

# Explanation, Justification, and Emergent Properties: An Essay on Nozickian Metatheory

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## 1 INTRODUCTION

In some ways, *Anarchy, State and Utopia* has been a victim of its own success. For over thirty-five years it has been one of the most provocative works in political philosophy, and the preeminent defense of Lockean libertarianism. Almost all readers have read it with an eye to its conclusions. Statists and redistributionists see it as something to be combated and defeated, libertarians start out to defend it or, at least, modify it in constructive ways. Given this it is hardly surprising that the second part of *Anarchy, State and Utopia*, arguing against the redistributive state, has been the focus of by far the most extensive, and famous, discussions. One shudders to think of how many essays have been written on Nozick's witty, four page, Wilt Chamberlain example.<sup>1</sup> The first part of *Anarchy, State, and Utopia*, in which Nozick argues against the anarchist, showing that minimal state is (in some sense) justifiable, has received much less attention. Eric Mack's contribution to this volume is an insightful analysis of Nozick's substantive case against anarchism, and how it might be modified to achieve success.

If within *Anarchy, State and Utopia* the first part generally goes unnoticed; within that part Nozick's path-breaking analysis of invisible hand explanations is almost entirely ignored within political philosophy.<sup>2</sup> Readers focus on Nozick's substantive claims, and not what he calls his "abstract" and "metatheoretical" comments about explanation and justification (ASU: 3).<sup>3</sup> This is partly Nozick's own doing; he directs readers away from his metatheoretical comments about the benefits of state of nature theories and invisible hands to his substantive account of the state of nature and the rise of the minimal state (ASU: 4). The proof of his method, he suggests, is in the pudding. I wish to take just the opposite course: I plan to examine the proof without the pudding. Or, rather, I wish to ask what Nozick would have proved if the pudding came out just as he hoped. If Nozick's argument against anarchism had fully

- 1 Most famously, perhaps, G.A. Cohen's "Robert Nozick and Wilt Chamberlain: How Patterns Preserve Liberty" in his *Self-Ownership, Freedom, and Equality* (Cambridge: Cambridge University Press, 1995), chap. 1.
- 2 I add within "political philosophy" as those concerned with social explanation and evolutionary theory have recognized its importance. See, for example, Edna Ullmann-Margalit, "Invisible Hand Explanations," *Synthese*, vol. 39 (1978): 263-91; Toni Vogel Carey, "The Invisible Hand of Natural Selection and Vice Versa," *Biology and Philosophy*, vol. 13 (1998): 427-442.
- 3 "ASU," of course, refers to *Anarchy, State, and Utopia* (New York: Basic Books, 1974); all references to this work are parenthetical in the text.

succeeded, what would it have shown? Contrary to the view of most commentators, I shall argue that it would have shown *a lot*. If the argument had succeeded, Nozick would have provided a powerful account of the realm of the political and demonstrated its moral permissibility and justifiability independent of collective choice or actual history. That is, Nozick would have fulfilled some of the core ambitions of political philosophy.

## 2 A SHORT SUMMARY

In what follows, then, I assume that Nozick's argument in the first part of *Anarchy, State and Utopia* ("State of Nature Theory, or How to Back into a State without Really Trying") is entirely successful. To recall, the starting point of the analysis is a non-political, Lockean, "state of nature." There are only individuals with their Lockean rights to life, liberty, and property. Following Locke, Nozick holds that each has executive power: she can enforce her own rights, punish transgressors, seek just compensation, and assist others in doing so (ASU: 10). Again closely following Locke, because individuals are judges in their own cases, their self-bias will lead them to err in their own favor: they will overestimate the harm done to them, and interpret rights claims in their own favor (ASU: 11). Conjoined with the executive power of each, we can expect disagreement and conflict about what is just. As I have argued elsewhere, Hobbes, Locke, and Kant all share the conviction that individuals, employing their private judgment about the dictates of justice, will inevitably disagree, and will be led to conflict.<sup>4</sup> At this point the social contract tradition appeals to a collective agreement according to which

all private judgment of every particular Member being excluded, the Community comes to be Umpire, by settled standing Rules, indifferent, and the same to all Parties; and by Men having Authority from the Community, for the execution of those Rules, decides all the differences that may happen between any Members of that Society, concerning *any matter of right*; and punishes those Offenses, which any Member hath committed against Society, which such Penalties as the Law has established.<sup>5</sup>

Famously, Nozick does not appeal to such an agreement. Instead, he proposes an "invisible hand" mechanism according to which each individual, acting only to best secure her own rights and interests, acts in such a way that the unintended outcome of a complex social interaction is, essentially, the Lockean state. Private judgment about the demands of morality is excluded, and some possess sole authority to

4 In my essay "The Property Equilibrium in a Liberal Social Order," *Social Philosophy & Policy*, forthcoming.

5 John Locke, *Second Treatise of Government* in *Two Treatises of Government*, edited by Peter Laslett (Cambridge: Cambridge University Press, 1960), §87. Emphasis added.

adjudicate the differences that may happen between any members of that society, concerning any matter of right; and punish those offenses, which any member has committed against society, with such penalties as the political authority establishes. This result, Nozick argues, emerges in the state of nature because individuals will realize that relying solely of self-enforcement of their right claims will be ineffective and dangerous for all the reasons that Locke pointed out. But the first obvious response is not to rush headlong into the state, but to form self-protective groups, in which individuals would agree to defend and enforce each other's rights. These groups, through, would have serious disadvantages:

....(1) everyone is always on call to serve a protective function .... and (2) any member may call out his associates by saying that his rights are being, or have been, violated. Protective associations will not want to be at the beck and call of their most cantankerous or paranoid members, not to mention members who might attempt, under the guise of self-defense, to use the association to violate the rights of others. Difficulties will also arise if two different members of the same association are in dispute, each calling upon his fellow members to come to his aid (ASU: 12-3).

More entrepreneurial and judicial protective agencies would arise to cope with these problems. So that a person is not constantly on call to engage in time-consuming and potentially dangerous enforcement activities, the protective agency would sell its enforcement services; people could buy a policy and so free themselves of actually engaging in enforcement and punishment. In order to cope with the problem of cantankerous, paranoid and criminal members, the agency would only act when, on the basis of its own settled standing rules, it decides that its clients have been wronged. At first there is no reason to think that these rules will be, in Locke's terms "indifferent, and the same to all Parties" — some agencies may have rules that manifestly favor their own clients. But while such agencies may be favored by cantankerous, paranoid, and criminal members, others will see their premiums going up as the agency constantly seeks to enforce biased claims on others. Most will abandon such agencies for those with more "indifferent" rules and procedures, which will tend to minimize enforcement costs and, so, premiums.

The next crucial step in Nozick's story is the rise of a dominant agency. Although he does not explicitly invoke the idea, rights enforcement has important increasing returns features: the more others join a specific agency, the greater the benefits of others doing so.<sup>6</sup> If everyone is a client of the same agency, all disputes will be internalized and so all disputes will be settled by its own standing rules and it will never actually have to battle other agencies. For these and other reasons (ASU: 15-18), we can expect a territory to come to be dominated by a single protective agency or a few acting as a combine.

