

# Nozick on Rights

Capitalism

University of Virginia

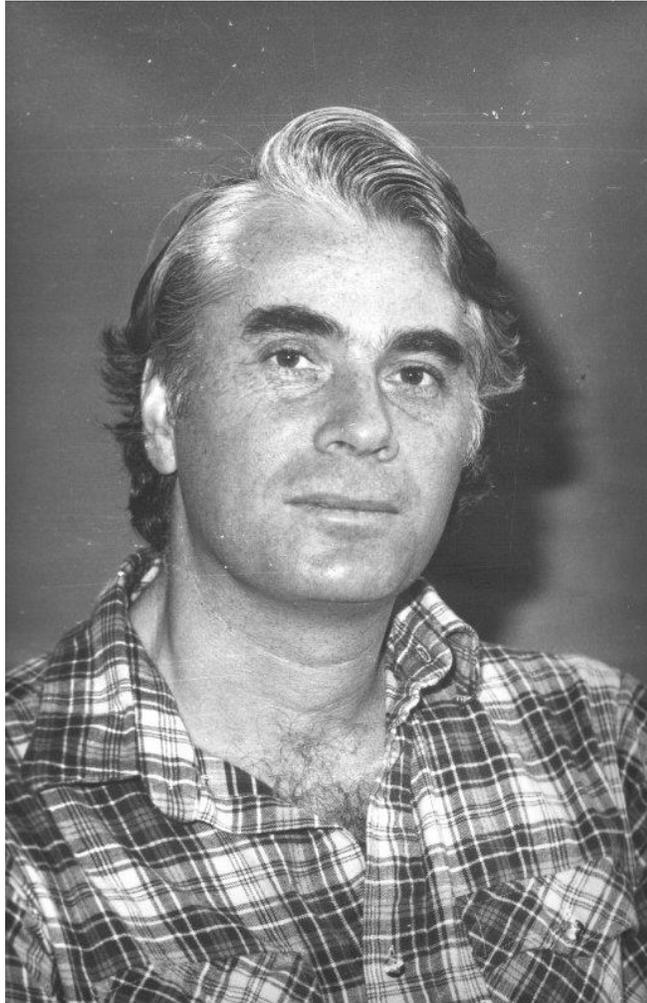
Matthias Brinkmann

# Contents

---

1. **Some Background**
2. Aims and Constraints
3. Nozick's Argument for Constraints

# Robert Nozick



**Robert Nozick (1938—2002)**

Analytical libertarianism

Harvard, colleague of Rawls

*Anarchy, State, and Utopia* (1974)

The best-looking philosopher?

# Some Background

- Nozick gives a hypothetical story about how a minimal state might arise:
  - ❑ **The private protective agency:** a private agency which people hire to enforce and protect their property rights, competing with other private agencies
  - ❑ **A dominant protective agency:** a private agency which people hire to enforce and protect their property rights, and which has a *de facto* monopoly
  - ❑ **The ultra-minimal state:** a state which claims a monopoly of power, but only enforces and protects the property rights of those who contract with it
  - ❑ **The nights-watchman/minimal state:** a state which claims a monopoly of power, enforcing and protecting the property right of everyone on its territory
- **Problem I.** Nozick wants to defend the minimal state (but not more than it). But isn't the minimal state redistributive?
- **Problem II.** The ultra-minimal state does not violate rights, but does leave the rights of some unprotected. Is that not paradoxical?

# Contents

---

1. Some Background
2. **Aims and Constraints**
3. Nozick's Argument for Constraints

# Constraints and Goals

- **Goals:** You should aim to bring about the goal X
- **Constraints:** You should not do actions of type A under any circumstances
  
- **Example: Murder.**
  - ❑ **Constraint:** do not kill the innocent
  - ❑ **Goal:** minimise the number of innocents being killed
- “Utilitarianism of rights”: minimise the overall number of rights being violated
  - ❑ Nozick: this is not how rights work
  - ❑ Sen: this is how rights work

