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Studies on State View of R.Nozick

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——诺齐克国家观研究



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# 序言 当代学者的关切与 政治哲学的兴起

人总是要为自己的思想和行为寻找根据；没有根据的思想与行为，人是难以忍受的。这大概既是科学探索的不竭动力，也是哲学反思的真正根源。就此而言，哲学总是与科学纠缠在一起的。

哲学与科学的区别，则在于二者寻求“根据”的方式是不同的。科学总要“实证”，既包括“证实”，也包括“证伪”，总之是要把“超验”的东西诉诸“经验”的东西，与“经验”无法沾边儿的东西不能算做“科学”。哲学则“反其道而行之”，总是“悬设”或“承诺某种东西，并对其做出自己的推论和论证，也就是“基本理念概念化”。

正因为哲学总是“悬设”或“承诺”，并只是对其“悬设”或“承诺”的“根据”进行自己的推论或论证，因而与“实证”的科学不断分道扬镳，以致被科学一步步地“驱逐”出了自己的“世袭领地”——自然、社会和思维。

然而，哲学却并不甘心在思想的天空中“游荡”，而总是企图用思想之光照亮人的思想与行为，总是把思想之光聚焦于人的某个思想领域和行为领域，于是，被称之为“部门哲学”的哲学在现代流行开来，被称之为“科学哲学”、“文化哲学”、“逻辑哲学”、“语言哲学”、“技术哲学”、“管理哲学”、“政治哲学”的

哲学，在我们今天生活的地球上由西而东方兴未艾。

其实，把“政治哲学”等等称做“部门哲学”并不准确，并因此往往引起一个原则性的误解，这就是忽略或抹杀了它的时代性的哲学意义。熟悉哲学史的人都知道，20世纪80年代在中国流行开来的“科学哲学”，并不仅仅是指“以科学为对象的哲学”，而是作为对“哲学”的现代理解而兴起于西方，并作为“科学主义思潮”的哲学流派涌入中国的。这就是说，无论是在其发源地西方，还是在其流行地东方，“科学哲学”都是作为哲学的现代标志而存在的——使哲学科学化。在这个意义上，“科学哲学”就不是某种“部门哲学”，而是对“哲学”的现代理解和现代要求——现代哲学应当（而且必须）是“科学哲学”。

如果仅就我们对哲学的这种理解和要求而言，确实是适应了我们对现实的理解和要求——科学技术是第一生产力，因而以科学化的方式来实现现代化。然而，现实生活告诉我们，“物质文明”不仅离不开“精神文明”，而且离不开“政治文明”。公平、正义、平等、权利，这些体现个人与国家、国家与社会之间关系的问题，对于现代人的思想和行为，也许具有更深层、更根本的意义与价值。于是，不仅作为“科学”的法学、政治学、社会学、经济学在现代社会生活中显示了愈益重要的作用，而且作为“哲学”的“政治哲学”也成为日益耀眼的显学。

哲学是思想中的现实，人类的现实关切是哲学的最真实的根基和最切实的生长点。因此，中国哲学界对“政治哲学”的关切，对西方政治哲学的代表人物罗尔斯、哈耶克、诺齐克及其哲学思想的关切，就是顺理成章的了。至于由这种关切而形成的研究成果的水平与价值，则一方面取决于研究者对“政治哲学”及其所蕴含的现实生活的理解，另一方面则取决于研究者的真正的“哲学”能力——区别于“科学”的“基本理念概念化”的能力。

本书作者罗克全是我指导的首届博士研究生。他选择了我并不熟悉的政治哲学作为其博士论文的论域，并把诺齐克的哲学思想作为其主要的研究对象。这给我出了一个难题，也给我提供了一个机会，这就是理解“政治哲学”。我把自己的粗浅理解写出来，作为罗克全博士这部著作的序言，并与阅读此书的读者一同思考。

孙正聿

2005年5月26日于长春

## 内容摘要

研究和探讨极端“消极自由主义”国家观——诺齐克的“最小国家”的内在矛盾：自由与权利的内在矛盾，由此所导致的国家性质与功能的内在矛盾。这是本书将诺齐克国家观进行彻底化的前提。

