Political Rule and Its Discontents[1]

1 Introduction

States stand, or are said to stand, in certain *relations of rule* to their subjects. A state wields "authority" or "power" over its subjects. It "obligates" or "coerces" or threatens or uses "force" or violence against them, so as to compel them to comply with its commands. It claims a "monopoly" or "exclusive right" to issue and enforce these commands. It taxes. And even when it does not directly affect its subjects in these ways, it profoundly shapes their natural and social environment. These relations of rule are thought to pose a problem. It's often described as a problem of "legitimacy," although I won't rest much on that notoriously supple term.

My aim is understand the problem better, on a common way, albeit not the only way, of framing it. This framing has two main elements. First, those who are subject to the problematic relations of rule are thought to have a pro tanto moral *complaint* against those relations. Those relations of rule threaten their liberty—or, at any rate, some right, interest, or status that they have. As Pettit defines the "problem of legitimacy," for example, it is "how to reconcile… political submission with personal freedom" (2012, 147).

Second, this complaint is *not* that the state in question is a *bad bargain*, in the sense that it leaves its subjects with a worse *distribution of means to a fulfilling life*—or, for shorthand, detracts from the *common good*. These means to a fulfilling life include *negative* goods—such as the absence of physical invasion, constraint, or impediment of one's person by other people—and *positive* goods—such as food, water, shelter, sanitation, medical care, and education. We can leave largely open what counts as a better distribution: whether it is sensitive to aggregation, equality, priority, desert, or some combination thereof. Suppose, at least for the sake of argument, that the state in question is a good bargain. By issuing and enforcing directives, it

induces cooperation that would otherwise not take place, and that cooperation promotes the common good. If the state reduces each individual's enjoyment of some means—such as the negative good of freedom from *state* interference—then it increases her enjoyment of other means—such as the negative good of freedom from interference *tout court*, as well as many positive goods. These more than compensate, so that the state puts its subjects in a better position overall to lead worthwhile lives. Still, this does not answer the complaint. Perhaps, if the alternatives threaten vastly greater evils, the state should not be dismantled. But, unless more is said, the relations of rule it involves are "illegitimate," or, in some other way, morally imperfect.

What does answer the complaint, if anything does, is either a *condition* or a *limit*. A *condition* on the relation of rule changes its context or character so that it is no longer as objectionable. Such a condition might be, among other things, that those subject to the relation of rule *consent* to it, or that it is *acceptable* to them. A *limit* removes the relation of rule from a sphere in which it would be objectionable. Such a limit might be that the state is *minimal*—that it acts to secure only negative, not positive, goods—or that it is *liberal*—that it does not regulate private or self-regarding choices.

A complaint of this kind drives many libertarian views. A more extreme libertarian position says that, absent consent, the state, like any other agent, may require compliance only with natural prohibitions on force (Simmons 1979, 2000, 2005). A more moderate libertarian position says that, absent consent, the state may require only compliance with natural prohibitions on force, or contributions to schemes that require such compliance; absent consent, the state must be minimal (Nozick 1974). Why not a more extensive state, which requires contributions to schemes that provide positive goods, such as greater literacy or protection from

infectious disease? Few libertarians think that they need to deny the seeming truism that things would be better if people enjoyed greater literacy or protection from infectious disease. (Some libertarians may support private charities, or harbor personal hopes for the victims of natural disasters or command economies, that are predicated on precisely that truism.) Instead, most libertarians will first answer: "Even if the state has good results, that doesn't answer the complaint against the relations of rule that the state involves. For instance, it doesn't license the state to coerce people, without their consent, to bring about those results. The ends don't justify the means."

Many who would favor a far more extensive state nevertheless agree that there is some such complaint against relations of rule, which is overcome only if certain conditions or limits are satisfied. Rawls's "liberal principle of legitimacy" says that because the state "exercises political power," it must meet the condition of being (as I will put it) "acceptable" to those subject to it: roughly, justifiable to them in terms that do not presuppose any particular religion or philosophy of life (1993, 136–37). Those subject to such "political power," it would seem, have some complaint about it, which must be addressed, if not by their consenting to it, then by its being acceptable to them. The complaint isn't answered simply by showing that the state brings about a better distribution of means to a fulfilling life—or, specifically, that the "basic structure" distributes "primary social goods" according to the "two principles of justice." If it did, Rawls 1971 would not have needed a sequel.

To take another example, Dworkin agrees that there is a crucial "puzzle of legitimacy": "How can *anything*" supply a general "justification for coercion in ordinary politics?" (1986, 191). The condition that must be met, he argues there, is that those subject to such coercion comprise a community of a special and demanding kind—a "community of principle"—which

goes beyond merely having a state that promotes the common good. And the more recent Dworkin 2011 is sown with thoughts of a similar form: the government "has no moral title to coerce, unless…" (372), "coercive political organizations undermine the dignity of their members unless..." (319–20), and so on.

Finally, consider a popular argument that economic justice is more urgent within borders than across them. Certain relations of rule, such as coercion, are thought to obtain distinctively within borders. And these relations are thought to provoke a complaint, which is answered only by the condition of economic justice beyond mere humanitarianism. To answer this complaint, it isn't enough to show that state coercion is a good bargain. No doubt, establishing a minimal state is an improvement over a state of nature. But the minimal state's relations of rule provoke a *new* demand for justification, not present in a state of nature, which that improvement alone does not satisfy (Blake 2001; Nagel 2005).

So it seems fair to say that the idea is widespread, at least among political philosophers: namely, that there is some complaint against certain relations of rule, which is answered not by a net improvement in the distribution of means to a fulfilling life, but instead by conditions or limits of the kind that we have described. But why, exactly? Imagine that you improve the distribution of means for a fulfilling life among us, your neighbors. You drain a stagnant pool in your yard, lowering our risk of mosquito-borne disease. It would be odd to suppose that we have a complaint against you. Yet when the state improves our means for fulfilling lives, we are supposed to have a complaint. Presumably, this is because of the relations of rule that the state, but not your neighborliness, involves. Which relations of rule provoke this complaint? Why? And why is the complaint met by, and only by, limits or conditions of the kind so often proposed? These are the questions this paper asks.

The paper investigates several familiar candidates for the problematic relation of rule. With respect to each candidate target of the complaint, I submit, we find one or both of two things. First, removing the candidate target doesn't remove the complaint. That is, if we subtract, in imagination, the relation of rule in question, we are still left, intuitively, with a complaint of the kind that we are trying to make sense of. Thus, that relation of rule cannot be the thing, or at least not the only thing, that provokes the complaint. Second, the complaint against the candidate relation of rule is answerable, either by anyone's lights, or at least by the lights of those who insist that there is a complaint, even without the conditions and limits that they invoke.

So what then nourishes this pervasive idea: that some relation of rule provokes a complaint, which in turn requires special conditions or limits? I am not sure. But, at the end of this paper, I explore a possibility. It is an anxiety that in being subject to the state's decisions, we are *subordinated*, or put into relations of *inferiority*, to other people. The problem of relations of political rule, if there is one, is not so much of reconciling such relations with the *liberty of the individual*, but rather of reconciling them with an ideal of *equality among individuals*.

2 From obligation to enforcement

To sharpen our focus, suppose henceforth that the state against which the complaint is brought is not only a good bargain, but moreover the best available bargain. The state is *an ideal enforcer*: it enforces all and only violations of its directives. Its police, courts, and so on, make no mistakes. And the state is *ideally directive*: there is no alternative set of directives that the state could issue and enforce that would bring about a better distribution of negative and positive goods (although likely there will be alternative sets that do equally well). Granted, this ideal

state may automatically meet one of the complaint-answering conditions proposed in the last section: namely, economic justice beyond humanitarianism. But it does not, unless more is said, satisfy the other conditions, such as consent or acceptability. Nor does it respect the limits of the minimal state; it aims to provide positive, no less than negative, goods.

To begin our search, then: Which relation of rule provokes the complaint? No relation of rule has attracted more discussion than "political obligation": a moral duty to comply with state directives, as such. Let me briefly explain, in this section, why I nevertheless turn my attention elsewhere.

We can include under the heading of "political obligation" the alleged "duty to obey the law," as well as "political authority," understood as the state's power to create political obligations, by issuing directives. We might also include under this heading the state's oft-discussed "moral monopoly" or "exclusive right": namely, that where there is a state, it is morally impermissible for private agents to enforce natural prohibitions. This can be seen as a special case of political obligation: namely, to comply with state's ban on private enforcement.

Our ideal state issues directives to contribute to schemes to promote the common good. Such directives will go beyond mere natural moral prohibitions on the use of force. As we will discuss in section 4.2, such directives will also go beyond natural moral requirements to promote the common good. Thus, if there are political obligations to comply with the ideal state's directives, we are morally constrained to a greater extent than we would be if we faced those directives with only natural duties, even on an expansive view of what those natural duties are. Put another way, if there are no political obligations, then sometimes disobeying the state's directives violates no moral duty whatsoever, not even a duty to promote the common good.

There is an intelligible complaint against being bound by political obligations. Of course, this complaint doesn't *grant* that there are political obligations and *then* rail against Moral Reality for having put us in chains. Instead, the complaint comes earlier, as a reason why Moral Reality doesn't in fact so obligate us: "In general, agents who would be bound by any putative moral requirement have at least pro tanto complaints against being so bound. Unless those complaints are answered by sufficiently important values that the requirement serves, there simply is no such moral requirement. Since the complaints against being bound by political obligations are not answered by sufficiently important values, there are no political obligations."

Can this sort of complaint against political obligations be the complaint that we are after? Let us ask two questions. First, does removing the candidate remove the complaint? Second, can the complaint against the candidate be answered, either by anyone's lights, or at least by the lights of those who insist that there is a complaint, even without the conditions and limits that they invoke?