<sup>6</sup> See W. Brian Arthur, *Increasing Returns and Path Dependence in the Economy* (Ann Arbor: University of Michigan Press, 1994). See ASU: 17.

At this point an “ultramiminal state” has arisen. Nozick thinks it falls short of our normal notion of a state because some individuals may have refused to join it for idiosyncratic reasons (some people after all still use Word Perfect despite the increasing returns of using Word). These individuals would either enforce their own rights or be members of boutique agencies; the dominant association would not defend them. The final step in the evolution of the state is for it to claim the right to judge whether non-members are employing rules and adjudication procedures that it deems fair; if it decides that such procedures are unacceptable it may ban their use against its members provided compensation is paid to the independents. This leads to two of Nozick’s most complex and controversial arguments in Part One. First, that provided compensation is paid the dominant agency may prohibit procedures that, on its view, run too great a risk that its members will be treated unjustly and, second, that adequate compensation can consist of providing protection services. If the dominant protection agency does this, he argues that it has evolved into a minimal state, claiming the sole authority to judge when coercion may be employed, and “taxing” some (its members) to pay for the protection of others (compensated independents).<sup>7</sup> We seem to have come very close to the Lockean state in which the dominant agency has authority for the execution of rules, decides all the differences that may happen between any members of that society, concerning any matter of right; and punishes those offenses, which any member hath committed against society, which such penalties it has established.

### 3 THE INVISIBLE HAND EXPLANATION OF THE STATE

#### *3.1 Nozick’s Analysis of Invisible Hand Explanations Applied to his Account*

Nozick not only emphasizes that this account of the rise of the state constitutes an invisible hand explanation, but spends a good deal of time analyzing the general idea of invisible hand explanations. The core of an invisible hand explanation is that (i) a certain pattern of human activity  $P$  arises which was produced by the intentional actions of the participants but (ii) at least in the pure case no one acted with the intention of bringing about  $P$ .<sup>8</sup> (As Nozick remarks, “No one, as they buy protection services from their local protective agency, has in mind anything so grand” as the creation of a Lockean state [ASU: 132]). Nozick identifies two mechanisms that can produce  $P$  from a set of actions and intentions not aiming at  $P$ : “filtering processes wherein some filter eliminates all entities not fitting a certain pattern, and equilibrium processes wherein each component part adjusts to local conditions, changing the local

<sup>7</sup> See, however, Eric Mack’s contribution to this volume.

<sup>8</sup> Nozick allows that there may be impure cases in which some participants intend  $P$  (ASU: 352, note 7). Compare Ullmann-Margalit, “Invisible Hand Explanations,” p. 287, note 9.

environments of others close by, so the sum of the local adjustments realizes a pattern.”<sup>9</sup>

The account of the rise of the state employs both mechanisms. Nozick supposes that people seek to act justly. To be sure, from an objective point of view some people act wrongly: after all, there is a dispute about rights claims and we must suppose that on a Lockean account one of the parties is, objectively, wrong. Nozick — and here he is faithfully following the social contract tradition — supposes that while there is an objective moral truth in such disputes, when we employ our reason we disagree. As Hobbes put it, no man’s reason constitutes right reason; that the use of private reason about objective morality leads us to disagree is perhaps the fundamental claim of the social contract tradition.<sup>10</sup> So rather than saying that each person acts rightly or morally, we can say that, overwhelmingly, people employ their private reason to act “within good faith” in interpreting the law of nature (ASU: 17). If state of nature/social contract theories take disagreement of private reason as the fundamental fact that makes individual rights enforcement unstable, an account of the rise of the state as a solution to this problem (whether via an invisible hand or a collective agreement) must retain this assumption.<sup>11</sup> An account that iterates interactions in a way that filters out bad-faith motivation will ensure that pattern *P* has been arrived at without any one acting badly (on the importance of this, see §4). If we are seeking to understand how individual rights bearers might solve their problem under the assumption of disagreement in private reason, but have doubts about the central design approach characteristic of the social contract (§3.4), then we may model them as interacting as morally as they reasonably can be expected to (but otherwise realistically, being mostly concerned with their own costs and benefits), and then subject to this filter, see what pattern emerges.

The rise of the dominant protective agency is an equilibrium filter — not in the sense of equilibrium in neo-classical economics in which the system will arrive at, and return to, the same equilibrium under a wide variety of conditions, but in these sense

9 Robert Nozick, “Invisible-Hand Explanations,” *The American Economic Review*, vol. 84 (May 1991): 314-18 at p. 314. On filters see also ASU: 21-22; 312-18.

10 I argue this further in “Hobbes’s Challenge to Public Reason Liberalism” in *Hobbes Today* edited by S.A. Lloyd (Cambridge: Cambridge University Press, forthcoming).

11 Douglas Lind argues that Nozick does not consistently follow it; on Lind’s view Nozick sometimes appeals to a Hobbesian state of nature riven by conflict and lack of trust. [“The Failure of Nozick’s Invisible-Hand Justification of the Political State,” *Auslegung: A Journal of Philosophy*, vol. 15 (1989): 57-68 at p. 64.] I believe that Lind fails to appreciate the intractable conflict in Locke’s state of nature arising from disagreement in private reason: “though the Law of Nature be plain and intelligible to all rational Creatures; yet men being biassed by their Interest, as well as ignorant for want of studying it, are not apt to allow of it as a Law binding to them in the application of it to their particular Cases” (*The Second Treatise*, §124).

of a path-dependent system that can arrive at multiple equilibria.<sup>12</sup> Any agency might rise to dominance; and whatever agency does so constitutes an equilibrium. Given that some agency is dominant, there will be no incentive to defect given the increasing returns features of adjudication (§4.4).<sup>13</sup> Thus as a system travels along some path, some protective agencies are filtered out, leading to an equilibrium with one dominant agency.

