

Critique of Robert Nozick's Side Constraints

In *Anarchy, State, and Utopia*, Nozick argues that the non-violation of human rights must be treated as a side-constraint. His proof employs foundationalism: presenting an initial premise and using reason in conjunction with Kantian principles to establish rules of human interaction. I will reconstruct this argument, citing early sections of the book for his implicit first premise and *Why Side Constraints* for the proceeding argument.

Nozick's first principle appears in *Animals and Constraints*, where he states that humans have a special moral status that grants them individual rights. This is an axiom; his book "does not present a precise theory of the moral basis of individual rights" (xiv). Even so, Nozick characterizes these rights as "so strong and far-reaching" that they cannot be violated (ix). In short, "individuals are inviolable" (31).

Valuing the non-violation of C, how should we act? In *Why Side Constraints*, Nozick presents two options: a goal-directed view where you maximize the non-violation of C and a side-constraint view where you maximize the non-violation of C without violating C. To highlight the difference, Nozick describes a mob which reacts to a crime by rampaging through town. The goal-directed view prescribes convicting an innocent person for the crime if it dissolves the mob and saves the community. The side-constraint view requires said individual's rights not be violated, regardless of the payoff. Though Nozick supports the latter view, he recognizes a 'paradox' in that it appears logically inconsistent. "How can a concern for the nonviolation of C lead to the refusal to violate C even when this would prevent other more extensive violations of C?" (30). The remainder of this section explains how side-constraints do in fact follow consistent logic from Nozick's initial premise.

First, Nozick ties the concept of inviolability to Kantian means and ends. If you are lent a tool with no or violable constraints placed on its use, it is completely a means by which to accomplish your goals. As inviolable constraints are added, the object ceases to be useable in those ways. If it is fully

inviolably constrained, it is treated solely as an end. Nozick adopts the Kantian claim that “individuals are ends and not merely means” (31). Yet fully constrained human interaction is “impossibly stringent” to implement (31). Instead, we may interact with *some* inviolable constraints as this treats people “never simply a means, but always at the same time as an end” (32).

Nozick claims an exchange is sufficiently just if each person consents knowing how the other intends to act. In other words, an acceptable side-constraint is anything both parties will informedly agree to. He chooses intent to operationalize consent because of how we intuit feeling like a means: “‘you were only *using* me’ can be said by someone who chose to interact only because he was ignorant of another’s goals” (31). When informed, one may still object to parts of an agreement, but decide this is outweighed by what he stands to gain. Nozick appeals to our intuition that this tradeoff is not anti-rights as people frequently choose to sacrifice pain for benefit in their own lives. Yet only they can make this decision. Nozick rephrases Kant’s claim that “individuals are ends” to assert the separateness of persons: no individual can mandate another’s sacrifice and since “there is no *social entity*... there are only individual people”, sacrifices cannot be imposed in the name of social good (32). Stating this is equivalent to the side-constraint view. Given the original mob example, Nozick’s rules of exchange show that we cannot sacrifice the innocent’s rights for a safer community. Thus, from the initial premise of human’s moral status and his resulting inviolability, Nozick has shown the logical consistency of side-constraints.

As a presupposition to the side-constraint view, Nozick explicitly states that just exchange requires one know “the uses to which you *intend* to put his actions” (31). I agree to the importance of informed choice, but object that knowing intent is sufficient. Say I gave Jane a banana in exchange for an apple knowing we both intend to eat our fruit. Immediately after, King Kong starts taking over the world and power-hungry Jane now intends to use the banana as leverage to get in on world domination. Intents can change. Or say Jane eats her banana and discards the peel on the sidewalk, causing someone to slip and injure themselves. Littering or causing harm is not Jane’s conscious intent; she drops the peel because she is not thinking at all. Yet had I known in either case what Jane would do rather than her original

intention, I would have conducted the exchange differently. In the former case, I may even feel used by how she broke our understanding. This suggests that informed consent depends on more than intent, not nullifying Nozick's overall argument, but parameterizing conditions for just agreement.

Nozick would concede that having information about actions can change an agreement, but would say that requiring this is "impossibly stringent" (31). To consider an action's consequences, Nozick would refer to the principle of justice in transfer: "whatever arises from a just situation by just steps is itself just" (151). Though my exchange with Jane constitutes a just step, her deal with King Kong certainly does not. Perhaps Nozick would constrain Jane's actions to what is permissible in a wholly just world. And though her exchange with the stranger on the sidewalk is not direct or consented to, Nozick would say the same rules govern "how a person may divest himself of a holding, passing it into an unheld state" (151).

If justness truly binds the actions of an individual, the concerns from my counterexamples are mitigated and I concede to Nozick's response. But in a world where we consider angry mobs, this supposition is not compelling. Thus I believe just interaction must be operationalized differently. Perhaps agreements based on intent should then bind individual's actions. Though this adds contractual elements to Nozick's minimal state, it more deeply satisfies the notion of informed consent.