Let's begin with the second question. Even those who press such a complaint against political obligations are likely to accept that there are some natural duties. And there is a pro tanto complaint against natural duties, as there is against any putative moral requirement. So they accept that that complaint against natural duties is overcome. Why, then, isn't the complaint against political obligations also overcome? Is the difference that the complaint against political obligations, the objection to being so bound, is somehow more serious? Political obligations are not, as a rule, more burdensome. After all, political obligations to refrain from private enforcement are requirements simply to let the state take a distasteful chore off one's hands. Perhaps the trouble is that political obligations are imposed on us by another person or "will" whereas natural duties are not? But this is an illusion. The basic principle that

when a state issues a directive to us, we are morally required to comply, if there is such a principle, is not *itself* imposed by any state. Rather, the state determines how it applies, as a result of making certain choices: namely, to issue directives. The same is true of natural duties. The basic principle that you may not step on my foot is not imposed by me. Rather, I determine how it applies, as result of making certain choices. If I move my foot from here to there, then you may no longer step there (van der Vossen 2015).[2]

Perhaps, then, the difference is not that it's somehow *worse* to be bound by political obligations than by natural duties, but instead that there's simply *less* to justify being so bound. What's to be said for complying as such, especially when not complying will do just as much good? Granted, if one has promised to comply, then the value of fidelity argues in favor of compliance. But if that's the only reason, then something like consent is a necessary condition for political obligation.

For the purposes of this paper, I will grant that this is so: that we can't answer the complaint against being bound by political obligations without appealing to a condition like consent. What matters is that that does not end our search. For consider our other question: Does removing the candidate relation of rule remove the complaint? Imagine (or observe) that we don't have political obligations. This means, again, that disobeying the state's directives will sometimes violate no moral duty whatsoever. Otherwise, the state relates to us in the same way. It still issues and enforces its directives (that is, all of the directives it needs to issue and enforce to promote the common good to the greatest extent possible). Does the fact that we *don't* have political obligations to comply with these directives, which it nonetheless issues and enforces, silence the complaint that so many feel? On the contrary, it would seem to intensify the complaint.

The residual complaint, some might say, is that the state, in *issuing* its directives, *asserts*, falsely, that we have political obligations. But can the complaint be merely that the state asserts untruths? In any event, imagine that the state does not assert that we have political obligations. (Is any imagination required? Do states assert that we are *morally* required to obey them?[3]) For example, although the state claims no *moral* monopoly on enforcing natural prohibitions, it nonetheless announces that it stands ready to imprison anyone else who tries to enforce them. Does the state's conceding that we aren't obligated to comply with these directives, which it nonetheless issues and enforces, quell the felt complaint? Quite the contrary.

It may seem obvious what the target of the residual complaint is. The state is *enforcing* our compliance with its directives. Indeed, it is very often said that it is the state's use of "force" or "violence" or "threat of punishment" or "coercion" that calls for special conditions or limits.[4] As Edmundson (1998 90) paraphrases the complaint: "The coercive nature of law not only renders the state presumptively illegitimate, it sets the bar of legitimacy at a higher level than is normally necessary for the legitimacy of individual or concerted private activity." The state's concession that we are free from any *moral bonds* of political obligation to comply with its directives does nothing to answer this complaint, about what the state still *does to us* in enforcing those directives. Indeed, the concession seems to amplify this complaint. This is especially so if we accept the *Duty Requirement*: that only duties may be enforced.[5] If there are no political obligations, then, as we observed earlier, there will be cases in which we have no moral duty whatsoever to comply with even an ideal state's directives. In such cases, according to the Duty Requirement, the state wrongs us in enforcing those directives.

3 Deterrents: The Distributive Complaint

What then is enforcement? It divides into three categories, which raise different concerns. To

enforce a directive, D, may be to *threaten*: to prevent the agent's violation of D by telling him that he will suffer some consequence that he seeks to avoid if he violates D.

Next, to enforce D may be to *defend*: to prevent the agent's violation of D by more direct, physical means. Note that "defense" covers a wider range of cases than it might at first seem. Restitution "after the fact"—such as returning stolen goods—is often described as a response to a *past* violation. But many such responses are forward-looking defense; they aim to prevent the *future* violation that *would* take place if, say, the thief were to *remain* in control of the stolen goods.[6]

Finally, to enforce D may be to *impose a deterrent*: to follow through on the threat (whether or not the threat itself was permissibly issued), not to prevent the violation of D (which has already occurred), but instead to sustain the potency of future threats to deter the agent or others from violating *instances of the same sort of* directive. I use "impose a deterrent" instead of (the admittedly less cumbersome) "punish," to stress that it does not involve condemnation, as punishment, perhaps by definition, does. The function of following through on deterrent threats is simply to induce cooperation, and that needn't involve condemnation.

For reasons that will become clearer as we proceed, I start by looking for a complaint against the permissibility of the state's *imposing deterrents* for violations of its directives. Suppose that some subject, Violet, has violated a state directive. May the state impose a deterrent on her? Let us assume that the deterrent, following contemporary practice, is imprisonment. Imprisoning her would deter future violations, which sustains cooperation, which in turn promotes the common good. So what's the problem?

Needless to say, in order to be effective, the deterrent may need to curtail radically the goods that Violet enjoys, especially negative goods (not least freedom of movement

unobstructed by guards). But this is not enough for a complaint. For by hypothesis, the deterrent provides others with important goods. By analogy, suppose we don't save one person from one-month-long entrapment in a pit, in order to save two others from two-month-long entrapments in similar pits. We do indeed leave the freedom of movement of the one person worse than we could have left it. But this is in order to avoid leaving the freedom of movement of two others worse to a far greater degree. If the one has a complaint, it seems straightforwardly answered by observing that the outcome we are bringing about is distributively fair.

It might be replied, however, that Violet's case is not like this. It isn't as though if Violet isn't imprisoned, two others will be imprisoned in similar cells for twice the time. Instead, not imprisoning Violet will affect each other person far more modestly. By hypothesis, not imprisoning Violet will weaken deterrence. But the effect of this weakened deterrence will be to leave each other person only a little more exposed to property crime, or leave each other person with only a little less in the way of public services. In sum, Violet bears great losses in order to provide others with much smaller benefits. Now, according to an aggregative principle of distribution, imposing the deterrent on Violet might make the distribution better, at least if the little losses that those many others suffer add up to a greater sum than the severe loss that Violet alone suffers. Similarly, according to a desert-based principle of distribution, which discounts the suffering of wrongdoers, imposing the deterrent on Violet might make the distribution better, at least if she acted wrongly in violating the state directive. But according to nonaggregative and non-desert-based principles of distribution (or to desert-based principles in those cases in which Violet has not acted wrongly), imposing the deterrent on Violet worsens the distribution. Which is to say that imposing the deterrent on Violet does *not* promote the common good after all. Call

this the *Distributive Complaint Against the State Imposition of Deterrents*, or the *Distributive Complaint*, for short.

How, if at all, can the Distributive Complaint be overcome? Consent would presumably do the trick. If someone consents to a smaller share in order to provide others with greater shares, then he has no complaint about a lesser share. Why? A natural answer is this: What he had a distributive claim to was not, strictly speaking, the share of the *good*. Instead, it was to the *opportunity* for such a share: the chance to have that good, *if he chose in a certain way*. When he *consents* to a smaller share, he hasn't been deprived of this opportunity. He has simply exercised it in a particular way.

In section 1, I described the state's aim, the common good, as a just distribution of *goods*. In many cases, however, the state may have reason to provide not goods, but instead *opportunities*: to put a person in a position to enjoy a good if he chooses appropriately, but not otherwise. There are many possible reasons for this. The recipient's choice may be the best indicator that she has reason to have the good. Or the opportunity to choose may facilitate activities that are possible or valuable only insofar as they flow from "one's own," "free" choices or judgments: such as expression, religious observance, association, or—as Raz (1986) understands "autonomy"—being the author of one's life as a whole. Or the denial of opportunity may be paternalistic. Or, more importantly for present purposes, the state may face a *more-through-choice* dilemma. Either the state can provide us with *less* of a good whatever we choose, or it can provide us with the opportunity for *more* of the good but only if we choose appropriately. Often, although of course not always, the latter opportunity is what we have reason to want.[7]

If what is to be distributed is opportunity, then Violet can raise the Distributive Complaint only if the state provides her with a worse opportunity than it provides others, or a worse opportunity than anyone needs to have. Turn the clock back to before Violet's violation of the state's directive. At that point, the state offered her exactly the same overall set of opportunities—goods conditioned by her choices—that it offered everyone else. Part of that overall set was this particular opportunity, O1: that if Violet complied with a certain directive, she would not be imprisoned, and if she violated this directive, she would be. In imposing the deterrent on Violet, it might be said, the state isn't *depriving* her of this opportunity, O1. What it does is *consistent* with her having this opportunity.

Violet might protest: "Yes, I grant that my opportunity was no worse than anyone else's, but it was worse than anyone's needed to be. The state could have provided everyone a clearly better opportunity, O2: that *whether or not* one complies with the directive, one will not suffer the deterrent." But then Violet would be mistaken. If the overall set included O2 instead of O1, then *other* opportunities in the O2-set would be *so much worse* that the O2-set overall would be worse (for each individual). The state faced a more-through-choice dilemma. Other opportunities in the O1-set depend on deterrence that is provided only by the inclusion of O1.

If this seems like sleight of hand, compare a case that has nothing to do with imposing deterrents. Suppose that there is some publicly provided benefit to be distributed. In order to know how to distribute it, the state asks people to apply for it. Imagine that if the state had to gather the relevant information on its own, it would be too costly to provide the benefit. Again, the state faces a more-through-choice dilemma. Dithers chooses not to apply before the deadline, whereas others do apply. As a result, shares of the benefit are distributed to those others, but not to Dithers. Dithers protests: "Since I have just as much of a claim to the benefit

as others, it is unfair that they have more than I." The state's reply is: "What you had an equal claim to was not the benefit, but the opportunity to receive it *if you applied*. And your claim has been honored as fully as the claims of those who applied and received it."