### *3.2 How Invisible Hand Explanations Demystify Emergent Properties*

In Edna Ullmann-Margalit's analysis a successful invisible hand account tells a "story," typically characterized by several stages, in which the actions of individuals are the ordinary and expected.<sup>14</sup> Prosaic action in the story is a strong point: we do not assume people do extraordinary things to get the right result, they only do what people normally would be expected to. Thus in Nozick's account of the rise of the ultra-minimal state, people act to protect themselves, they do not wish to spend a lot of time being called out to protect others, they are worried about being at the beck and call of the quarrelsome and contentious, and they seek to get good value for their money. Overall, they are what we might call reasonably self-interested folk who are willing to act within their understanding of morality. Ullmann-Margalit holds that the power of an invisible hand account is that, on the basis of the prosaic, an unexpected, surprising, pattern emerges:

What is surprising — even startling, sometimes — about invisible hand explanations is, I suggest, their very existence: the fact, that is, that what one would have thought had to be the product of someone's intentional design can be shown to be the unsought and unintended product of dispersed individual activity .... among the marks of the good invisible-hand explanations are ... the fluency and naturalness — the very lack of surprising elements in — the description involved.<sup>15</sup>

12 In this sense Nozick's invisible hand account is very different from Adam Smith's. David Miller recognizes this; because the equilibrium is path-dependent there is no convincing reason to think the equilibrium arrived at will be optimal. See his "The Justification of Political Authority" in *Robert Nozick*, edited by David Schmidtz (Cambridge: Cambridge University Press, 2002): 10-33 at p. 17. I consider this issue in section 4.4. Multiple equilibria often are associated with complex systems; the extent to which standard microeconomics can model them is a matter of controversy. For an excellent defense of the ability of standard microeconomic reasoning to model these cases, see Steven N. Durlauf, "Complexity, Economics, and Public Policy," *Politics, Economics, and Philosophy*, forthcoming.

13 David Miller doubts this. "The Justification of Political Authority," pp. 20ff. Again, I am assuming in this chapter that Nozick's pudding is perfectly done.

14 Ullmann-Margalit, "Invisible Hand Explanations," pp. 270-71.

15 *Ibid.*, pp. 271-2.

An effective invisible hand explanation shows the emergence of a new and unexpected property ( $P$ ) out of the prosaic properties of the account, which appear themselves not to have  $P$  implicit in them. The argument for the ultra-minimal state certainly qualifies, and Nozick himself is clear that this is an invisible hand explanation.<sup>16</sup> It is far less clear that the argument from the ultra-minimal to minimal state is a compelling invisible-hand account, although many have supposed that the entire analysis leading up to the minimal state is an invisible hand explanation.<sup>17</sup> On the one hand Nozick suggests that the minimal state is already implicit in the ultra-minimal (ASU: 25), so we might conclude that the invisible-hand explanation of the minimal state just *is* the explanation for the ultra-minimal state. Yet the actions and reasoning of the dominant protective agency in prohibiting unauthorized enforcement by independents is too close to aiming at  $P$  to constitute a satisfying invisible hand explanation of  $P$ : the agency is seeking to gain a monopoly on the authorization of coercion, and its complex compensation reasoning (ASU: chap. 4) is anything but prosaic. It is not very surprising that the outcome of the dominant agency's reasoning is a claim to minimal, Lockean, statehood.

Invisible hand explanations are so powerful because they fully explain an emergent property. The resulting  $P$  property is surprising because — at least before the account is given — we cannot see how  $P$  is latent in the filtered, rather prosaic, actions of a number of people. In complexity theory,  $P$  is an emergent property of system  $S$  when  $S$  is composed of elements  $\{e_1 \dots e_n\}$  and our best micro knowledge of the elements does not attribute to them the property of producing  $P$ . In his *System of Logic* Mill proposes three features of an emergent property  $P$ :<sup>18</sup>

- (1)  $P$  is not the sum of  $\{e_1 \dots e_n\}$ ;
- (2)  $P$  is of an entirely different character than  $\{e_1 \dots e_n\}$ ;
- (3)  $P$  cannot not predicted or deduced from the behavior of the members of  $\{e_1 \dots e_n\}$  considered independently (i.e., apart from their interactions in  $S$ ).

Thus it is said that waves are an emergent property of  $H_2O$ . The properties studied by hydrology are not the sum of the properties of hydrogen and oxygen (as opposed to a mechanical force, which may be seem as the sum of its causes); waves are of a very

16 ASU: 22; Nozick, "Invisible-Hand Explanations." p. 314. See also Ullmann-Margalit, "Invisible Hand Explanations," pp. 264-5.

17 See, for example, David Miller, "The Justification of Political Authority;" Douglas Lind, "The Failure of Nozick's Invisible-Hand Justification of the Political State."

18 John Stuart Mill, *A System of Logic, Ratiocinative and Inductive in The Collected Works of John Stuart Mill*, edited by J.M. Robson (Indianapolis: Liberty Fund, 2006), vol. 7, pp. 370-73; 438-40. I am following here Sunny Y. Auyang, *Foundations of Complex-systems Theories in Economics, Evolutionary Biology and Statistical Physics* (Cambridge: Cambridge University Press, 1998), pp. 173-4.

different character than a chemical compound, and the properties of an individual water molecule do not allow us to deduce the relevant laws concerning waves. Of interest for us is that emergent properties are distinguished from mere “resultant” properties on the grounds that, while a resultant property is the expected outcome of  $S$ , an emergent property is novel and, given our understanding of  $\{e_1 \dots e_n\}$ , unexpected or surprising.<sup>19</sup>

Invisible hand accounts are thus explanations of emergent properties.<sup>20</sup> Indeed they are especially informative explanations of such properties. Claims about emergent properties can sometimes seem rather mysterious: we might know that  $P$  emerges from  $\{e_1 \dots e_n\}$  in  $S$ , but the way in which it does so may be unexplained.<sup>21</sup> Thus it is plausible to see consciousness as an emergent property of the brain, but it is not clear how much this actually explains. It tells us the sort of explanation we are looking for, but we have not yet seen how consciousness emerges. In contrast, an invisible-hand account provides the motivations, filters and equilibrium concepts such that we can model the emergence of  $P$  from an  $S$  composed of  $\{e_1 \dots e_n\}$ .

### 3.3 Actual, Hypothetical, and Counterfactual Invisible Hands

An important feature of emergent properties is that the macro property  $P$  emerges from a wide variety of values for  $\{e_1 \dots e_n\}$ . That is, if  $P$  is an emergent property of  $S$ , there are many states of the micro elements  $\{e_1 \dots e_n\}$  that produce  $P$ . To return to the standard example of waves, the same wave action can be produced by different water molecules; switching  $e_i$  for  $e_j$  (and so replacing system state  $S_2$  for  $S_1$ ) will have no effect: the same  $P$  will be produced by either  $S_1$  or  $S_2$ .<sup>22</sup> The core idea here is the micro-unpredictability (we cannot say what any specific element will be doing at any particular time, or with whom it will be interacting), is combined with macro-predictability: we nevertheless can predict that  $P$  will arise anyway.<sup>23</sup> Thus in Nozick’s invisible-hand account, it does not matter, in any particular system  $S$ , what protection agency gains dominance, what people are independents, who is paranoid, and so on. If we think of each of the actors as being specified by different values (degree of contentiousness, risk aversion, liability to misinterpret rights, entrepreneurial skill, skill in winning conflicts, amount of property held, etc.), then for a wide range of these values, the values can be varied (some  $S$ ’s may have a high standard of entrepreneurial skill, others a lower average) and permuted (it does not matter

19 Auyang, *Foundations of Complex-systems Theories*, p. 177.

20 Durlauf rightly stresses this in “Complexity, Economics, and Public Policy.”

21 This is Durlauf’s complaint against many complexity models in economics in *ibid.*

22 Durlauf deems this the property of “universality.” See *ibid.*

23 See Peter Smith, *Explaining Chaos* (Cambridge: Cambridge University Press, 1998), p. 13.



whether person  $e_i$  has entrepreneurial skill value  $x$  and  $e_j$   $y$ , or vice versa), and yet  $P$  will still be the emergent property.