# Sen's Example

Ali is in a location unknown to Donna, but Donna knows that there are ten racist bashers who are following him to beat him up. Donna can warn Ali, but only by breaking his house, and finding a note he left indicating his whereabouts. Should Donna break into Ali's house? (Sen, "Rights and Agency", Philosophy & Public Affairs 1982)

TABLE 1  
LONG-TERM UTILITIES

| State of Affairs | Ali's Utility | Each Basher's Utility (10 Bashers) | Utility Sum Total |  |
|------------------|---------------|------------------------------------|-------------------|--|
| No bashing       | 15            | 5                                  | 65                | - 15 for violation of Ali's right to privacy = 50          |
| Bashing          | 10            | 6                                  | 70                | - 50 for violation of Ali's right to bodily integrity = 20 |

# Constraints and Moral Status

- Consider some cases:
  - ❑ Case 1. In a burning museum, you can destroy one **painting** to save five other paintings
  - ❑ Case 2. In a burning orphanage, you can kill one **orphan** to save five other orphans
  - ❑ Case 3. In a burning zoo, you can kill one **zebra** to save five other zebras
- Some intuitive reactions
  - ❑ Case 1. Most people would say it is **permissible** to destroy the one painting
  - ❑ Case 2. Most people would say it is **impermissible** to kill the one orphan
  - ❑ Case 3. People's reactions are likely to be mixed
- A possible explanation: there is something about people (and perhaps animals) such that we are not allowed to trade them off against each other
  - ❑ Call this the **moral status of persons**
  - ❑ But why do people have moral status?

# Are constraints irrational?

The side-constraint view forbids you to violate these moral constraints in the pursuit of your goals; whereas the view whose objective is to minimize the violation of these rights allows you to violate the rights (the constraints) in order to lessen their total violation in the society. (29)

- Imagine that there is some constraint C
  - ❑ Because it is a constraint, you should not violate it, even if this means other people will violate C many times
  - ❑ Because it is a constraint, you should not violate it, even if this means that **you** will violate C many times in the future
- If we care about C, why should we not care about how often C is violated?

# Questions

---

1. If we care about people, why would we not care about the absolute number of rights violations?
2. Do side-constraints have to be absolute? Can they allow exceptions?
3. Does accepting side-constraints mean that there cannot be any goals in our moral theory?

# Contents

---

1. Some Background
2. Aims and Constraints
3. **Nozick's Argument for Constraints**

# Moral Form and Moral Content

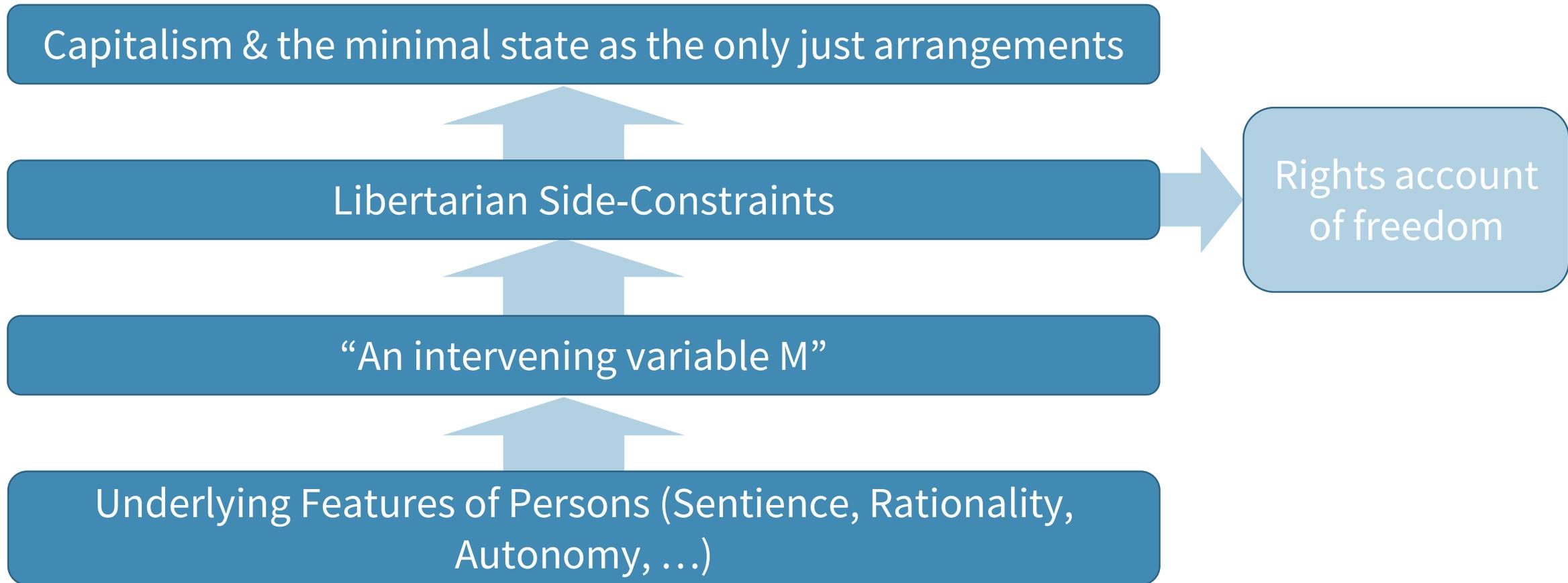
Nozick's argument “**from moral form to moral content**” (p. 34):