Observe that this response to the Distributive Complaint has two welcome implications. First, it puts pressure on the deterrent of a given severity to be "necessary." If a less severe deterrent would have the same deterrent effect, then a better overall package of opportunity for each person is possible: namely, one with the less severe deterrent. Second, it puts pressure on the deterrent of a given severity to be "proportional" to the violation. If the only deterrent that will deter a given violation is very severe, whereas such violations have only small effects, then that deterrent may make the overall package of opportunity worse.

4 Deterrents: The Deontological Complaint

So much for the Distributive Complaint. Another complaint against the state's imposition of deterrents, however, seems to be staring us in the face. Grant that imposing the deterrent achieves a greater good. Still, there are certain things that we may not do to a person even to produce a greater good. We may *leave* the one person *in* a pit in order to rescue two others. But surely we may not *push* the one *into* the pit as a means to rescuing two others. It's not quite Thomson's (1986) paradigm of fatally pushing someone off a footbridge to stop a trolley that would otherwise kill five, since the numbers and stakes for each are lower and (arguably) since we are only "removing," not "using," the one. But it still runs up against similar "deontological" resistance. Likewise, one might protest on Violet's behalf that imposing a deterrent on her violates a deontological constraint on what may be done to a person even to produce a greater good, such as:

Force Constraint: It is impermissible to use force on someone as a means to, or foreseeable side-effect of a means to, a greater good (compare Kamm 2006).

And, it might be said, imprisoning Violet subjects her to force as a means to, or a forseeable side-effect of a means to, a greater good. This, then, is the *Deontological Complaint Against State Imposition of Deterrents*, or the *Deontological Complaint*.

4.1 The Forceless State

With earlier candidate complaints, our first move was to show that removing the target did not remove the complaint. However, it might seem impossible, in this case, to remove the target. How can a state impose deterrent imprisonment *without* force (Huemer 2013, 10)?

In fact, it takes only a little imagination. The state might build a cage around Violet, while she sleeps in a public park, using materials she does not own, without laying hands on her (directly or with the use of implements). Now, it might be said that this still "harms" her, by "actively" bringing it about that she bears the loss of confinement. And "active harming" is a close cousin to force, subject to similar deontological constraints.

So, for good measure, imagine the Omittite Empire. Their Emperor, the Guardian of the Ladder, does not put violators of his directives in prison, or build prisons around them. He doesn't need to. This is because each Omittite, to survive the elements, must descend into his naturally carved hole each night. Every morning, the Guardian drops the Ladder into each hole to enable its occupant to climb back up. His deterrent is simply to withhold the Ladder, confining the occupant there for a fixed period. Suppose an Omittite, "Holton," violates some directive, and so the Guardian, as announced, does not drop the Ladder into Holton's hole for several months. This isn't a use of force or an "active harming." It's simply a failure to aid.

To be sure, there are deontological constraints on refusals to aid, even for the greater good. We may refuse to give life-saving medication to the one in order to have it to give to the five. But we may not refuse to give life-saving medication to the one in order to learn from the progress of his disease how to save the five from it (Foot 2002, 28). I take it that this is explained by something like:

> *Non-Aid Constraint*: If one is otherwise required to aid someone, it is not sufficient to release one from this requirement that by refusing to aid that person, one can *use or affect that person as* a means to a greater good.

But is the Guardian refusing aid so as *to use or affect Holton as a means* to the greater good?

The Guardian is withholding the Ladder from Holton so that others, among them Dieter, will be deterred from violating the directive. Dieter is deterred by the combination of two beliefs. First, the *Belief in Credibility*: Dieter's belief that the Guardian won't drop the Ladder to Dieter, if Dieter violates. Second, the *Belief in Consequence*: Dieter's belief that this is something for Dieter to avoid. Now, *if* the Guardian were withholding the Ladder from Holton so as to be able to make a spectacle of his confinement, so as to sustain Dieter's Belief in Consequence—as if to say, "Obey, lest ye suffer as, lo, this wretch suffers"—then he would be refusing aid so as to use Holton as a means. But the Guardian doesn't need to sustain Dieter's Belief in Consequence, and indeed probably can't have much effect on it. It's obvious to Dieter that it will be a bad thing for Dieter if the Ladder isn't dropped to him. He doesn't need to be "scared straight." The Guardian needs to sustain only Dieter's Belief in *Credibility*. And the means to sustaining *that* belief is simply not dropping the Ladder into Holton's hole, as if to say to Dieter: "Look, I mean business. The same will be done in your case." Nothing that happens to Holton as a result is part of the Guardian's means to the greater good. Put another way, the

Guardian's deterrent aim would not be thwarted if (contrary to fact) confinement were a benefit to Holton (if he needed and wanted more than anything quiet respite without the temptation of escape) or if refusing to drop the ladder to Holton did not confine or otherwise involve him (if he, exceptionally, could survive the elements outside, or climb out on his own). Suppose the Guardian's intelligence officers bring him two complete and fully accurate dossiers: one on how Holton would be affected by withholding the ladder, the other on how Dieter (as he believes) would. It seems the Guardian has no reason to read Holton's, but every reason to read Dieter's. If Dieter believes that confinement would benefit him, or that he would not be confined, then the Guardian's deterrent aims will be thwarted. But what will happen to Holton—the contents of his dossier—are neither here nor there.

In sum, the Deontological Complaint cannot so much as be raised in Holton's case. And yet, intuitively, the Omittites' forceless system of deterrents seems not very different in its moral character from more familiar, forcible systems.[8]

4.2 The Natural Duty Argument

Suppose, however, that the state does not have the Guardian's luxury. It must use force in its deterrents. This brings us to our second response: to show that the candidate target is not objectionable—or, rather, that those who press a complaint cannot find it objectionable, compatible with their other commitments.

Some try to show this with the *Natural Duty Argument*.[9] "Even proponents of the Deontological Complaint must accept that:

(1) Each individual has a natural duty to promote the common good.

We're assuming that the state is ideally directive, i.e., that:

(2) No alternative set of directives that the state could issue and enforce would better promote the common good.

So, it follows that:

(3) The uniquely best way for any individual to promote the common good is to comply with state directives.

So, it follows that:

(4) Each individual's natural duty to promote the common good is extensionally equivalent to a duty to comply with state directives.

Now, assume:

(5) *Duty Permission*: The Force Constraint is lifted, for purposes of deterrence, when the target violates a duty.

Then it follows that:

(6) *State Imposition*: The Force Constraint is lifted, for purposes of deterrence, when the target violates a state directive."

I don't press the Natural Duty Argument. One reason is that it has limited dialectical reach. First, some might deny Duty Permission.[10] In particular, they might say that the Force Constraint is lifted for violations of natural prohibitions on the use of force, but not for violations of other duties. Would they thereby draw an arbitrary distinction? Perhaps, but in advance of hearing some explanation of Duty Permission, how can we know? Second, some, especially libertarians, might deny that there is a natural duty to promote the common good. They may accept only that there are natural prohibitions on the use of force—or, at most, requirements to provide aid in extreme circumstances.[11]

The other, more important, reason for avoiding the Natural Duty Argument is simply that it is invalid. Premise (2) that the state is ideally directive does not imply (3) that the uniquely best way to fulfill one's duty to promote the common good is to comply with state directives.[12] Simmons's well-known "particularity problem" supplies one reason for this "Gap": this divergence between what natural duty requires and what an ideally directive state directs. Suppose that the natural duty is to contribute to the "global" common good, and suppose that one can contribute to that at least as well by complying with the directives of a *foreign* state. For example, a Swede might pay Danish taxes instead of Swedish taxes. So her natural duty to promote the common good does not imply a duty to comply with the directives of the Swedish government to pay Swedish taxes, only a more permissive duty to pay Swedish or Danish taxes (Simmons 1979, ch. 6; 2005, sect. 7).

But the Gap does not depend on "particularity," so understood. Even if we assumed a single world-state, the Gap would still be there, for reasons familiar from debates over rule utilitarianism. There is often no way for the state to carve out an exception for benign or beneficial individual actions without worse consequences overall. To put it schematically: Although it promotes the common good at least as well for those in condition C to X, it detracts from the common good for those *not* in C to X. And there might be no way for the state to deter the latter without a blanket prohibition of X-ing, *whether or not* one is in C. Countless examples fit this schema. In the case of coordination problems, it might promote the common good at least as well for those in a condition *in which enough others will coordinate* to promote the common good in some other way, although it detracts from the common good for those in a condition *in which not enough others will coordinate* to do so. Similarly, it might promote the common good at least as well for those in a condition *in which they can act competently without official*

authorization to act without official authorization, although it detracts from the common good for those who *cannot* act competently without official authorization to act without official authorization. Examples would be skilled and responsible operation of a motor vehicle or practice of medicine without a license, entry into a secured space without proper identification, or the revelation of state secrets in the public interest.[13] Similarly, it might promote the common good at least as well for those in a condition *in which it is known that their attempts at harmful acts will be futile* to attempt (such as the subjects of an undercover "sting" operation), although it detracts from the common good for those whose attempts *will succeed* to attempt.

In sum, an ideally directive state will have to impose deterrents for the violation of directives to act in ways that are not required by any natural duty to promote the common good. Because of this Gap, even if Duty Permission is true, the state may still violate the Force Constraint in imposing deterrents for the violation of such directives. Of course, one might try to bridge the Gap with political obligations. But are there political obligations? As we noted in section 2, it's far from clear.