This is of the first importance, for we are now ready for (our first) somewhat surprising result: the fact that the account is hypothetical, rather than being a weakness, is a strength in our analysis of  $P$ . Suppose that we possessed a complete historical account of the rise of some specific ultra-minimal state. We could specify the specific actors involved and the roles they played. Suppose further that the record revealed that everyone acted in good faith, according to their plausible understanding of natural law. What would this show? Not very much: we would know that pattern  $P$  actually did arise from system  $S_1$ , but we would not know much about  $P$ . Does it only emerge upon this particular specification? What changes in the values of the system members and their interactions are consistent with  $P$  emerging? We would, as it were, have one data point, but our understanding of the way that  $P$  emerges on  $S$  would be very limited indeed. On the other hand, a hypothetical account can be seen as a *model*; by not specifying many of the values, we can run the model and see to what extent the micro specifications of  $\{e_1 \dots e_n\}$  in  $S$  do and do not affect the emergence of  $P$ . That the invisible hand “story” gives rise to  $P$  when only specifying broad prosaic motivations under plausible filters and equilibrium concepts gives us greater confidence that we know the processes by which  $P$  emerges on  $S$ .

But, it may be objected, if in the real world,  $P$  did not emerge by the invisible hand process from  $S$ , but from alternative process, then we have not really understood *our* pattern  $P$ . Suppose in our world  $P$  emerged because it was the object of an explicit social contract; in such a case it was the result of design, not an invisible hand. So in the end, it might be insisted, history does matter. We need to be clear here; the problem is not that our invisible-hand account is hypothetical — the worry now is that it is counterfactual. To what extent is our model still a good explanation if we know that some specific  $P$  did not emerge from the invisible hand? According to Ullmann-Margalit, showing that the genesis of  $P$  was not via the invisible hand is not definitive in whether the invisible hand explains  $P$ .

...[E]ven if the invisible-hand explanation turns out not to be the correct account of how the thing emerged, it may still not be devoid of validity with regard to the question of how (and why) it is *maintained*. Not every product of design, especially if we are dealing with a complex social pattern or institution, is successful and lasting. The ascertainment that there is (was) a designing agent, therefore, even when conjoined with the ability to identify him and to spell out his rationale, does not take us very far towards illuminating the nature of its success and stability. The availability, on the other hand, of a cogent invisible-hand story of how the pattern in question could have arisen — given the specific circumstances, some common-sense assumptions concerning the drives of the individuals concerned, and the normal course of

events — may, I believe, contribute to our understanding of the inherently self-reinforcing nature of this pattern and hence of its being successful and lasting.<sup>24</sup>

Given the rather prosaic actions that underlie *P* on the invisible hand account, the fact that the efficient cause of *P* was some intentional process that, perhaps, short-circuited the invisible hand, does not show that *P* is not maintained or sustained by the invisible hand. Insofar as the invisible hand is based on a compelling equilibrium analysis, attributing to it a sustaining function will be especially plausible.

Nozick makes a far stronger claim for counterfactual invisible hands:

A theory of a state of nature that begins with fundamental general descriptions of morally permissible and impermissible actions, and of deeply based reasons why some persons in any society would violate these constraints, and goes on to describe how a state would arise from the state of nature will serve our explanatory purposes, *even if no state ever actually arose in that way* (ASU: 7, emphasis in original).

Ullmann-Margalit is willing to endorse the invisible-hand account even though states were not produced by the process as long as they are sustained by it; but she insists that if our explanation is to be true whatever claims we make about the facts must be true.<sup>25</sup> Nozick is much more willing to embrace counterfactual explanations. He allows that a perfectly good (he does not say “true”) explanation of *P* may be process-defective (ASU: 8).<sup>26</sup> Suppose the facts are as postulated by the invisible hand account, and the laws involved in the invisible-hand explanation are perfectly true, but some non-invisible hand process always intervenes and produces and sustains *P* via its own processes. Nozick holds that, given that we have shown that *P* would emerge and be sustained as a result of the invisible hand process were it not for the intervention, we have gone a long ways toward explaining *P*.

Although we certainly would learn a lot about *P* from seeing how it would emerge out of an invisible hand process even if in fact it never does, we would have to inquire why our invisible hand always gets preempted by another process. And although we learned that *P could* be an emergent property of the invisible hand, in our world it would not be. (That is why we have learned something about *P*, but not much about *P*-in-our-world). Such a case might arise for a neo-classical economist in a world economy run by a central planning God; she could give an account of how the invisible hand *could* produce an equilibrium, but God always beats the invisible hand to it. Although our economist does know something important about the property of

24 Ullmann-Margalit, “Invisible Hand Explanations,” p. 275. Emphasis in original.

25 Ibid., p. 274.

26 Nozick also considers how fact-defective and law-defective explanations may satisfy our explanatory interests (ASU: 8). See §4.3 below.

equilibrium states, she does not explain economic equilibrium in her world. Consider though, a less radical case of the invisible hand as a process-defective explanation. Assume that in our society  $P$  is not produced or even sustained by the invisible-hand process. God runs our economy, and so we have a centrally planned command economy with perfectly efficient prices, but the rest of the world runs things the old-fashioned way.<sup>27</sup> Nevertheless the invisible hand explanation may still be the best account of what property  $P$  is about in our world. God would still not be the best explanation of the property of economic equilibrium, for this process produces  $P$  only under exceptional and fragile circumstances<sup>28</sup> (when we are God's chosen people, and until we disobey), whereas (let us suppose) an alternative, invisible-hand process, produces  $P$  under a wide variety of parameters (think again about the importance of hypothetical models). Although it would be wrong to say that  $P$  can *only* be an emergent property of the invisible hand in  $S$ , it would still be true that the best understanding of  $P$  is as such a property, for it is the most robust explanation of the rise and/or maintenance of  $P$  in our world — it produces/sustains  $P$  under a wide variety of  $S$  specifications. Thus even under some counterfactual conditions the invisible hand would be our best explanation.