西方自“文艺复兴”运动以来，从“人何以是人，而不是处于奴役状态”这个启蒙运动的主旨出发，在政治哲学领域形成了两种不同的自由观念：“积极自由主义”从内在于人的崇高要求出发，论证国家的“最大值”及其可能；“消极自由主义”从人的基本需要出发，论证国家的“最小值”及其可能。“消极自由主义”又可分为“古典自由主义”与“新古典自由主义”。前者在国家观中所回答的问题是：建构什么样的国家，人才能是自由的；后者在国家观中所回答的问题是：自由的个人会形成什么样的国家。其中，诺齐克从个人自由出发，以市场原则形成“最小国家”，而且他认为这就是国家不可超越的“极大值”。诺齐克的《无政府、国家与乌托邦》一书，是“新古典自由主义”以市场原则形成“最小国家”的唯一垂范之作。

国内外学术界对诺齐克国家观的批判可分为两方面：一是认为他的国家观凸现个人自由，而失却社会正义；二是认为他把个人自由“原子化”。本文认为，应以诺齐克国家观自身逻辑为前

提，揭露其理论自身的内在矛盾，才是解决问题的最佳途径。通过研究，我们发现诺齐克的“最小国家”应当是“非模式化国家”，但是它仍然不可避免地存在自由与权利之间不可解决的内在矛盾。于是，我们将这种国家观彻底化，即为马克思主义的“非政治国家”。

诺齐克的个人自由秉持康德的道德直觉，即“以人为目的，而不仅仅以人为工具”这一“绝对命令”，并依此将康德的规范性伦理学改造为描述性政治哲学。首先，诺齐克以康德的“绝对命令”改造传统“自然状态”理论，作为其国家观的出发点。自然状态是个人的基本要求和对他人的基本要求，这是任何个人的基本权利——自然权利。因此，自然状态必然是社会规则的前提，这就确立了诺齐克的市场原则：始终对个人权利具有“前规则”性。因此，“古典自由主义”的市场原则中的“看不见的手”，在诺齐克那里就从上帝改造为“以人为目的，而不仅仅以人为工具”这样一个道德理性的直觉，同时，它也就是诺齐克的道德边际约束——诺齐克所理解的正义（或平等）。

于是，从自然状态出发，通过市场中“看不见的手”的作用，在个人自然权利交换过程中，形成了“相互保护性社团”，但它是不稳定的，无法处理社团内部成员间的纠纷。为了解决这个问题，人们便组成一个有分工、有秩序的具有商业性和保护性的机构，出售保护性服务。在它对内禁止成员个人之间强行正义、对外通过市场竞争时，就成为“支配性保护社团”。当这种社团在一个地区内通过市场购买方式，使独立者放弃强行自助，取得强力独占权时，便形成了“超弱意义的国家”。最后，诺齐克通过论证对那些无力购买保护性服务的“财政上窘迫的被禁者”进行赔偿，使社团内部成员损害最大限度地减少，形成了税收与再分配，“最弱意义的国家”即成于此，这也就是诺齐克所理解的“最小国家”。然而，与其他国家观的人为强制不同，诺齐克“最

小国家”的税收与再分配是市场化的结果。

诺齐克的“最小国家”是对“古典自由主义”国家观直接从“支配性保护社团”过渡到国家这种国家观的深化和细致化；也是对功利主义国家观缺少道德边际约束，仅仅只是从肯定性方面理解个人自由，而导致把人作为工具的背叛。同时，一方面，因为契约论以普遍同意作为政治国家得以形成的依据，这是把个人自由当做某一既定规则的结果，取消了个人自由所应具有独立性。另一方面，个人主义的无政府主义把个人自由仅仅看做内在价值，但是，因为没有实现个人自然权利的否定性就等于个人根本没有个人自由可言，所以，为了有效地制止越界行为，保护个人的自然权利，“最小国家”是必需的。

正是在论证“最小国家”的性质与功能时，诺齐克对无政府主义的反驳并不是彻底的：“最小国家”具有“非模式化公平”和“非模式化程序”等特点，那么，其功能也应当是“非模式化”的，即在“最小国家”中应保有个人自由以价值为目标的位置。因为社团对独立者采取的先购买、赔偿与一个人放弃自然权利没有任何必然性，只能保持在个人的自愿选择基础上。所以，在无政府与“最小国家”之间仍有可以弱化的域值，我们将它理解为“非模式化国家”。