Indeed, instead of answering the Deontological Complaint, the Natural Duty Argument seems only to reveal its force. Suppose we accept (i) the Duty Requirement: that the *only* thing that can lift the Force Constraint, absent consent, is the violation of a duty. And suppose that we accept (ii) that there are not, in general, political obligations. Then we must accept that, in light of the Gap, even an ideal state (unless it is, like the Omittite Empire, forceless) *will routinely violate the Force Constraint in imposing deterrents for its directives*. That is a simple and powerful complaint against a relation of rule.[14]

4.3 The Avoidance Principle

The unmet ambition of the Natural Duty Argument was to show that those who press the Deontological Complaint cannot consistently object to the state's imposition of deterrents for violations of its directives. In the rest of this section, I will try to show this in a different way. I will argue that one cannot consistently object to state imposition so long as one accepts an elementary Lockean idea: that it is at least permissible to enforce the "law of nature." More precisely:

> *Natural Imposition*: The Force Constraint is lifted, for purposes of deterrence, when the target has violated a *natural prohibition on the use of force*.

To be sure, the ideally directive state's directives go way beyond natural prohibitions on the use of force. Again, they include directives to cooperate to promote the common good in many other ways: for example, to contribute to police protection and public education, in the specific manner that the state has decided. But I will argue that *these* differences between natural prohibitions on the use of force and state directives simply don't matter to the permissibility of imposing deterrents for their violation. This line of argument assumes neither Duty Permission, nor a natural duty to promote the common good. Nor does it require political obligations. Again, it assumes only Natural Imposition.

If we accept Natural Imposition, then we need some explanation of it. Why is it that if some state-of-naturalist, Flintstone, violates a natural prohibition on the use of force, then the Force Constraint is lifted for the purposes of imposing a deterrent on him? It doesn't help to say that by punishing Flintstone we bring about the good of apportioning suffering to desert. Even if there is such a good, and even if punishing Flintstone brings it about, it isn't goods brought about by punishment that we need to find. We already have a greater good to be brought about by imposing a deterrent on Flintstone: namely, protection from force. The "pro" column is already

drenched in ink. What we don't have is an explanation of why the Force Constraint, which usually prevents us from using force even to bring about the greater good, should be lifted in this case.

What lifts the Force Constraint in this case, I suggest, may be captured by a very simple principle:

> *Avoidance Principle*: The Force Constraint is lifted when and only when the target has or had adequate opportunity to avoid the use of force (deeply indebted to Hart 1968 and, especially, Scanlon 1998, 1999).[15]

"Adequate" is determined by fairly balancing the two main interests at stake. On the one hand there is the interest underlying the Force Constraint. This, I would argue, is the target's interest in not being subject to force by others that he does not control.[16] On the other hand, there are the burdens that others may have to bear in order to provide him with control. In some circumstances, the only control that would count as adequate is the target's present consent. In other circumstances, however, weaker control is adequate, given that the burdens that others would have to bear to provide stronger control would be too great. In particular, it would burden others severely to require Flintstone's present consent, after he has violated a natural prohibition, in order to impose a deterrent. This would make the deterrent empty, since one could always escape its imposition by refusing to consent to it. And others rely on the deterrent to sustain the credibility of a threat that induces behavior that promotes the negative common good: a just distribution of freedom from force. Hence, a weaker form of control seems adequate in Flintstone's case: the control exercised in complying with the natural prohibitions. Flintstone's adequate opportunity to avoid force was his opportunity not to violate the natural prohibitions.

Why think that "adequate opportunity to avoid" is what does the work in lifting the Force Constraint? In particular, why not just appeal to the glaring fact that Flintstone has a duty? First, the fact that Flintstone has a duty to refrain from force, by itself, is scarcely sufficient to impose a deterrent on Flintstone, so as to induce others to refrain from force. After all, if Flintstone had *complied* with his duty to refrain from force, then it would be wrong to make him a scapegoat, even if this would be an effective deterrent. Why? Because he did not have adequate opportunity to avoid the force.

Second, it's uncontroversial that, even when someone has no relevant duty, the mere fact that he consents can lift the Force Constraint. The Avoidance Principle explains this straightforwardly. Withholding consent to force, when one had opportunity to withhold consent, is just a special case of exercising an opportunity to avoid force.

Finally, even when someone has no relevant duty, the fact that he was given control weaker than consent can, in the right circumstances, intuitively lift the Force Constraint. Suppose again that we are rushing to save two people from two-month-long entrapments in pits. In order to get there in time, we have to forcibly knock Block, who is in our way, into a pit for a month's stay. If Block's just stuck there in our way, then, as noted before, it seems we can't do it. But if he could easily step aside, and we make him fully aware of the situation, and he still refuses, then I think we may knock him into the pit. Suppose, further, that it makes no difference to the success or cost of the mission whether he is in the way. If he isn't in the way, then we don't need to knock him. If he is in the way, then we do need to knock him, but doing so is completely effortless. Then Block has *no duty to step aside* (at least as far as the rescue mission is concerned). To repeat: his presence there makes *no* difference to the success or cost of the mission. It's not that he has a *duty* to step aside, but rather that he *cannot complain* (at least not

on grounds of the Force Constraint) if, when he doesn't step aside, we push him in. This is because he had adequate opportunity to avoid.[17]

The Avoidance Principle, however, might seem obviously vulnerable to counterexample. First, why suppose that Flintstone's opportunity to avoid was adequate? Suppose that the cost of compliance was death. He would have died from organ failure had he not harvested the vital organs of his victim. The reply is that "adequate" is a moralized notion. The target may not cite, as a "cost" of exercising an opportunity to avoid force, that he thereby had to "forgo" the benefits of wrongful conduct.

Second, suppose Coldfoot consented yesterday, with the best possible opportunity to withhold consent, in the freest and most informed conditions, to our pushing him off of a footbridge to stop the (slow, but inexorable) trolley. Today, without anyone having materially relied on his consent, he says: "I no longer consent to being pushed." Arguably, we may not push Coldfoot.[18] Or suppose that Hefty, with the best possible opportunity to avoid doing so, in the freest and most informed conditions, intentionally, knowingly, etc. steps onto an overpass, despite the sign that reads, "If you are heavy enough, you may be pushed off to stop runaway trolleys." However, mounting the overpass, Hefty clearly announces, "I do not consent to being pushed." Again, many will deny that we may push Hefty. We can't set up deontology-free zones simply by erecting signage.

In other words, the opportunity to avoid that is intuitively adequate for Flintstone—namely, the opportunity to refrain from violation—is weaker than the opportunity to avoid that is intuitively adequate for Coldfoot or Hefty—namely, the opportunity to withdraw or withhold present consent. Why is this? Our point of departure is that others are not overly burdened by a principle that grants Coldfoot (or Hefty) freedom from force *provided he didn't consent*

yesterday (or doesn't mount the overpass). Given that, how much *more* are others burdened by a principle that grants Coldfoot (or Hefty) *more extensive control*: that insists, as it were, on a waiting period on Coldfoot's gift (or further conditions on Hefty's)? Not much, it would seem. By contrast, while others may not be overly burdened by a principle that grants Flintstone freedom from force provided that he does *not* violate a natural prohibition on force, it seems they are significantly more burdened by a principle that grants Flintstone freedom from force even if he *does* violate. *That* extension of Flintstone's control deprives them of the deterrent and its protections. It asks a great deal of others.

If the Avoidance Principle is what explains Natural Imposition, then the Deontological Complaint against State Imposition collapses. For the Avoidance Principle would seem to justify State Imposition as well. Just as Flintstone had opportunity to avoid the deterrent, by complying with the natural prohibitions on force, so too Violet had opportunity to avoid the deterrent, by complying with the state's directives. And just as to provide Flintstone with even greater opportunity (e.g., to require his present consent) in order to impose a deterrent would burden others severely, so too to provide Violet with even greater opportunity (e.g., to require her present consent) in order to impose a deterrent would burden others severely. Just as others rely on the deterrent in Flintstone's case to sustain the credibility of a threat that induces behavior that promotes the negative common good, so too they rely on the deterrent in Violet's case to sustain the credibility of a threat that induces behavior that promotes the common good, negative and positive.[19]

4.3.1 Replies: Opportunity to avoid state imposition is inadequate

To salvage the Deontological Complaint, one needs somehow to drive a wedge between Natural and State Imposition, so that State Imposition, but not Natural Imposition, is ruled out.

One might reply that we can do this even while granting the Avoidance Principle. While Flintstone's opportunity to comply with natural prohibitions is adequate, Violet's opportunity to comply with state deterrents is not adequate. So the Avoidance Principle explains why the Force Constraint is lifted in Flintstone's, but not Violet's, case.

Indeed, there are grounds for such a reply. We have granted that one cannot cite as costs of exercising one's opportunity to avoid that one had to forgo benefits of wrongful conduct. Since Flintstone has a duty to exercise his opportunity to avoid—i.e., to comply with natural prohibitions—it seems fairly easy to explain why his opportunity counts as adequate. But if Violet does not have a duty to exercise her opportunity to avoid by complying—i.e., a political obligation to comply with the state's directive—it may be more difficult to show that her opportunity was adequate.

But, first, if we can assume a duty to promote the common good, then this is less likely to present a problem—although, admittedly, this assumption limits the dialectical reach of the argument. For the situation will often be as follows. One can promote the common good in way X or way Y. Neither is markedly more burdensome than the other, but either is markedly more burdensome than refusing to promote the common good. The state directive, however, is, specifically, to X. Can one complain, if a deterrent is imposed for not X-ing, that one did not have adequate opportunity to avoid? The main "costs" of X-ing were forgoing the benefits of refusing to promote the common good at all. But, since one has a duty to promote the common good, one cannot cite these "costs." The only costs of X-ing that one could potentially cite are forgoing the benefits of Y-ing. But since Y-ing is about as burdensome as X-ing, there are no significant benefits of this kind. Although one is not morally required to X, one cannot claim

that one did not have adequate opportunity to avoid, because all of the other things that one might have *permissibly* done would have had the same cost.