#### 3.4 Explanatory Political Theory: the Political Order as an Emergent Property

Nozick tells us that invisible hand accounts provide “fundamental explanations” of a realm because they “make no use of any other notions of the realm” (ASU: 19). A property  $P$  is fundamentally explained when there is a convincing account of how  $P$  is an emergent property of  $\{e_1 \dots e_n\}$  in  $S$ . Nozick's invisible hand account starts with a prosaic individual-level activity subject to a high level of social interaction given some filters and equilibrium concepts, and then (assuming all goes well in the story), shows that statehood (or, least, ultra-minimal statehood) is an emergent property. Thus the idea of the statehood would be fully explained and explicated without employing as basic concepts such as sovereignty, social order, political power, or political authority. Although today political philosophers are often obsessed with normative claims, we should not forget that a longstanding aim of political theorizing is to understand the realm of the political. We should not succumb to the temptation of dismissing invisible-hand theories as *merely explanatory*,<sup>29</sup> and so largely besides the point in

27 This relates to the famous socialist calculation debate between, on the socialist side, Oscar Lange and on the other the Austrians — von Mises and Hayek. For a nice summary from the Austrian perspective, see Karen I. Vaughn, *Austrian Economics in America: the Migration of a Tradition* (Cambridge: Cambridge University Press, 1994), chap. 3.

28 This is the worry about Nozick's supposition of an invisible hand process that always gets pushed aside by another process, and so is always process-defective.

29 I believe that David Miller does so, “The Justification of Political Authority,” pp. 14ff.

political theory. A traditional view — which has much to recommend it — is that before political theory can ask whether the state is justified, it must have some grasp of what the core properties of statehood and the political are.<sup>30</sup>

Now a dominant strain in modern political philosophy is to view the state as an artifice, created to solve human problems. “The state, conceived of as artificial, is to be understood as created for our ends, our protection, our defense.”<sup>31</sup> While to view the state as an artifice does not necessarily require that it is the product of intentional design, this view of the state easily lends itself to the design perspective: if the state is an artifice with a point, then we may suppose that it came about in order to secure the relevant aims. Hobbes’s and Locke’s social contract theories sought not simply to justify the state, but to explain how it arose out of the state of nature. Seeing how our ends were frustrated, we designed an institution for our protection and defense. Thus, on this view, the realm of the political was intentionally designed to solve a set of human problems. Recall Hobbes:

The only way to erect such a common power, as may be able to defend them from the invasion of foreigners, and the injuries of one another, and thereby to secure them in such sort as that by their own industry and by the fruits of the earth they may nourish themselves and live contentedly, is to confer all their power and strength upon one man, or upon one assembly of men, that may reduce all their wills, by plurality of voices, unto one will.... This is more than consent, or concord; it is a real unity of them all in one and the same person, made by covenant of every man with every man, in such manner as if every man should say to every man: I authorise and give up my right of governing myself to this man, or to this assembly of men, on this condition; that thou give up, thy right to him, and authorise all his actions in like manner. This done, the multitude so united in one person is called a COMMONWEALTH; in Latin, CIVITAS. *This is the generation of that great LEVIATHAN, or rather, to speak more reverently, of that mortal god to which we owe, under the immortal God, our peace and defence.*<sup>32</sup>

The traditional social contract explication of the political is just the sort of intentional design account that, we might say, is an explanation of the first look: seeing that the state solves problems, we explain it as the result of people seeking to solve the problems. The concepts constitutive of the political are, as it were, inventions of the political. A whole new set of concepts — authorization, political authority, united wills and judgments, political power — all arise out of the insight that they are required to solve this problem. Not only is such an explanation of the political rather

30 Christopher W. Morris notably follows this method in *An Essay on the Modern State* (Cambridge: Cambridge University Press, 1998), chap. 2.

31 *Ibid.*, p. 5.

32 Thomas Hobbes, *Leviathan*, edited by Edwin Curley (Indianapolis: Hackett, 1994), p. 109 (chap. xvii, ¶13). Italics added.

thin, it opens the way to a deep anarchist objection that the idea of the political is simply an error, or a piece of ideology perpetuated by those who wish to rule over others. Contrast this to a successful invisible-hand account. Here the realm of the political is the emergent property of prosaic human actions under a large range of system states. It comes very close to establishing the claim that the political is the natural result of free and normal human interaction.

#### 4 DOES NOZICK'S INVISIBLE HAND JUSTIFY?

##### 4.1 *The Minimal Justificatory Claim*

That the political realm is something like the inevitable result of prosaic human action would not show that the state or the realm of the political is justified. Nozick is explicit that “the notion of invisible-hand explanation is descriptive, not normative. Not every pattern that arises by an invisible-hand process is desirable, and something that can arise by an invisible-hand process might better arise or be maintained though conscious intervention.”<sup>33</sup> Yet it is natural to refer to “Nozick’s invisible-hand justification of the political state.”<sup>34</sup> In what way is the invisible hand explanation part of the justification of the political state? That is our key question.

The most obvious answer is that because one of the filters (§3.1) is a moral filter — people are assumed to act out of good-faith concern for the rights of others — we can be assured that the rise of the political is not *necessarily* the result of intentional rights violations. Nozick is very clear that he seeks to answer the anarchist who claims “that any state necessarily violates people’s moral rights and hence is intrinsically immoral” (ASU: 6). To anarchists such as Bakunin, the state necessarily depends on exploitation: slavery is its essence.<sup>35</sup> Nozick demonstrates that, at a minimum, the political can emerge on a system characterized by prosaic action under the constraint that people make a good-faith effort to do the right thing. Thus, in opposition to the classical anarchists such as Bakunin, Nozick has shown that political properties — the realm of the political — can be accounted for even when filtering out manifestly exploitative and unjust action. So unjust and exploitative action cannot be essential to the political. Thus the claim that political is inherently unjust is defeated. We have at a minimum, then, a possibility proof that the political can arise without manifest rights violations, and that the realm of the political is not essentially unjust.<sup>36</sup>

33 Nozick, “Invisible-Hand Explanations,” p. 314

34 Lind, “The Failure of Nozick’s Invisible-Hand Justification of the Political State.”

35 See *Bakunin on Anarchy*, edited by Sam Dolgoff (New York: Vintage Books, 1971), pp. 137ff.

36 David Schmitz notes this in “Justifying the State,” *Ethics*, vol. 101 (October 1990): 89-102 at p. 102.

#### 4.2 Legitimacy as an Emergent Property

The possibility proof is a significant result, but it only serves to defeat the sort of unqualified criticism of the state advanced by Bakunin — that it is *necessarily* unjust. I believe our analysis of the Nozickian invisible hand and its emergent properties allows us to make a much stronger claim, directed at a much wider array of anarchists: viz., that moral legitimacy is a property of ultra-minimal states generally. Recall that we have seen that a hypothetical invisible hand account is best understood as a model, in which a wide variety of values of  $\{e_1 \dots e_n\}$ , resulting in a wide variety of specifications of system  $S$ , all produce the same emergent property  $P$  — the set of properties of the ultra-minimal state. We have also seen that the invisible-hand account leading to  $P$  filters out manifestly impermissible action, so all these specifications of  $S$  will lead to the emergence of a pattern  $P$  that is permissible. One understanding of the idea of state “legitimacy” is that the coercive actions of the state in using force to enforce the law are morally permissible.<sup>37</sup> What the Nozickian invisible hand shows, then, is that political legitimacy is an emergent property of prosaic human action under the constraint that people make a good-faith effort to act within the moral law.

