitting justify each other.

People view the exchange as an absolutely even trade. Before the exchange a person has one full share in himself, and not even a partial share in any other person. With $s+n-1$ other individuals (to use the same letters as before) in the society, each person incorporates himself into $s+n$ shares, signing over each of these shares to the Board of Directors. In exchange for this he gets a $1/s+n$ th share in each of the other $s+n-1$ persons in the society, *plus* the same share in himself. Thus he has $s+n$ shares each representing $1/s+n$ th ownership in each of the $s+n$ individuals in the society. Multiplying the number of shares he holds by the fraction of ownership in someone that each share represents we get $(s+n)(1/s+n)$, which is equal to 1. What he ends up with from the exchange totals to one full ownership, which is exactly what he signs over to the Board of Directors for it. People say, and think, that when everybody owns everybody, nobody owns anybody.⁶ Each person believes that each other person is not a tyrant but rather someone just like himself, in exactly the same position. Since everyone is in the same boat, no one views the situation as one of domination; the large number of passengers in that boat make it more tolerable than a one-person rowboat. Since the decisions apply to all equally, one gets (it is said) the rule of impersonal and nonarbitrary regulations rather than the rule of men. Each person is thought to benefit from the efforts of the others to rule wisely over all, and each is an equal in this endeavor, having an equal say with the others. Thus is established the system of one

shareholder, one vote. And perhaps fraternal feelings flourish as people realize that they all are inextricably intertwined, each equally shareholder and shareheld, each his brothers' keeper and his brothers' kept.

Occasionally some few malcontents refuse to accept their Great Corporation Shares and refuse to sign the stockholders' guild Scroll of Membership. Refusing to put their John Hancocks on the Declaration of Interdependence, they say they want no part of the system and refuse to grant the system any part of them. Several of them go so far as to call for the dismantling of the corporation! Hotheads on the Board of Directors call for their incarceration, but in view of the youngsters' noncooperation it seems that they haven't yet granted the Board the explicit right to do that. Some members of the Board maintain that by accepting the benefits of growing up under the wing of the corporation and by remaining in its area of influence, the youngsters have already tacitly consented to be shareheld, and so no further act from them is needed. But since everyone else realizes that tacit consent isn't worth the paper it's not written on, that claim commands little support. One member of the Board says that, since all children are made by their parents, their parents own them and so the Board's ownership shares in the parents thereby give it ownership shares in the children. The novelty of this line militates against its use at such a delicate moment.

We slow the dramatic pace of our tale in order to consider Locke's views on parental ownership of children.⁷ Locke must discuss Filmer in detail, not merely to clear the field of some alternative curious view, but to show why that view doesn't follow from elements of his own view, *as one might suppose it did*. That is why the author of the *Second Treatise* goes on to compose the *First*.⁸ Ownership rights in what one has made would seem to follow from Locke's theory of property. Hence Locke would have a real problem if God who made and owned the world *gave* Adam sole ownership in it. Even though Locke thought and argued that this hadn't happened (chap. 4), he also must have wondered what the consequences would be if it had happened. He must have wondered if his views would entail that *if it had* then others would need Adam's permission to use his property to sustain themselves physically and so would be within his power. (If so and if a gift

can be bequeathed then. . . .) Views whose satisfactory result (no domination of some by others) depends upon a contingency which could have been otherwise (no such gift by God to Adam) should leave someone holding them very uncomfortable. (I ignore here the reply that God is necessarily good and so his not making such a gift is *not* contingent. A moral view which must take *that* route to avoid being overthrown by facts that look accidental is very shaky indeed.) Thus Locke discussed (I, sects. 41, 42) an essential element of his theory when he speaks of every man's "title to so much out of another's plenty, as will keep him from extreme want, where he has no means to subsist otherwise," which the other may not withhold.

Similarly Locke must explain why parents don't own their children. His major argument (I, sects. 52–54) seems to depend upon the view that one owns something one makes only if one controls and understands all parts of the process of making it. By this criterion, people who plant seeds on their land and water them would not own the trees that then grow. Surely most of what most of us do is to intervene in or originate processes whose complete operation we do not understand, yielding a result we could not completely design. (Who knows *all* of what physicists say is relevant to materials having the properties they do and to forces working as they do; and who knows what the physicists don't know?) Yet in many such cases, Locke does want to say that we own what we produce.

Locke offers a second argument: "Even the power which God himself exerciseth over mankind is by right of fatherhood, yet this fatherhood is such a one as utterly excludes all pretense of title in earthly parents; for he is King because he is indeed maker of us all, which no parents can pretend to be of their children" (I, sect. 54). It is difficult to puzzle this out. If the point is that people cannot own their children because they themselves are owned and so incapable of ownership, this would apply to owning everything else they make as well. If the point is that God, far more than a child's parents, is the maker of a child, this applies to many other things that Locke thinks can be owned (plants, nonhuman animals); and perhaps it applies to everything. (The *degree* to which this holds seems an unsubstantial base upon which to build a theory.) Note that Locke is *not* claiming that children, because of

something about *their* nature, cannot be owned by their parents even if these make them. He does *not* claim that something about people (who have not done anything unjust for which their lives are forfeit, sects. 23, 178) bars ownership in them by their maker, for he holds that God owns man by virtue of making him in all his exalted natural properties (sect. 6).