1. Morality includes side constraints.
2. The best explanation of why morality includes side constraints is the separateness of people.
3. The separateness of people entails libertarian side constraints (i.e., strong private property rights).

Thus,

4. It is likely that morality includes libertarian side constraints (i.e., strong private property rights).

# The Structure of the Argument



# Nozick on Moralised Freedom

Whether a person's actions are voluntary depends on what it is that limits his alternatives. [...] Other people's actions 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. (p. 262)

**Nozick's Marriage Example.** Imagine there are 26 heterosexual women and men, A and A\*, B and B\*, etc., each of them wanting to enter a monogamous marriage. Imagine that all of them rank the opposite sex in a strict order (A/A\* is more attractive than B/B\*, B/B\* is more attractive than C/C\*, etc.). Imagine that A marries A\*, B marries B\*, etc. Are Z and Z\* unfree when they are the only ones left over? Nozick:

Z and Z\* voluntarily choose to marry each other. The fact that their only other alternative is (in their view) much worse, and the fact that others chose to exercise their rights in certain ways, thereby shaping the external environment of options in which Z and Z\* choose, does not mean they did not marry voluntarily. [...] Similar considerations apply to market exchanges between workers and owners of capital. (p. 263)

# The Moral Grounds of Constraints

Nozick mentions five options for the grounds of constraints (p. 48):

1. Sentience and Self-Consciousness
2. Rationality
3. Free Will
4. Moral agency
5. Having a soul

Nozick: each of these are individually insufficient to ground constraints

- ❑ **Problem I.** It would appear that a person's characteristics, by virtue of which others are constrained in their treatment of him, must themselves be valuable characteristics. How else are we to understand why something so valuable emerges from them? (p. 48)
- ❑ **Problem II.** These moral grounds do not have a "perspicuous and convincing connection to moral constraints on behaviour" (p. 49)

# Questions

---

1. Is Nozick right that the alternative grounds don't work?
2. Does he succeed in solving the two problems?
3. Can he explain libertarian constraints?

# Nozick: The Meaning of Life (p. 48-51)

“A person’s shaping his life in accordance with some overall plan is his way of giving meaning to his life; only a being with the capacity so to shape his life can have or strive for meaningful life.” (p. 50)

- What is important is that we set aims for ourselves and actively pursue those aims
- The ability to shape one’s life combines features 2-4: rationality, free will, agency
- This overcomes **problem I**. The ability to shape one’s whole life is valuable because it allows us to create a meaningful life
- It is not quite clear how this account overcomes **problem II**.



# Summary

- ❖ Nozick distinguishes between moral constraints and moral goals. Rights work like the former
- ❖ An explanation of why there are constraints is that people are separate, or have moral status
- ❖ If there are libertarian side-constraints, we can provide a non-consequentialist argument for capitalism
- ❖ Nozick suggests that the ability to shape one's life grounds libertarian side-constraints, because it allows people to create meaning in their lives