This is a truly striking result. Political theory has typically supposed that the question “Is the state legitimate?” is one that must be answered at the political level: it is a question to be posed by political theory within the political realm. Nozick’s argument is designed to demonstrate that the legitimacy of the ultra-minimal state arises from non-political interactions, and emerges upon a wide variety of social states. There is an instructive contrast here to Hayek, whose invisible hand-evolutionary account of social order Nozick cites (ASU: 336-7). For Hayek, an “order of actions” is an emergent property of a system of rules under conditions of generally free action.<sup>38</sup> As a selectionist, Hayek proposes mechanisms by which competition between societies selects rules that provide for effective orders. As an emergent property, an effective social order can arise from a variety of rules and social settings. Nozick’s account is different; it specifies the rules (Lockean moral constraints), and then shows that these rules under prosaic motivations and concerns (*i*) lead to the emergent property of the ultra-minimal state and (*ii*) select only such states that are

37 We can contrast such legitimacy to justified state authority in the sense that citizens have an obligation to obey the state. See Thomas Christiano, *The Constitution of Equality* (Oxford: Oxford University Press, 2008), pp. 240-1.

38 I analyze Hayek’s evolutionary account and its relation to emergent properties in “Hayek on the Evolution of Mind and Society” in the *Cambridge Companion to Hayek*, edited by Edward Feser (Cambridge: Cambridge University Press, 2006): 332-58. For a careful analysis of Hayek’s idea of an “order of actions” see Eric Mack’s essay “Hayek on Justice and the Order of Actions,” pp. 259-86 of the same volume.

legitimate. Thus Nozick demonstrates that a legitimate political order is an emergent property for all populations of Lockean.

#### 4.3 *Objection I: Hypotheticals, Counterfactuals, and Legitimacy*

David Schmidtz plausibly argues that a hypothetical story cannot justify through emergence. Schmidtz contrasts a “teleological” justification, which “seeks to justify institutions in terms of what they accomplish” from an “emergent approach [which] takes justification to be an emergent property of the process by which institutions arise.”<sup>39</sup> On Schmidtz’s analysis the emergent approach — which he identifies with both social contract and invisible hand accounts<sup>40</sup> — looks to what has actually taken place to justify the state. Schmidtz is adamant that hypothetical models cannot justify via emergence; if society *S* has not actually gone through the process, we cannot say that there has been an emergent justification of *P* via the process. If a hypothetical emergence account does appear justificatory it is only because we take the emergence story as indicating that there is an implicit teleological justification of the state. In a hypothetical story hypothetical emergence occurs because we can see the hypothetical agents would do what satisfies their goals, including constructing a state.<sup>41</sup> But then it is the goals, not the emergence, which is doing the justificatory work.

Our analysis paints a considerably more complex picture. Again, we must be careful in distinguishing hypotheticals and counterfactuals. That the explanatory account is a hypothetical model rather than an actual account is a great strength, for we see that ultra-minimal statehood is an emergent property of a wide variety of societies, not just one. This increases our confidence that the best explication of these properties is as emergent. The question is whether we still can conclude that ultra-minimal statehood is an emergent property under counterfactual conditions — when we know that a specific *P* did not arise via the invisible hand. Now here we must take care here to distinguish purely explanatory from normative contexts. Recall that in purely explanatory contexts I considered three different views of the place of counterfactuals. (i) Ullmann-Margalit holds that if the invisible hand sustains this *P*, even if it did not bring about this *P*, we could still see this *P* as an emergent property. (ii) I pressed further: even if we live in an outlier society in which some other process has preempted the invisible hand, the best explanation of *P* in our world (including our *P*) is that it is an emergent property, though we have to admit that it can arise, and has arisen, in other ways, as it did in our case. If in one case the conditions

39 Schmidtz, “Justifying the State,” p. 89.

40 Ibid., p. 91.

41 Ibid., p. 101. Note here the similarity to the traditional account of the social contract as artifice (§3.4).

explaining *P* are unstable and/or unusual, and in another account *P* is the normal result of prosaic actions, the latter is the preferred general explanation of the nature of *P*. (iii) Lastly, we saw that Nozick wishes to push further still: even if the invisible hand is always preempted by some other process, we still have explained the nature of *P* by knowing that in lieu of this other process (or these other process; ASU: 8n), *P* is an emergent property of the invisible hand.

Although I was skeptical of Nozick's full embrace of counterfactuals in purely explanatory contexts, it is unobjectionable in what we might call normative-explanatory theory.<sup>42</sup> In political theory we are often interested in explaining a realm or idea in a normative context. We are interested in the idea of rights, or democracy, or the state, and so we wish to see how an explanation of a realm or concept accounts for current understanding of our practices, where one of the aspects of the current understanding is that the realm or concept has normative significance. Now one of our concerns is the nature of a legitimate and just state — one that is not the result of immorality, exploitation, or oppression. In Rawls's theory, we inquire about such a state by enquiring about the political principles reasonable and rational people would select in a fair original choice situation.<sup>43</sup> Nozick's concern is the properties of the state in a society populated by people who are acting on the basis of their own costs and benefits but who are also basically moral — let us call them "reasonable and rational Lockeans." Perhaps there never has been a society of such Lockeans (or a society of reasonable and rational Rawlsians); if so non-counterfactual analysis will only explicate the realm of the political under injustice and/or irrationality. By applying the filter on manifestly non-Lockean action, Nozick can propose an answer to the question at the core of political philosophy since Plato's *Republic*: what are the properties of a just state? That there has never been such a state does not show that there cannot be an explanation of what its properties would be. What Nozick shows is that the properties of a just and legitimate state are those that would emerge from the prosaic actions of rational and reasonable Lockeans, and that it would be a minimal state.

This may appear *too* striking. The invisible hand legitimates *P* even though there never has been a *P* produced by the invisible hand! Readers may recoil at this, but I believe that it because they read Nozick's account too simply, as simply a story about legitimation via consent. Schmidtz, I think, does so, and this is why he can see invisible hand and traditional social contract accounts as both emergent, when it is quite clear that the social contract does not offer a fundamental emergence

42 I am here considering what Nozick (ASU: 7) calls "fact-defective" accounts.

43 John Rawls, *A Theory of Justice*, revised edn. (Cambridge, MA: Belknap Press of Harvard University Press, 1999), pp. 15-9.



explanation.<sup>44</sup> Nozick's aim is to provide a fundamental explanation of the properties of the legitimate state. Because it is partly an explanatory project, Nozick's concern is to model the conditions under which such a state would arise; because it is also a normative project, the conditions are appropriately counterfactual in filtering out manifestly anti-Lockean motivations, while otherwise postulating prosaic actions and concerns.