诺齐克国家观的核心概念是“道德边际约束”，它是个人自然权利肯定性与否定性的市场结果，是个人自然权利的行为界限，具有多样性，而且它没有任何一个完成了的模式。因此，“最小国家”的正义是非模式化的。这也就规定了诺齐克的“最小国家”的最高限度只能是不涉足、不剥离个人自然权利的市场原则。

诺齐克的个人权利的“获取原则”建立在对洛克获取理论——“占有不损害他人利益，并给其它人留下足够的好处”这一原则改造的基础上，提出：一个人获取所有权，不能损害他人



占有这一权利的机会，即机会平等，这是持有正义的充分条件。而“转让原则”是以自愿为原则的，它依赖于一个人是否有权利这样做而确定其合法性，这是持有正义的必要条件。“矫正不正义的原则”，一般要依据获取与转让是否正义而启用这一原则。对于“最小国家”税收的形成方式，诺齐克却坚持模式化，其目的是为了减少个人分散捐助那些“财政上窘迫的被禁者”的成本，但是，通过捐助体系很有可能会损失捐助的目的，而且民间组织也能替代捐助体系的功能。所以，诺齐克的市场中所形成的税收，使其“最小国家”并非最小。

诺齐克的分配原则坚持“非模式化的历史原则”——它依赖于一个人对他的占有权利的获取与权利的自愿转让等合法过程，因此没有一个统一的模式。一切模式化的分配原则或“目的—结果”分配原则，都是把分配的利益当做“天上掉下来的馅饼”，通过国家进行强行正义，必然会侵犯个人的自然权利。这样，它也就决定了诺齐克的“最小国家”对再分配的消解，它“最有效地减少那些渴望权力或经济利益的人们这样接管或操纵国家的机会”。这种分立或者分散的个人权利正是诺齐克期待中的乌托邦。

在乌托邦理论中，诺齐克企图建构一个个人权利的“异质性”的联合体国家，使个人的意志选择的自由与任何人的自由同时并存。其建构方式是通过个人的主体性想像，经过“设计手段”与“过滤手段”，逐步形成并确立、进入一个稳定的世界。不同的个人将选择或建构不同的联合体，并以此为基础，以个人的自然权利为前提，通过市场方式形成松散的“个人存在权”的乌托邦。在那里，“将不只有一种共同体的存在，也不是只有一种生活方式。乌托邦将由各种联合体组成，人们在不同的制度下过着不同的生活。”但是，诺齐克的乌托邦理论与其“最小国家”的性质与功能的矛盾一样，将个人自由外在化为权利对自由的肯定性，不可避免地存在着自由与权利的矛盾，即个人权利并不能

够表达个人自由，只能产生对自由的异化。因此，有必要将它彻底化。

“社群主义”认为，诺齐克将个人自由“原子化”，应该将“原子论”意义上的“个人自由”代之以“自我”，它在“社会背景”、“历史背景”和“文化背景”中自我规定，自我追寻，但“社群主义”对诺齐克的批判是以“文化原子论”方式，将个人自由锁闭于其中。当一个社群文化核心出现矛盾时，“自我”是无法确立的。所以，以“社群主义”的方式将诺齐克的国家观进行彻底化，只能导致一个庸俗化的国家观。

马克思主义将自由诉诸实践，人的自由是历史地、发展着地实现的，因而它是否定性地实现，这才真正解决了诺齐克国家观中自由与权利的矛盾。因而，马克思主义的“非政治国家”是将诺齐克的“非模式化国家”彻底化的必然逻辑。

## Abstract

This book tries to discuss state view of Nozick which is the extremely Negative-freedom and to uncover its illogicalities of liberty and its indicating entitlement, which leads to a contradiction of the characters of state and its functions. That is the premise of which we make change drastically to the state view of Nozick.