Second, even if there is no duty to promote the common good, complying with *many* state directives, such as its ban on private enforcement, carries little cost.

Finally, if certain familiar features of the "rule of law" are respected, then there will be better opportunity to avoid state imposition than natural imposition. Deterrents will be imposed only if they are specifically announced in advance.

At best, then, this line of reply enjoys piecemeal success. In some cases, under certain assumptions, there may be worse opportunity to avoid state imposition than there is to avoid natural imposition. And so, in those cases, it is less clear that the Avoidability Principle will sanction state imposition as it sanctions natural imposition. Yet the Deontological Complaint, one might have thought, was supposed to be more categorical.

4.3.2 Replies: Force may be used only for protection from force

So how else are we to drive a wedge between Natural and State Imposition? Perhaps by rejecting, or imposing a further constraint on, the Avoidance Principle, in such a way that Natural Imposition remains standing, but State Imposition does not. But how to do this? One answer might be:

> *Rugged Individualism*: Absent consent, force may be used on S only to protect others from S's force.

This would rule out State Imposition, since the deterrents that the state imposes on Violet will very often serve goods other than protection from Violet's force, such as protection from others' force or the "protection" from ignorance that education provides.

The problem is that Rugged Individualism also rules out Natural Imposition. Imposing deterrents on S for violations of natural prohibitions on force cannot be justified, in general, by others' interest in being free from S's force. Suppose that, following his violation, Flintstone is reformed, or incapacitated, so that there is no prospect of *him* using force in the future (Otsuka 2003, ch. 3). In that case, imposing a deterrent on Flintstone does nothing to serve the interest of his victim, Vic, in being free from *Flintstone's* force. It may well serve Vic's interests in being free from *another* person's, Dieter's, force, since it reinforces Dieter's belief that *anyone* who uses force on Vic will pay. And, as Locke (1689, §8) assumed, this was much of the point of punishment: "as may make him repent of doing it, and thereby deter him, and by his Example others." But, according to the Rugged Individualist, *Vic's* interest in being free from *Dieter's* force cannot justify imposing a deterrent on *Flintstone*.[20]

To be sure, committed Rugged Individualists can deny Natural Imposition. And they can still allow that nonconsensual force may be used in defense—which, again, includes some forms of "after the fact" restitution (Rothbard 1982, ch. 12–13). Again, my argument is directed only against those who accept Natural Imposition. All the same, there are serious, perhaps intolerable, costs of rejecting it, which it isn't clear that Rugged Individualists have squarely faced. If we reject Natural Imposition, then morality leaves Vic defenseless in cases like those just discussed.[21]

Compatible with Natural Imposition is the weaker:

Negativism: Absent consent, force may be used on S only to protect others from anyone's force: i.e., to promote the negative common good.

However, Negativism is also fully compatible with the minimal state, which imposes deterrents for violations of directives to contribute to the negative common good: e.g., to supply service or

taxes to support policing and defense. So Negativism would support the Deontological Complaint only against a more expansive state.

In any event, Negativism is a far less stable position than Rugged Individualism, extreme though the latter may be. Rugged Individualism builds on a distinction that, vague and contested though it is, is accepted, in some form, by most nonconsequentialists: a distinction between what *S does to* others, regarding which "morality makes relatively strong claims" on S—either in terms of what morality requires S to do, or in terms of what morality allows to be done to S—and what *merely happens* to others (albeit perhaps because S lets it happen), regarding which morality makes weaker claims on S. Then Rugged Individualism takes this to an extreme: that morality makes *no claims on* S (at least in the sense that morality allows nothing to be done to S) with regard to what *merely happens* to others. The Rugged Individualist doesn't claim that it *isn't* bad or doesn't matter when some ill befalls someone *without* S's doing, while it *is* bad and does matter when some ill befalls someone *from* S's doing. "Yes," the Rugged Individualist agrees, "it's worse if your son dies of cholera as a child that S could have prevented than if S forcibly detains him as an adult, for an indecisive fifteen minutes, before releasing him. But that isn't the point. The point is that S is *responsible for* what *S does* (again, in the sense that morality may make claims on S regarding what S does) in a way in which S is not responsible for *what merely happens*."

But once we deny Rugged Individualism—once we grant that people's interest in protection *from others' force*, which are not S's doings, can justify uses of force against S—how can we defend Negativism—how can we deny that their interest in protection from *ills other than force,* which are not S's doings, can justify uses of force against S? If we can use force against S to protect ourselves from the violence of other people, then why can't we use force

against S to protect ourselves from the ravages of wild animals? Why then can't we use force against S to protect ourselves from the ravages of microbes? And so on. Here the answer can't be that S is responsible only for what S does. Here it indeed begins to look like, in order to defend Negativism, we *do* need to assert that it somehow isn't bad or doesn't matter when some ill befalls someone without anyone's doing, but is bad and does matter when some ill befalls someone by someone's doing. And *that* idea is lunatic.

4.3.3 Replies: The Duty Requirement

Again, we are trying to find a way to reject, or to impose a further constraint on, the Avoidance Principle, so that Natural Imposition remains standing, but State Imposition does not. One last possibility is to insist on the Duty Requirement, which we can now state more precisely as:

> *Duty Requirement*: Absent consent, the Force Constraint is lifted *only when* the target has, or will otherwise, violate a duty (or, one might add, "infringe" a right without violating a duty).[22]

Since natural prohibitions are duties, Natural Imposition is compatible with the Duty Requirement. But if there are no duties to comply with state directives, then the Duty Requirement rules out State Imposition.

We have already seen reasons to *reject* the Duty Requirement. Again, Block's case seems a counterexample to it. It is permissible to knock him into the pit, because he *can* step aside, even though he has no *duty* to step aside (because his stepping aside contributes nothing to the rescue). And we have a theory of error for the Duty Requirement. What really lifts the Force Constraint is adequate opportunity to avoid. It's just that the presence of a duty to do what will avoid force can contribute to making that opportunity adequate in a moralized sense.

Is there, then, any reason to *accept* the Duty Requirement? Why think that it is true? Of course, it is inappropriate to *condemn* the target if he hasn't done anything wrong. But imposing a deterrent, to achieve its function of inducing cooperation, need not involve condemnation. Perhaps one might support the Duty Requirement by expanding Rugged Individualism into:

> *Rugged Individualism + Desert*: Absent consent, force may be used on S only to protect others from S's force *or to give S what S deserves*.

But this view seems an odd hybrid, linking together personal interests in freedom from force with the impersonal good of restoring the world to karmic balance. If *these* two goods, why not others?

To sum up: If we accept Natural Imposition, then the Deontological Complaint Against State Imposition collapses. For the resources that we must invoke to explain why the Force Constraint should be removed in Flintstone's case for natural imposition equally explain why the Force Constraint should be removed in Violet's case for state imposition. There is no load-bearing difference between the two cases.

5 Is there a Deontological Complaint Against *Threats*?

In sections 3–4, we considered the possibility that the complaint is against the *imposition* of deterrents. But might the complaint be against *threatening* to impose deterrents, whether or not they are imposed? By "coercion," after all, many have in mind coercive *threats*.

To begin with, let us remove the target. Imagine that tomorrow common knowledge of dispositions to comply were to emerge spontaneously. And imagine that, in this Trusting Future, the state stops backing up its directives with threats. Still, it continues to issue directives, to coordinate our behavior, and so to shape our natural and social environment profoundly, comprehensively, and inescapably. Would the complaint disappear? Perhaps. But I suspect that

many would answer that a complaint would persist. Would Rawlsians, for example, concede that, in our Trusting Future, the state *would* be permitted to issue directives that could be justified only by a sectarian doctrine (Bird 2014; Quong 2014, 271–273)?

Next, we can ask whether the state's threats are objectionable. If there is a deontological constraint that applies to the state's threats, then, it is true, we cannot appeal to the Avoidance Principle. For even if we have adequate opportunity to avoid the *imposition* of deterrents, by complying with the state's directives, we have no opportunity to avoid *threats* of their imposition. We are all born to such threats.

But is there a deontological constraint that applies to the state's threats? It can't be said that threats are wrong as a rule. Presumably, threats to defend oneself or to impose natural deterrents are permissible. And threats lie, along with warnings and offers, on a continuum of announcements that something will be done if something else isn't. Not only are many such announcements perfectly permissible, but also the boundaries between threats and other such announcements are far from clear. To tell whether there is a deontological constraint on state threats, therefore, we need to know why threats, or more broadly such announcements, are wrong when they are. Kolodny (ms. a) explores various possible answers. Here I just summarize briefly why none of these answers would count our ideal state's threats as wrong.

First, it is often said that threats are wrong just when *what they threaten is wrong*. I don't think this is true. An overwhelming response to a nuclear first strike is wrong, but permissible to threaten. But, in any event, we are supposing at this point in the argument that what the state threatens is not wrong. The state is permitted to impose deterrents.

Second, threats may be objectionable when and because they *leave the opportunity of the threatened person worse than he is entitled to from the threatener*. So long as the state is ideally

directive, however, it leaves each person's opportunities overall as good as is within the state's power to leave them, compatibly with a fair distribution of opportunities for others. How could anyone be entitled to more from the state? So, again, there is no complaint.

Finally, some threats may be objectionable even though they do not leave the opportunities of the threatened person worse than he is entitled to from the threatener. Blackmail and abuse of office are the paradigms. But, in brief, these involve factors unlikely to arise in the case of state threats.

In sum, just as there was no sound complaint against state force, there is no sound complaint against state threats.