#### 4.4 Objection II: The Failure of True Justification

Thus far I have been focusing on the question of moral legitimacy, i.e., the moral permissibility of the state's use of force. Nozick, though, actually suggests three possible ways in which one might "justify the state:"

If [a] one could show that the state would be superior to the most favored situation of anarchy, the best that could be hoped for, or [b] would arise by a process involving no morally impermissible steps, or [c] would be an improvement if it arose, this would provide a rationale for the state's existence; it would justify the state (ASU: 5).

Nozick's analysis seems to focus almost exclusively on (b).<sup>45</sup> But what of (a) and (c)? David Miller has strenuously argued that Nozick fails to "show that the emergence of the state is not only something that might have happened, permissibly, but that would be desirable if it did."<sup>46</sup> Miller recognizes that invisible hand explanations are path-dependent (§3.1), so a society could arrive at a suboptimal ultra-minimal state.

If agency A gets off to a flying start, either because it runs the best advertising campaign, or because it appeals to those clients who are the quickest to see the advantages of professional protective service, or for whatever reason, other clients may switch to A *not* because they like its organization or the procedures it uses but because of the advantages in being a client of the largest agency in town. If A eventually turns into a minimal state, its claim to legitimacy resides solely in the fact that it discharges the functions appropriate to a minimal state; it cannot claim to have been *chosen* by the people it serves, by virtue (for instance) of the superiority of its methods to those of erstwhile rivals.<sup>47</sup>

44 In fairness to my good friend Dave Schmitz (and one should *at least* be fair to one's friends!) his analysis is presented as general, and does not explicitly address Nozick. Although I disagree with his analysis of emergence, his essay remains one of the most thoughtful analyses of emergent justifications in political philosophy.

45 This is noted by Lind, "The Failure of Nozick's Invisible-Hand Justification of the Political State," p. 62.

46 Miller, "The Justification of Political Authority," p. 15. Miller's criticism is more wide-ranging than I can consider here; especially interesting is his proposal that we can construct a preference ordering over modes of justification. It would take us too far afield to consider this idea.

47 *Ibid.*, p. 17.

In contrast, Miller argues, in a traditional social contract account, although Lockean contractors “may not end up with the form of government that each of them prefers,... at least the majority’s preference will prevail.”<sup>48</sup> Because the invisible hand is path-dependent in this way, it would seem that we can get worse results than would be delivered by the traditional, collective, social contract. It seems that if our aim is to justify the state by showing that it is an improvement over the state of nature — that it is a truly desirable condition — then the invisible hand process cannot ensure this.

We need to distinguish four possible outcomes of the invisible hand process that might cause worries. In order of increasing seriousness:

- (i) There is a legitimate minimal<sup>49</sup> state that the majority holds is inferior to a state that could have been arrived at by a contract;
- (ii) There is a legitimate minimal state that is Pareto-inferior to a state that could have been arrived at by a contract;
- (iii) There is a legitimate minimal state that is not Pareto-superior to the state of nature;
- (iv) There is a legitimate minimal state that is Pareto-inferior to the state of nature.

Re (i): Miller invokes the first option in the above quote. He is certainly right that a path-dependent process driven by increasing returns is by no means guaranteed to satisfy majority preferences (reflect on how many people use the Windows operating system just because so many others use it). However, it begs the question against Nozick to hold that in a Lockean contract the majority would at least have its preferences satisfied. Nozick assumes no such majoritarian values. If some have majoritarian values and others do not, there is no reason why majoritarianism should rule. Indeed even in Locke the majoritarian phase supposes a prior unanimous consent to enter a civil society.<sup>50</sup>

It is also worth stressing that, unlike Nozick’s invisible hand account, there is no reason to suppose that the outcome of a simple majoritarian choice will be a Nash equilibrium. In Nozick’s tale, at the end of the day no one has a unilateral incentive to defect on the minimal state — either one has joined because the benefits of

48 Ibid.

49 I have been stressing that the invisible hand process certainly leads to an ultra-minimal state; I have been more skeptical about its relation to the minimal state. However, Nozick clearly thinks that the minimal state is superior to the ultra-minimal, and permissible steps would lead to it. Since Nozick’s stopping point is the minimal state, I deal with Miller’s objections in relation to it.

50 Locke, *Second Treatise*, chap. VIII.

membership exceed the costs, or one has been compensated for membership. With a simple majoritarian choice, although the majority may get what it wants, there is no reason to suppose that the minority won't have an incentive to defect and go their own way.

Re (ii): Of course if everyone has majoritarian preferences that would be different, for now we would have our second case in which the path-dependent process leads to a Pareto-inferior outcome. In such a case the invisible hand leads to a non-majoritarian state  $P$ , whereas everyone prefers the majoritarian  $P'$ . There is no reason to think this might not happen. In a path-dependent process protective agency A may be eliminated by B at time 1, and B eliminated by C at time 2, yet if people were confronted with a choice between A and C it is possible that all would prefer A to C. Miller would, presumably, hold that an explicit contract would not select a Pareto-dominated state, and leaving aside information and transaction costs, this seems generally true. If, however, everyone actually prefers another state to that which has emerged from the invisible hand, there is no reason why the members of a Nozickian society could not contract into this different state. Indeed, the entire point of Part Three of *Anarchy State and Utopia* is to allow groups to contract into more-than-minimal states that appeal to them. At a limit, if everyone in a society wished to contract into such a state, they certainly could. Similarly, if they all preferred the creation of a new minimal state to the present one, they could (consistent with their current contracts) contract into a new state.<sup>51</sup>

Although explicit unanimity requirements are good at avoiding Pareto-dominated options in a set of eligible choices, they have difficulty in showing that there is any state that is acceptable to parties stuck in the state of nature. It is unlikely that any specific state will be most preferred by everyone in the state of nature. Consider Table 1.

<i>Alf</i>	<i>Betty</i>	<i>Charlie</i>
A	B	C
B	C	B
C	A	D
D	S of N	S of N
S of N	D	A

*Table 1*

Here there is no unanimous view of the best state. Betty would rather stay in the state of nature than have D, and Charlie would rather stay put than live under A. They can all agree that either B or C would be better than staying in the state of nature, but neither Pareto-dominates the other (again, it begs the question to say that the majority

<sup>51</sup> Of course the transactions costs would be very high, but we have bracketed those.

prefers B to C; suppose Charlie is a libertarian). In the end, even an explicit contractual view is unlikely to employ the unanimity rule in deciding which of the eligible options to choose.

Re (iii) and (iv): It would be more worrisome if there was a legitimate state that was not Pareto-superior to the state of nature — that is, at least one person would prefer life in the state of nature to membership in the state. If this occurred some might claim that the state may be permissible but it cannot be justified to them. It is important to see that, even if successful, Nozick's compensation argument would not show that such a complaint could not be made. To see this, suppose that the individualistic state of nature is  $S_1$ ;  $S_2$  is a condition with a dominant protective association that allows independents to use their own procedures, but always wins in any dispute with them; while  $S_3$  is characterized by a dominant protective association that has turned itself into a minimal state by prohibiting independent procedures of which it does not approve. Let us grant that the move from  $S_2$  to  $S_3$  is justified via the compensation argument, so that the independents are not worse off in  $S_3$  than in  $S_2$ . But we see that this does not ensure that the independents are not worse off in  $S_2$  than in  $S_1$ ; perhaps they enjoy being independents and it is easier to be one in a world composed entirely of small independent groups. So the move to  $S_2$  — to a dominant protective agency — made some of our independents worse off by making the life of an independent less pleasant.