Since Locke does not hold that (1) something intrinsic to persons bars those who make them from owning them—to avoid the conclusion that parents own their children, he must argue either that (2) some condition within the theory of how property rights arise in productive processes excludes the process whereby parents make their children as yielding ownership, or (3) something about parents bars them from standing in the, or a particular, ownership relation, or (4) parents do not, really, make their children. We have seen problems with Locke's attempt to work 2, 3, and 4. The latter two being unpromising, someone of Lockean persuasion would have to work out a variant of 1 or 2.

Note that Locke's strong denial that parents make their children, causing these beings, removes one base on which to found the responsibility of parents to care for their children. Thus Locke is reduced to saying that the law of nature requires such parental care (sect. 56), as a brute moral fact, apparently. But this leaves unexplained why it requires the care *from the parents*, and why it isn't another case of someone's receiving "the benefit of another's pains, which he had no right to" (sect. 34).

Our tale now must be brought to a close. About the youngsters, it is decided they do not have to join the stockholders' guild, after all. They can refuse its benefits and leave the corporation area, without any hard feelings. (But since no settlement has survived on Mars for more than six months there are strong reasons for remaining on earth and becoming a stockholder.) Those invited to love it or leave it respond by claiming that since the corporation doesn't own all the land, anybody can buy some land in the corporation area and live as they wish. Though the corporation hadn't actually bought up all the land itself, the original corporation rules, adopted by everyone at the great consolidational convention, are viewed as prohibiting the secession of land from the corporation's control.⁹ Can the corporation, it is asked, allow another corporation to spring up in its midst? Can it tolerate the

dangers of isolated nonstockheld individuals; in a word, anarchy?

Some suggest that the recalcitrant people be allowed to opt out of the corporation yet remain within the territory. Why shouldn't they be allowed to stay in the midst of the corporation, choosing precisely those contacts with the corporation they wish to have, formulating their own personal package of rights and duties (above and beyond nonaggression) vis-à-vis other persons and the corporation, paying for the particular things they receive, living independently? ¹⁰

But others reply that this would be too chaotic; and that it also might undermine the corporate system. For others ("gullible others," it is said) also might be tempted to resign from the guild of shareholders. And who would be left? Only those least able to fend for themselves. And who would take care of them? And how would those who did leave manage on their own? And would fraternity flourish as greatly without universal shareholding, and without all persons (able to do so) being forced to aid others? Almost all view their historical experience as showing that this system of each person's having an equal say (within *some* specified limits) in the lives of all others is the best and fairest imaginable. Their social theorists agree that their system of *demoktesis*, ownership of the people, by the people, and for the people, is the highest form of social life, one that must not be allowed to perish from the earth.

In elaborating this eldritch tale we have arrived, finally, at what is recognizable as a modern state, with its vast panoply of powers over its citizens. Indeed, we have arrived at a *democratic* state. Our hypothetical account of how it might arise from a minimal state without any blatant violation of anyone's rights through a series of individual steps each arguably unobjectionable has placed us in a better position to focus upon and ponder the essential nature of such a state and its fundamental mode of relationship among persons. For what it's worth.

Other tales, some of unjust origins, also might be told. Consider the following sequence of cases, which we shall call the Tale of the Slave, and imagine it is about you.

1. There is a slave completely at the mercy of his brutal master's whims. He often is cruelly beaten, called out in the middle of the night, and so on.

2. The master is kindlier and beats the slave only for stated infractions of his rules (not fulfilling the work quota, and so on). He gives the slave some free time.
3. The master has a group of slaves, and he decides how things are to be allocated among them on nice grounds, taking into account their needs, merit, and so on.
4. The master allows his slaves four days on their own and requires them to work only three days a week on his land. The rest of the time is their own.
5. The master allows his slaves to go off and work in the city (or anywhere they wish) for wages. He requires only that they send back to him three-sevenths of their wages. He also retains the power to recall them to the plantation if some emergency threatens his land; and to raise or lower the three-sevenths amount required to be turned over to him. He further retains the right to restrict the slaves from participating in certain dangerous activities that threaten his financial return, for example, mountain climbing, cigarette smoking.
6. The master allows all of his 10,000 slaves, except you, to vote, and the joint decision is made by all of them. There is open discussion, and so forth, among them, and they have the power to determine to what uses to put whatever percentage of your (and their) earnings they decide to take; what activities legitimately may be forbidden to you, and so on.

Let us pause in this sequence of cases to take stock. If the master contracts this transfer of power so that he cannot withdraw it, you have a change of master. You now have 10,000 masters instead of just one; rather you have one 10,000-headed master. Perhaps the 10,000 even will be kindlier than the benevolent master in case 2. Still, they are your master. However, still more can be done. A kindly single master (as in case 2) might allow his slave(s) to speak up and try to persuade him to make a certain decision. The 10,000-headed master can do this also.