6 Is there a Deontological Complaint Against *Taxation*?

Perhaps the complaint, then, is to the state's use of our *external* property, not simply in compensation or deterrent fines, but also in taxation.[23] To be clear, I have discussed two other state actions that might be described as "the use of our property." First, I have discussed the permissibility of the state's use of force in imposing deterrents, which is the state's *use of our bodies*, which might be said to be our property. Second, I have discussed the permissibility of the state's inducing us, by threat, to act in ways that contribute to the common good. The state might induce us to build a well, or stand sentry. This might be described as the *use of our labor*, which might be said to be our property. Whether or not such descriptions are accurate or illuminating, we have already discussed what they purport to describe.

The subject that we have not yet discussed is the state's use of our property in the most natural, literal interpretation of the phrase: its use of some object, not itself part of our bodies, that nonetheless belongs to us. It might be argued that just as there is a deontological constraint on the use of our bodies, there is a deontological constraint on the use of our external property.

And it might be argued that taxation violates this deontological constraint. Taxation does something morally akin to invading and removing parts of our bodies, akin to draining the blood from our very veins.

First, we can remove the candidate target. After all, we did not assume that the Guardian of the Ladder taxed his subjects. The complaint would remain, I take it, even if his Empire was self-financed.

Second, can those who hold that there is a complaint against the state legitimately hold that taxation violates a deontological constraint, akin to an invasion of the body? Only if they accept:

> *Natural Property*: There are rights in property other than those assigned by a system that reliably secures the common good.

Taxation by an ideally directive state is itself part of a system that reliably secures the common good. So if Natural Property is false, if people have property rights only in what such a system assigns them, then taxation defines, rather than violates, their property rights. And some who hold that there is some complaint against some relation of rule reject Natural Property. So *their* complaint against the state can't be that taxation violates property rights.[24] Moreover, even if one accepts Natural Property, the Avoidability Principle may still license taxation. There might be adequate opportunity to avoid taxation, just as there is adequate opportunity to avoid the force used in deterrents.

Suppose, however, that one holds both (i) Natural Property and (ii) that there is not adequate opportunity to avoid taxation. Then, I grant, one could hold that there is a complaint against taxation. But it bears emphasis how strange the resulting position would be. For it has already been granted that there is no complaint against the state's use of *our labor*: its directing

us, under threat, to act in certain ways. The resulting position would be that there is a complaint only against the state's use of the *material fruits* of our labor. And yet one might have thought that the complaint against the state's use of our labor had far *greater* power than the complaint against the state's use of its products. Nozick (1974, 169–171), for example, implicitly acknowledges this when he argues that taxation is objectionable *because* it is "on a par with forced labor."

7 The Subordination Complaint

For all the alarm stirred by the words "force," "violence," "power," "coercion," "authority"—for all of the insistence that some relation of rule provokes a special justificatory demand met only by special limits or conditions—we have struggled to find a complaint that would account for it. Either the apparent target of the complaint can be removed without removing the felt complaint. Or there isn't, on reflection, anything in the apparent target to complain about consistently (unless one insists on Rugged Individualism or Natural Property). To put it another way: Surely those who insist on consent or acceptability for *political rule* don't require consent or acceptability for *everything*. You may drain your stagnant pool, or give a church sermon, without my consent, and you may do so for entirely sectarian reasons, which I cannot be expected to accept. But, the thought runs, political rule is different. *Something about political rule* calls for consent or acceptability. But we still have not found what this "something" could be.

So I explore a possible answer. What animates the sense of complaint may be an anxiety that to be subject to political rule is to be put in relations of subordination, or social inferiority, to other individuals, with whom one has a claim to stand as an equal.

To explain: I take it that we intuitively grasp the notion of relations of subordination, or social inferiority: that, in virtue of how a society is structured, some people can be—in a sense that is perfectly familiar, even if its analysis is elusive—"above" and others "below." We know the paradigms. The servant is "subordinate" to the lord of the manor, the slave "subordinate" to the master, and so on. If asked to place various social groups in a hierarchy, we do this with ease. The plebian is "lower than" the patrician, the untouchable "beneath" the Brahmin, and so on. But what is it in the paradigms that provokes this unease? What are relations of subordination, or social inferiority, exactly? Kolodny (2014b) suggests at least a rough and partial analysis. At its core is the suggestion that subordination consists in being exposed to the greater power and de facto authority of another individual. The greater power need not be of force or violence, but instead of withholding goods, or altering another's environment. The greater de facto authority consists in the capacity to issue directives that are generally, if not exceptionlessly, followed by others (whether because of moral belief, threat, salience, or mere force of habit). Crucially, subordination consists, at least in part, in the asymmetric relations of power and authority *themselves*, independently of *how*, if at all, that power and de facto authority are *exercised*. Thus, the familiar republican paradigms of the kindly slave-master, the aristocrat given to noblesse oblige, the colonial administrator who bears the "white man's burden," and so on, count, as they intuitively seem to count, as forms of subordination, even though the power and authority are exercised beneficently and fairly, without violating any independent deontological constraints.[25]

To be sure, not all asymmetries of power and authority are political. Nor do all asymmetries of power and authority constitute subordination (of an objectionable kind, at any rate). However, asymmetries of power and authority tend to constitute subordination when they

have certain features. And asymmetries in *political* power and authority characteristically have these features.

One such feature is that it is costly or difficult to escape the relations that are marked by the asymmetry of power and authority. To return to the paradigms: If one can exit a slave "contract" at will, then it is not clear in what sense one really is a slave. The point isn't that while social inferiority is always a burden, one forfeits one's complaint when the burden is self-imposed. It is rather that the freer one is to exit what would otherwise be a relation of social inferiority, the less it seems a relation of social inferiority in the first place. And one typically cannot escape the effects of political decisions at will, or at least not without high cost or difficulty.

Another feature is that the relevant power or authority is final. This is because one strategy for avoiding, or moderating, the subordination that an asymmetry would otherwise entail is for there to be equality higher up, as it were, the chain of command: a decision that sets the terms for how the asymmetric power or authority lower down is to be exercised. However, this strategy of avoidance or moderation is not available when the power and authority are final: when, as it were, there is no higher court of appeal. And such finality is characteristic of *political* power and authority.

The *Subordination Complaint* is, then, that in being subjected to the state's decisions, we are subordinated to other people, with whom, as individual persons, we have a claim to equality. This seems to follow from two very simple and plausible—although, in the end, misleading—ideas. First, in being subjected to the state's decisions, we are exposed to the greater, inescapable, and final power and de facto authority of the state. And, second, the state, once the robes and badges are peeled off, just is other people.

Can the Subordination Complaint be the complaint that we've been after? It fits its contours remarkably well. First, the Subordination Complaint would not apply to what is typically held up as the antithesis of relations of rule: namely, a Lockean state of nature. For, at least when the Lockean state of nature is depicted attractively, it is a condition of equality, wherein no man rules over any other.

Second, the Subordination Complaint would apply just as well to the Omittites. As we have assumed, the Guardian of the Ladder wields his greater power and authority so as to promote the common good. And he does so in a way that never actually violates any independent deontological constraints. But this does not change the fact that every other Omittite is exposed to his greater, final, and inescapable power and de facto authority.

Third, the Subordination Complaint might similarly survive into our Trusting Future. Although the state no longer threatens, let alone follows through on threats, the state still enjoys vastly greater de facto authority, through its asymmetric capacity to coordinate. It also enjoys vastly greater power to affect one's natural and social environment.

Finally, the Subordination Complaint would help to explain why "force" and "coercion" suggest themselves as targets for the complaint. What makes force special for political philosophy is not simply the badness of its effects, or the deontological constraints that govern its use. It is instead that the power to use force typically, albeit contingently, determines the social hierarchy. The power to use force is usually the final power: the power that regulates and controls the exercise of other powers. In the ordinary run of human affairs, an individual enjoys superior powers of other kinds only if he also enjoys superior powers to use force. (After all, what prevents some Omittite from seizing the Ladder, if not that the Guardian can fend him off? Of course, we can imagine that the Guardian has no capacity for force. Instead, he is protected

by a magical shield that frustrates any attempt to use force against him. But things usually aren't like that.) The power to coerce, at least when understood as inducing another to act by giving him, in some sense, "no choice," is final in a similar way.

If the complaint is the Subordination Complaint, then how, if at all, can it be overcome? Setting aside whether a retreat to the minimal state, or consent, or acceptability would *suffice* to overcome the Subordination Complaint, none of these is obviously *necessary*. It is true that in being subjected to the state's decisions, we are exposed to the greater power and de facto authority of the state. And it is true that the decisions of the state are just the decisions of people. Yet, it does not follow from this that, in being subject to the state's decisions, one is subordinated to another individual. That would follow only if the decisions of the state represented the superior power and authority of some other individual. And, at least in principle, we can imagine democratic arrangements, in which each person has equal opportunity to influence the state's decisions or the delegation of making them. In that case, it could be argued, merely in virtue of being subjected to the state's decisions, we would not be subordinated to any other individual. There would be no other person, qua citizen, of whom I could say: "Because he has greater opportunity than I have to influence what the state does, in being subjected to its decisions, I am subordinated to him." Much more needs to be said, of course (Kolodny 2014b). But if there could be a state whose decisions did not represent the subordination of any individual to any other, then there would be no need to withdraw to the minimal state or to wheel in consent or acceptability.[26] This is because the complaint that these measures would be taken to overcome—namely, the Subordination Complaint—would simply not arise in the first place.[27]

At this point, one might protest that *if* the complaint can be addressed by equal opportunity to influence political decisions, then it can't count as the sort of complaint that we

were looking for. We were looking for a complaint that would persist even for a state that was achieving the common good. But a state that was achieving a just distribution of means to a fulfilling life would already be a state that distributed opportunities for political influence equally. The more concessive response is simply to grant the point. If we keep accounts carefully, we see that the ideal state is, by definition, not vulnerable to any complaint, not even the Subordination Complaint, after all. The less concessive response, which better fits the case, is that the opportunity to influence political decisions isn't primarily important as a means to a fulfilling life (Kolodny 2014a). Equal opportunity for political influence is more like unanimous consent or acceptability than like a fair distribution of bodily security or a basic income. It matters principally as a response to a concern about relations of rule, rather than as fair distribution of means for a fulfilling life. Including equal opportunity for political influence as part of the common good would be like including unanimous consent to the state as part of the common good. It would indeed guarantee that a state that realized the common good, so defined, was immune to the complaint. But it would nonetheless be a kind of category mistake.