This possibility alerts us the problem with understanding “better off” in terms of desires or a wide-open notion of preference— which is perhaps why Nozick does not really explore options (a) and (c). If Alf has preferences over other people's action, then Betty's exercise of her rights will often make him worse off simply because he has a preference that Betty not do not what she has a right to do.<sup>52</sup> But surely Nozick cannot say that a condition in which all are acting within their rights, but some prefer others not do so, fails to be justified because the latter group is “worse off.” In Lockean theory the only clear and uncontroversial sense of Betty being worse off in situation  $S_2$  than in  $S_1$  is if her rights and claims to the fruits of the earth are less honored and protected in  $S_2$  than in  $S_1$ .<sup>53</sup> It might appear that this leads us to the

52 I further explore this problem in “Recognized Rights as Devices of Public Reason,” *Philosophical Perspectives: Ethics*, vol. 23 (2009): 111-36.

53 Two problems arise here. (i) It may seem that the “proviso” on appropriation of property necessarily refers to a person being made “worse off” in a sense that does not refer to her rights and claims. Much depends here on the details. Nozick, to be sure, talks about “worsening” of another person's situation through appropriation (ASU: 178); however we may follow Locke in specifying the worsening in terms of claims to available resources and fruits of the earth (*Second Treatise*, chap. IV). (ii) Nozick's compensation argument requires some measure of being as well off in one condition as another. If the dominant agency is compensating people for not being able to exercise their judgment rights, surely there must be some measure of well-being besides being able to exercise one's rights. This is the most perplexing issue in the first part of *Anarchy*,

conclusion that so long as everyone acted permissibly (i.e., honored rights) in moving from  $S_1$  to  $S_2$ , no one can be worse off in  $S_2$  in the sense relevant to Lockean political justification. Thus would seem to mean that the permissibility of the move from  $S_1$  to  $S_2$  (Nozick's option [b]) implies Miller's stronger notion of justification (Nozick's [a] and [c]): the move from  $S_1$  to  $S_2$  was justified because it was permissible. This would be wrong: we must allow that, at least in principle, an unintended consequence of each person's permissible actions may be a pattern ( $S_2$  or  $S_3$ ) in which the protection of rights is more uncertain than in the state of nature ( $S_1$ ).<sup>54</sup> All would be good reasonable and rational Lockeans (and so each would be acting permissibly) but, from the perspective of honoring rights, each may yet be worse off (say because they have equilibrated on a really inefficient ultra-minimal, or minimal, state).

If we evaluate the state of nature and the minimal state simply in terms of whether one's rights are honored, Nozick must argue that, with regard to rights protection, most will be better off and none worse off than in the state of nature. The Lockean thesis is that this indeed will be the case because in a world of independents justice will be systematically distorted by self-bias; as we move to more impartial systems, Locke argued, we achieve superior justice (§2) even though one may disagree with many judgments of the state (or dominant protection agency). If Locke — and indeed the entire social contract tradition — was right about this, then Nozick is well-positioned to claim that the minimal state (which is simply an organization for the effective enforcement of rights) is not simply permissible, but Pareto-superior to the state of nature. Moreover, although enforcement of individual claims can be understood as a purely private good (the individual gets her own rights enforced), insofar as effective enforcement acts as a deterrence of future violations, this has general public good features: those who do not buy policies as well as those who do receive the general benefits of deterrence. Consequently, in  $S_1$  — a world of independents — there will be underinvestment in deterrence; as one agency comes to dominate, the benefits of providing deterrence will be internalized among its members, and so it will more efficiently invest in deterrence as opposed to merely enforcement activities. Thus we have additional reason to suppose that justice will be better enforced under a dominant agency. To be sure an incompetent minimal state — one that was worse at enforcing justice than individuals in the state of nature — would not be Pareto-superior, but the point of the invisible hand account is that there is a market mechanism that would filter out really bad providers of impartial justice

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*State, and Utopia.* On the view I have proposed here, a person would have to be compensated in terms of how well his rights are honored and protected, but it may seem that it is just this matter about which the independents disagree. I tend to think that a consistent account could be worked out along these lines, but of course I cannot do so here.

54 Following Philip Pettit, we might call this an “invisible backhand” as in a Prisoners' Dilemma. See *The Common Mind* (Oxford: Oxford University Press, 1996), p. 270.

(here it seems far superior to the contract story, which requires a one-time central plan to set up a state). And, of course, if the minimal state is Pareto-superior to the state of nature it cannot be Pareto-inferior to it, so possibility (iv) can also be dismissed.

I conclude that if Nozick's derivation of the minimal state is successful the minimal state is not simply justified in the sense of being morally legitimate, but justified in the sense that all are better off in terms of their rights to life, liberty, and property than they would be in the state of nature.

## 5 CONCLUSION

Nozick's argument against the anarchist constitutes a major advance in political theory. *If* we accept his Lockean premises and *if* his argument goes through as intended (admittedly, two pretty big "ifs") he would have explicated the realm of politically legitimate as an emergent property of prosaic actions of individuals given certain filters and equilibrium concepts. One of these filters is on clearly immoral action. We are, after all, interested in the nature of the legitimate state, not an oppressive one. *The legitimate state is an emergent pattern produced by the prosaic actions by reasonable and rational Lockeans.* Although the hypothetical invisible hand account is based on the free choice of individuals, the case for legitimacy is not based on consent, but on the emergent properties of the ultra-minimal state as it arises under the moral filter. Nozick's argument against the anarchist is not a tweak on the traditional social contract story; it is fresh beginning in political theory, exploring the nature of emergent explanations, and how they can figure into justifications. In answering the anarchist he provides an entirely new approach to the ancient inquiry into the properties of the just and legitimate state.

Readers may recoil at this. Of course, they may insist, at the end of the day Nozick must be proposing some version of consent theory, and it must really matter whether people have actually consented! The problem, in my view, is that readers simply have not taken seriously enough that Nozick's starting point is explanatory political theory. A reading of the book that does not give a crucial role to explanatory political theory is, I propose, ultimately incoherent. Everyone knows that *Anarchy, State, and Utopia* gives pride of place to the "invisible hand," but the invisible hand is explicitly part of explanatory political theory. One simply cannot stress the "invisible hand" in *Anarchy, State, and Utopia* and ignore explanatory political theory. The deep interpretive question is the relation between explanatory political theory and justification. On the interpretation I have proposed, Nozick's normative political philosophy shows that one of the emergent properties of a system of free interaction among reasonable and rational Lockeans is an ultra-minimal state with moral legitimacy.

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