From the start point of the Enlightenment Project, the leitmotiv of which is that a man is surely a man rather than being a state of slavery, two conceptions of freedom have been formed in the realm of political philosophy: the Positive Freedom versus the Negative Freedom. The former, which is in accordance with the internal sublime desire of humanity, attempts to demonstrate a Maximax-state which it is possible, while the later, which is in terms of the natural needs of individual, tries on the argumentation of the Minimal-state which is possible. The Negative Freedom can be divided into two phases, namely, 'the Classicality Freedom' and 'the New-classicality Freedom' (viz. Libertarianism). What 'the Classicality Freedom' has answered in its state-view is the question of what kind of state should be upbuilt—people living there is free. However, the Libertarianism resolves on the basis of its state-view that state would be

founded freely by individuality. Thereinto, Nozick demonstrates that his Minimal-state is formed on the basis of market principles by which the individual is in liberty. Moreover, he thinks that this is the state's maximum, which could not be surpassed beyond. Nozick's work *Anarchy, State and Utopia* is the only nonesuch book in which the Minmax-state can be shaped desirably, on the market rules of the New-classicality Freedom.

Usually, there are two representations of the animadversion on Nozick's state-view: the first is that Nozick's state-view gives only prominence to the Individual Liberty, but the Social Justice is disappeared. The second criticism is that Nozick holds the individual liberty on 'Atomism', so, the Communitarianism argues that it should be replaced by the essential (self-defined) self in 'Culture Context'. But in our article, we debate that basing on the logicity of Nozick's state-view to reveal the Minimal-state its own internal illogicality is the best method for researching. By studying, we dig out that Nozick's Minimal-state should be Non-Pattern-State; yet, this Non-Pattern-State leaves inevitably behind a dilemma of liberty and its indicating rights. So we reinvent this state-view thoroughly as a result that is a Non-Politics-State of Marxism.

Nozick's individual liberty adheres to Kantian's moral intuition of 'Treating humanity as an end, and never simply as a means'. Moreover, based on the Kantian normative ethnics, Nozick tries to rebuild his descriptive political philosophy. Primarily, Nozick recasts the traditional State-of-Nature theory by Kantian Absolute Orders, and takes this as the beginning point of his state-view. State-of-Nature is the most basic requests to individuals, and it is also the most basic requests of individuals, this is the individual basic right, namely

Nature Rights. So the state-of-nature is the premise of all the social principles of necessity, insofar, Nozick establishes the Market-Rules, which are the prior rules to individual rights. Thereby, the explanations of invisible-hand from God on market rules of 'the Classicality Freedom', which is reinvented as 'Treating humanity as an end, and never simply as a means'. And that is Nozick's Moral-Side-Constraints, and which is also Nozick's justices or equalities.

From the starting point of state-of-nature, it comes into being the mutual-protection associations gradually. The associations, however, are not steady, because the difficulties will arise if two different members of the same association are in dispute. For solving these difficulties, people will form the division of labor systems, and sell protective services, we can call it Commercial Protection Agency. When protective agency requires that their clients give up the enforcing of their rights. On the other hand, the agency comes into being the Dominant Protective Association at an end by market competition. And when this association purchases the prohibition of private enforcement of justice of the independents' rights, the independents abandon their private enforcements of justice. When the association takes up the monopoly of enforcement factually, Nozick names Ultraminimal State. In the next phrase, Nozick demonstrates that the protective agency compensates the independents fully, and complements the financially pressed, which cannot purchase the protective services. Doing so for the greatest least of harm to the clients of agency, the compensation or complements become taxes and redistribution of the minimal-state naturally. However, different from the enforcement of artificiality of others' state-view, taxes and redistribution in which Nozick's minimal-state are rooted out of the market exchanging.

Nozick's minimal-state is further deeper than the state-view of 'the Classicality Freedom' that transmits to the minimal-state from the Dominant Protective Association directly; and it also betrays the state-view of utilitarianism, for it is absent of Moral-Side-Constraints, so, as a result, it treats humanity as means. Contractarian builds up a native government in terms of common consent socially, which counts the liberty of individual as an end of some peculiar patterns, this would be the abolishment to the independency of individual consequentially. Last, Anarcho-individualism treats liberty of individual as its internal perfect value, it equals to no nature rights because there is lack of negativity of nature right. Protecting the nature-right of individual, and prohibiting the actions of impingement virtually, the minimal-state is desirable.