8 Conclusion: A problem of equality, not freedom

The problem posed by relations of rule, it is commonly thought, is the problem of reconciling them with the freedom of the individual, whether this is understood as the individual's being protected from things being done to her person or field of choice, or as the individual's being enabled to do things. Negatively, I've suggested that if *this* is the problem posed by relations of rule, then there isn't a problem, at least not a problem beyond simply showing that things are better with state. If we think of freedom as a good that state action brings about, then so long as the state is reliably achieving the common good, then the state is bringing about that good for

each to the greatest extent compatibly with fairness to others. If we think of freedom as a deontological constraint on what the state does, then the state need not violate such a constraint.

More positively, I've conjectured that if the relations of rule that the state involves pose a problem, it is a problem not of reconciling those relations with the *freedom* of the individual, but instead of reconciling those relations with an ideal of *equality* among individuals, understood as not being subordinated to any individual as an inferior to a superior. Or if this is a problem of reconciling relations of rule with individual freedom, the notion of "freedom" in play is quite different. It isn't being insulated from invasion or interference. Nor is it being resourced to chart a course through life. Instead, it's something like being "without a master."

I leave open how much we should care about this Subordination Complaint. Perhaps it is overblown or anachronistic. I also leave open whether any conceivable state might avoid it. Again, my aims in this paper are more preliminary: to draw attention to the influence of a concern about subordination over our thinking about relations of rule, and to suggest that if relations of rule pose some special problem, this is where it lies.

Bird, Colin, 2014: "Coercion and Public Justification," *Politics, Philosophy, Economics* 13: 189–214.

Blake, Michael, 2001: "Distributive Justice, State Coercion, and Autonomy," *Philosophy and Public Affairs* 30: 257–96.

Boonin, David, 2008: *The Problem of Punishment* (Cambridge).

Dworkin, Ronald, 1986: *Law's Empire* (Harvard).

Dworkin, Ronald, 2011: *Justice for Hedgehogs* (Harvard).

Edmundson, William A., 1998, *Three Anarchical Fallacies* (Cambridge).

Estlund, David, 2009: *Democratic Authority* (Princeton).

Foot, Philippa, 2002: "The Problem of Abortion and the Doctrine of Double Effect," in *Virtues and Vices* (Oxford), pp. 19–32.

Goldman, Alan, 1979: "The Paradox of Punishment," *Philosophy & Public Affairs* 9: 42–58.

Hart, H.L.A. 1968: "Prolegomenon to the Principles of Punishment," in *Punishment and Responsibility: Essays in the Philosophy of Law* (Oxford), pp. 1–27.

Huemer, Michael, 2013 *The Problem of Political Authority* (Palgrave).

Kamm, Frances, 2006: *Intricate Ethics* (Oxford).

Kershnar, Stephen, 2002: "The Structure of Rights Forfeiture in the Context of Culpable Wrongdoing," *Philosophia* 29: 57–88.

Klosko, George, 2005: *Political Obligations* (Oxford).

Kolodny, Niko, 2014a: "Rule Over None I: What Justifies Democracy?" *Philosophy and Public Affairs* 42: 195–229.

Kolodny, Niko, 2014b: "Rule Over None II: Social Equality and the Justification of Democracy," *Philosophy & Public Affairs* 42: 287–336.

Kolodny, Niko, ms. a: "What Makes Threats Wrong?"

Kolodny, Niko, ms. b: "Being Under the Power of Others."

Larmore, Charles, 1999: "The Moral Basis of Political Liberalism," *Journal of Philosophy* 96: 599–625.

Locke, John, 1689: *Second Treatise of Government*.

Morris, Christopher, 1991: "Punishment and Loss of Moral Standing," *Canadian Journal of Philosophy* 21: 53–79.

Murphy, Liam, 2014: *What Makes Law* (Cambridge).

Nagel, Thomas, 1991: *Equality and Partiality* (Oxford).

Nagel, Thomas, 2005: "The Problem of Global Justice," *Philosophy and Public Affairs* 33: 113–47.

Nagel, Thomas, and Murphy, 2004: *The Myth of Ownership* (Oxford).

Nozick, Robert, 1974: *Anarchy, State, and Utopia* (Basic Books).

Olsaretti, Serena, 2009: "Responsibility and the Consequences of Choice," *Proceedings of the Aristotelian Society* 109: 165–188.

Otsuka, Michael, 2003: *Libertarianism without Inequality* (Oxford)

Pettit, Philip, 1999: *Republicanism* (Cambridge).

Pettit, Philip, 2012: *On the People's Terms* (Cambridge).

Quinn, Warren, 1985: "The Right to Threaten and the Right to Punish," *Philosophy and Public Affairs* 14: 327–373.

Quong, Jonathan, 2011: *Liberalism without Perfection* (Oxford).

Quong, Jonathan, 2014: "On the Idea of Public Reason," in Jon Mandle and David A. Reidy, ed., *A Companion to Rawls* (Wiley), pp. 265–80.

Rawls, John, 1971: *A Theory of Justice* (Harvard).

Rawls, John, 1993: *Political Liberalism* (Columbia).

Raz, Joseph, 1986: *The Morality of Freedom* (Oxford).

Raz, Joseph, 1994: "Authority, Law, and Morality" in *Ethics in the Public Domain* (Oxford), pp. 210–237.

Ripstein, Arthur, 2009: *Force and Freedom* (Harvard).

Rothbard, Murray, 1982: *The Ethics of Liberty* (Humanities Press).

Scanlon, T.M. 1998: *What We Owe to Each Other* (Harvard).

Scanlon, T.M. 1999: “Punishment and the Rule of Law,” in Harold Hongju Koh and Ronald Slye, eds., *Deliberative Democracy and Human Rights* (Yale), pp. 257–71.

Simmons, A. John, 1979: *Moral Principles and Political Obligations* (Princeton).

Simmons, A. John, 1991: “Locke and the Right to Punish,” *Philosophy & Public Affairs* 20: 311–349.

Simmons, A. John 2000: “Justification and Legitimacy,” in *Justification and Legitimacy: Essays on Rights and Obligations* (Cambridge), pp. 122–157.

Simmons, A. John 2005: “The Duty to Obey and Our Natural Moral Duties” in Simmons and Wellman 2005, 93–196.

Simmons, A. John, and Christopher Heath Wellman, 2005: *Is There a Duty to Obey the Law?* (Cambridge).

Tadros, Victor, 2011: *The Ends of Harm* (Oxford).

Thomson, Judith Jarvis, 1985: “The Trolley Problem,” *Yale Law Journal* 94: 1395–1415.

Vallentyne, Peter, 2012: “Taxation, Redistribution and Property Rights,” in Andrei Marmor, ed., *The Routledge Companion of Philosophy of Law* (Routledge), pp. 291–301.

Van der Vossen, Bas, 2015: “Imposing Duties and Original Appropriation,” *Journal of Political Philosophy* 23: 64–85.

Waldron, Jeremy, 1993: “Special Ties and Natural Duties,” *Philosophy & Public Affairs* 22: 3–30.

Wellman, Christopher Heath, 1996: “Liberalism, Samaritanism, and Political Legitimacy,” *Philosophy & Public Affairs*: 211–237

Wellman, Christopher Heath, 2005: “Samaritanism and the Duty to Obey the Law,” in Wellman and Simmons 2005, pp. 3–89.

Wellman, Christopher Heath, 2009: "Rights and State Punishment," *Journal of Philosophy* 56: 419–439.

Wellman, Christopher Heath, 2012: "The Rights Forfeiture Theory of Punishment," *Ethics* 122: 371–393.

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[2] The difference, it might be replied, is that when I move my foot from here to there, you are not "taking orders from" or "being bossed around" by me, as an inferior by a superior. If so, then this would be a step in the direction of the Subordination Complaint of section 7.

[3] Raz (1994) suggests that a claim to the "right to impose obligations on… subjects" is constitutive of a legal system. I find this far from obvious (compare Murphy 2014, 86, 115–16). It may be constitutive of the state that it claims, or presupposes, a permission to issue and enforce directives (which may suffice for Raz's jurisprudential purposes).

[4] See Simmons 2000, 137; Nozick 1974, ix; Rawls 1993, 136–37; Larmore 1999, 605–608; Nagel 1991, ch. 14; Dworkin 1986, 191; Pettit 2012, 147; Ripstein 2009, Ch. 2.v; Huemer 2013, ch. 1.

[5] See Nozick 1974, 6; Dworkin 1986, 191; 2011, 319–20; Klosko 2005, 49–50; Quong 2011, 115. This is why Dworkin holds, as noted in the introduction, that justified coercion requires a "community of principle": justified coercion requires political obligations, which in turn require a community of principle. The Duty Requirement also appears to be an implicit premise in the argument that the state wrongs us by enforcing prohibitions on private enforcement (Nozick 1974, 24; Simmons 2000, 156). Since there is no natural duty to refrain from private enforcement, the argument runs, the state violates the Duty Requirement in enforcing its directives to refrain.

[6] Some forms of restitution can't be counted as forward-looking defense. If I destroy your property, there's nothing left to defend. However, such restitution-as-compensation is not a *way of enforcing* a requirement. Instead, it is a *source of* requirements (e.g., to compensate you for your destroyed property).