7. Though still not having the vote, you are at liberty (and are given the right) to enter into the discussions of the 10,000, to try to persuade them to adopt various policies and to treat you and themselves in a certain way. They then go off to vote to decide upon policies covering the *vast* range of their powers.
8. In appreciation of your useful contributions to discussion, the 10,000 allow you to vote if they are deadlocked; they commit themselves to this procedure. After the discussion you mark your vote on a slip of paper, and they go off and vote. In the eventuality

that they divide evenly on some issue, 5,000 for and 5,000 against, they look at your ballot and count it in. This has never yet happened; they have never yet had occasion to open your ballot. (A single master also might commit himself to letting his slave decide any issue concerning him about which he, the master, was absolutely indifferent.)

9. They throw your vote in with theirs. If they are exactly tied your vote carries the issue. Otherwise it makes no difference to the electoral outcome.

The question is: which transition from case 1 to case 9 made it no longer the tale of a slave? ¹¹

HYPOTHETICAL HISTORIES

Might a more-than-minimal state arise through a process of boycott? People favoring such a state might refuse to deal or exchange or have social relations with those who don't commit themselves to participate in that state's additional apparatus (including the boycott of nonparticipants). The more who sign up pledging themselves to boycott nonparticipants, the more restricted are the opportunities to these nonparticipants. If the boycott works completely, all might end up choosing to participate in the additional activities of the more-than-minimal state, and indeed might then give it permission to force them to do things against their will.

Under this resulting arrangement, someone *could* refuse to enter or could opt out of the additional processes and constraints, if he was willing to face however effective a social boycott might be mounted against him; unlike a more-than-minimal state, where everyone is compelled to participate. This arrangement, which would *mirror* certain institutional features of a more-than-minimal state, illustrates how coordinated actions which people might choose can achieve certain results without any violation of rights. It is highly unlikely that in a society containing many persons, an actual boycott such as the one described could be maintained successfully. There would be many persons opposed to the additional apparatus who could find enough others to deal with, establish a protective agency with, and so on, so as to withstand the boycott

in an independent enclave (not necessarily geographical); furthermore, they could offer incentives to some participants in the boycott to break it (perhaps secretly, to avoid the response of the others who continue to maintain it). The boycott would fail, with more leaving it as they see others doing so and profiting by it. Only if almost all in the society so adhere to the ideal of the more-than-minimal state as to welcome its additional restrictions and to resist personal gain to effectuate the boycott and are so concerned and involved as to continually mold their relations to achieve the goal will the analogue of the more-than-minimal state be established. It is *only* the analogue of the more-than-minimal state, under which each person retains the choice of whether to participate or not, that is legitimate; and only when it arises in the fashion described.

How should hypothetical histories affect our current judgment of the institutional structure of a society? Let me venture some tentative remarks. If an existing society was led to by an actual history that is just, then so is that society. If the actual history of an existing society is unjust, and *no* hypothetical just history could lead to the structure of that society, then that structure is unjust. More complicated are the cases where the actual history of a society is unjust yet some hypothetical just history could have led to its current structure (though not perhaps to the particular distribution of holdings or positions under it). If the hypothetical just history is "close" to the actual history, whose injustices played no significant role in bringing about or maintaining the institutional structure, the actual structure will be as just as one can expect to get.

If the hypothetical just history involves each person's consenting to the institutional structure and to any limitations on his rights (specified by the moral side constraints on the behavior of others) it embodies, then if some actual person would not consent, one must view the institutional structure as unjust (unless it counts as just via some other hypothetical history). Similarly, one must hold the institutional structure unjust if the hypothetical just history involves some people's consenting who didn't, and some now would not assent to those others having done so. If the institutional structure could arise by some hypothetical just history which does not involve anyone's consent to that structure, then

one's evaluation of the structure will depend upon one's evaluation of the process which would give rise to it. If that process is viewed as better (along dimensions other than justice where, by hypothesis, it excels) than the actual history, this probably will improve one's evaluation of the structure. That a just process would have led to the institutional structure, but only if manned by despicable individuals, will not enhance one's evaluation of that institutional structure.

Since a structure that could arise by a just process which does not involve the consent of individuals will not involve limitations of their rights or embody rights which they do not possess, it will be closer, *insofar as rights are concerned*, to the starting point of individual rights specified by moral side constraints; and hence its structure of rights will be viewed as just. Holding the injustice of their actual histories constant, institutional structures closer to the rights individuals possess in virtue of the moral side constraints will be more just than institutional structures more distant. *If* an institutional structure embodying *only* individual rights can arise *unjustly*, one will be willing to stick with such a one even if it did (rectifying particular injustices of position and holding) and let it be transformed into whatever other institutional structure arises out of it. Whereas if an institutional structure diverges from the individual rights embodied in the moral side constraints, one will not be willing to let it continue to operate, even if it *could have* arisen via some hypothetical just history; for the current limitations on rights will significantly affect what arises out of it, and perhaps even those existing limitations would not be consented to. The situation of individual rights will have to be reestablished.