In the sense of Nozick does not refute the Anarcho-individualism thoroughly in the course of arguing the nature of minimal-state and its functions. The characters of minimal-state are non-pattern justice and non-pattern procedure; so, its functions should be non-pattern's, that there should be a position which regards the liberty of individual as its internal perfect value. Because there is not necessity to which the associations carry the compensation or complement first, and then it has the rights of prohibiting the enforcement by independents, whether or not individual does away with his status of independency, which starts from his own free will. Therefore, we have an in-between which is between anarchy and minimal-state, and which is the result of weakening the minimal-state, we named it Non-Pattern-State.

The kernel conception of Nozick's state-view is 'moral-side-constraint', it is a result of market exchanging of individual nature-rights, it is also a border of individual behavior, and yet, it is not any

finished patterns which takes on multiformity. So the justice of minimal-state is non-pattern, which can determine the tiptop limit of Nozick's state that no society should go further than enforcing that most basic requirement of peaceful cooperation. This is the market principle of Nozick's.

Nozick's theory of 'The original acquisition of holdings' of individual rights is based on Locke's theory of acquisition, which contains 'Property holdings should be sure that the situation of others is not worsened, besides this, there should be enough and as good left in common for others', but Nozick reinvents it as: 'A process normally giving rise to a permanent bequeathable property right in a previously unowned thing will not do so if the position of others no longer at liberty to use the thing is thereby worsened.' Nozick puts forward three principles: the principle of justice in acquisition which is a sufficient reason to justice of holdings, the principle of justice in transferring which is a necessary reason to justice of holdings, and the principle of rectification of injustice which relies on the former two principles whether they are just or not. The taxes in minimal-state for which Nozick accounts reducing the cost of contributor individually and dispersedly for the financially depressed people, so, Nozick insists on a tax system pattern. But it is possible that donation system can be replace by civilian organizations. That is to say, the minimal-state of Nozick is not minimal.

Nozick persists in the distribute principles of historical non-pattern principles, which depend on the just procedure of holding rights and transferring by one's own will. Otherwise, the distribution of current time-slice principles and end-result principles (which can be called by a joint named distribution patterning principles), all of them, Nozick

regards these distributions are in the light of manna from heaven, because of considering the distribution as a pattern or as an end-result principle. Nozick demonstrates that it does infringe the individual nature-rights by enforcement of justice. As a result, the redistribution of state is disappeared. Nozick argues that 'the minimal-state best reduces the chances of such takeover or manipulation of the state by persons desiring power or economic benefits'. That is the desirable utopia of Nozick in that the individual rights are separate.

In utopian theory, Nozick tries on constitution of different characters of communities, in which the utopia is a framework for utopias, and it is a place where people are at liberty to join together voluntarily to pursue and attempt to realize their own vision of good life in the ideal community but where no one can impose his own utopian vision upon others. Nozick founds his utopia by two steps that people imagine a possible world in which to live, and then to establish a stable world being set up by design devices and filter devices. Different individuals will choose or establish different communities in accord with his own vision of good life, so, this kind of utopia Nozick calls it Existential Utopia, which bases on the premise of individual nature-rights, where there will not be one kind of community existing and one kind of life leading in utopia, utopia will consist of different and divergent communities in which people lead different kinds of lives under different institutions. But in this kind of utopia, it still subsists inevitably a contradiction to liberty and right in Nozick's utopian theory, which is the same as the contradiction to the nature and function of minimal-state. We argue that individual rights cannot express as liberty to individual, and it will yield dissimulation to liberty. So, we should make drastic change to Nozick's state-view.



Communitarianism debates that Nozick considers the individual liberty as 'atomism', which should be replaced by Social-Context, Historical-Context and Culture-Context by Cross-culture Dialogue. But Communitarianism establishes Culture-Atomism to replace Nozick's atomism of individual liberty that would not seek self, especially, when the dilemma comes out from the core of a culture. Thus, we think that the state-view of Communitarianism is vulgar.

Marxism appeals liberty to practice, and liberty will be realized by itself historically and developingly. So, the state-view of Marxism is the perspicuity to the relation of rights and liberty, in which practice is the medium of them, because the realization of liberty is negatively. And so, the non-politics state is of a necessary result of Nozick's non-patterning state. Thus, we make a thorough change to the minimal-state drastically.