[7] No doubt, there are difficult questions here about what makes one opportunity, or overall set of opportunities, better than another opportunity, or overall set of opportunities (what Olsaretti 2009 calls "principles of stakes"). I don't think the value of an opportunity can be reduced to the

expectation of the effects of possible exercises of it, based on some probability of those exercises. But I don't have a general, positive theory to offer. I am just relying on what seem to me plausible particular judgments.

[8] Libertarians may reply: "Whether there is an objection to the regime all comes down to whether the Guardian *owns* the ladder. If he wove it from his own hair (and happened upon the design by chance inspiration and not from any scarce genetic advantage, etc.), then all's hunky-dory. He's just a private citizen going about his business. But if he wove it from plant fibers (or did so without leaving enough and as good for others, etc.), well then, he's an enslaving tyrant." If the libertarian's concern turns on such subtleties about the provenance of the physical instruments of deterrence, then it seems to me a long way off from any traditional or commonsense concern about relations of rule.

[9] The Natural Duty Argument is suggested by Quong (2011, ch. 4) and Wellman (1996, 2005). Waldron (1993) argues for something like (4) below, but does not discuss the enforcement of directives.

However, Wellman (1996, 219 n. 13) says that his argument for the permissibility of state coercion does not rest on anything like Duty Permission. Instead, the claims of the target to be free from coercion are simply "outweighed" in cases of emergency rescue. But this seems inadequate. The examples Wellman uses to motivate the claim of "outweighing" appear to be either of (temporarily) commandeering someone's property, or of issuing (as opposed to following through on) threats. But what is presently at issue is something different: following through on a threat with forcible action on someone's person. And it's not at all intuitive that the Force Constraint is overcome merely because an emergency rescue is underway. After all, our motivating case, of one person toppling another to save two, was an emergency rescue.

[10] Simmons (2005, 192), who affirms "the natural right of all persons to enforce morality (by coercion, if necessary)," may accept Duty Permission. But Nozick (1974, 91–93) does not.

[11] Simmons (2000, 137), however, accepts a natural duty to promote the common good.

[12] Compare Murphy's "basic structural point" (2014, 130).

[13] Compare the cases that Raz (1986, 74) advances to show that (at least as far as his "Normal Justification Thesis" is concerned) the state's directives in a given area often will not have authority over citizens with specialized skills or knowledge in that area.

[14] Somewhat surprisingly, Raz may be committed to this consequence, since he affirms (ii), and there is some evidence that he affirms (i) too. According to his Harm Principle, "coercion," at least, is permissible only to prevent someone from violating a duty of autonomy, which suggests something like the Duty Requirement. Granted, Raz (1986, 104, 148) stresses that the fact that we do not have a general duty to obey "even laws which the government is justified in making" does not mean that the state is not justified in using force or coercion to "enforce moral duties on those who are inclined to disregard them." However, by Raz's own lights, the state enforces many directives that citizens have no moral duty to obey.

[15] Note that even if the Force Constraint is lifted, it may still be wrong to use force. For one thing, the use of force, unlike the ideal state's enforcement, may not bring about a greater good. For another, it may violate other deontological constraints.

[16] I don't claim that this interest in control explains why the Force Constraint has a "deontological" or "agent-relative" character. After all, the five whom we do not save from force might ask why *their* interests in control do not outweigh the interest of the one. Why

certain kinds of interests should give rise to "deontological" constraints is a difficult question. My claim is only that this interest in control is among them.

[17] The Avoidance Principle captures, I think, the defensible part of a "rights forfeiture" theory of punishment. See Goldman 1979; Kershnar 2002; Morris 1991; Simmons 1991; and Wellman 2009, 2012. However, this account differs from rights forfeiture theories in a number of respects.

First, the account doesn't imply, as most rights forfeiture theories of punishment maintain, that one forfeits a right only by *violating* a right, which is more or less the Duty Requirement.

Second, this account does not, a fortiori, imply a strict equivalence between the right violated and the right forfeited (which is what leads to Goldman's (1979) "paradox"). "Proportionality" is explained in the way described at the end of section 3.

Third, this account also doesn't imply, as some rights forfeiture theories imply, that if one violates a right, then one forfeits a right for *any purpose*. It does not imply, for example, if a sadist secretly inflicts pain on Flintstone without knowing that Flintstone is a violator, then the sadist does not violate his rights. The Force Constraint is lifted only for uses of force, such as deterrence, that provide others with goods that are sufficiently important to justify Flintstone's reduced control over others' uses of force. Uses of force in secret and for private satisfaction don't provide others with such goods.

Finally, the Avoidance Principle offers a justification for the "forfeiture of rights," which rights forfeiture theories tend to leave mysterious. The justification, to put it in terms congenial to the rights forfeiture theory, is that just as one can "waive rights" through one's choices, so too can one "forfeit rights" through one's choices, when the costs to others of greater "immunity to the loss of rights" would unfairly burden them. "Waiver" and "forfeiture" are different answers, in different contexts, to the same basic question: What sort of control over how others treat one is it fair to expect when balanced against the costs that others must bear to provide one with such control?

Simmons (1991, 335) similarly appeals to fairness to explain why the Force Constraint is lifted in Flintstone's case, although, I think, in the wrong way. "[T]o extend such privileges to those who break the rules," he argues, "would seem to involve serious and straightforward unfairness to those who limit their own liberty by obeying the rules." The thought appears to be that, if others bear burdens to respect Force Constraint, but you don't bear them, then they are permitted to compensate themselves, and so equalize the burdens, by not respecting the Force Constraint toward you. How does this compensate them? Presumably, by providing them with deterrent protection. The trouble is that unequal burdens borne in respecting the Force Constraint can arise even if no one has violated the Force Constraint. In such a case, Simmons's argument would seem to license scapegoating to equalize burdens. In short, this seems the wrong way to think about fairness in this context. The relevant question of fairness is how to balance the interests that the Force Constraint is meant to protect against the interests that would be disadvantaged by more extensive protection. The Avoidance Principle does this directly.

[18] This suggests that even once-off, historical consent, of the kind that Locke envisioned, may not suffice to answer the Deontological Complaint (Huemer 2013, 21 n. 3).

[19] Indeed, on this view, deterrents may be permissible even when the state is not ideally directive. Even if the current set of directives is suboptimal, the "stern" message sent by following through—"If you violate one of these directives, then you will suffer the deterrent"—

may have better effects than the "lax" message sent by not following through—"If you violate one of these directives, then you may not suffer the deterrent." While, by definition, there are patterns of conduct better than general compliance with the suboptimal directives, there may also be worse patterns of conduct. And the lax message may only encourage such worse patterns. Assuming that people have had adequate opportunity to comply with the suboptimal directives, the Deontological Complaint might be met. Of course, the state should replace its suboptimal directives with optimal ones. Indeed, it may be acting impermissibly in *not* doing so. The point is that, *if* the state has not yet done so, then the message sent by its not following through on the threats that it has made may be worse than its following through. Paradoxically put, it may be permissible for the state to impose deterrents for violations of directives that it has impermissibly issued and that it is permissible for individuals to violate. This suggests, incidentally, that relaxing the assumption that the state is an ideal enforcer makes the Deontological Complaint far harder to answer than does relaxing the assumption that its directives are ideal.

[20] This point is easily obscured by confusing the *threat* to punish Flintstone, which aims to prevent Flintstone's use of force, and so might be justified by Vic's interest in being free from Flintstone's force, with *following through* on the threat *after* Flintstone's violation, which does not defend against his violation. (Although Quinn (1985) argues that what justifies the threat justifies following through, I find his argument, for reasons which there isn't space to explain here, unsuccessful.) So, for good measure, further suppose that Flintstone was not even deterred by our threat. In that case, not even the *threat* to Flintstone was justified by Vic's interest in defending against Flintstone's force, since it did nothing to serve that interest. All the same, following through on the threat serves Vic's interest in deterring Dieter.

[21] To my knowledge, Boonin (2008, ch. 5, especially sect. 5.11) offers the most resourceful defense of replacing our system of punishment with a system of restitution against, among other things, the objection that it would provide insufficient deterrence. However, Boonin relies heavily on the idea that a violator owes restitution to third parties for encouraging others to violate. But what encourages others is not the violation itself, but instead the fact that the violator isn't "brought to justice." So to apply Boonin's approach to our current discussion would amount to including as part of "Flintstone's force" negative effects resulting from changes in others' behavior resulting from Flintstone's not suffering a deterrent. But this would make even State Imposition compatible with Rugged Individualism, since imposing a deterrent on Violet protects us from "Violet's force" in the same sense: from negative effects resulting from changes in others' behavior resulting from Violet's not suffering a deterrent.

[22] There is a different principle in the vicinity of Duty Requirement, put forward in the excellent Tadros 2011: namely, that the Force Constraint is lifted only when the target has a duty to bear the costs that the force imposes, or would have such a duty in an otherwise similar situation where there was something that the target could actively do so as to bear those costs. I find this view, while ingenious, ultimately undermotivated and overly constraining. But I don't have space to discuss it here.

[23] We might also include commandeerings of private property, or dispositions of public property, such as public land, buildings, and equipment—or, more abstractly, things done with "our flag" or in "our name."

[24] An example is Thomas Nagel, who voices the complaint in Nagel 1991 while rejecting Natural Property in Nagel and Murphy 2004. Consider also left-libertarians who view taxation as

justified by uses, or appropriations, of the external world involved in the production of the taxed property (Vallentyne 2012).

[25] This concern with subordination may remind many readers of the concern with "domination" in the revival and development of the republican tradition—most prominently by Pettit 1999, 2012—and the concern with "dependence" in the recent revival and development of Kant's legal and political philosophy—most prominently by Ripstein 2009. Indeed, I believe that nonsubordination, nondomination, and independence are rival interpretations of same underlying concern: different analyses of the sort of anxiety evoked by republican paradigms like the kindly slave master. Kolodny (ms. b) argues that the underlying concern is better interpreted as a concern about subordination.

[26] This point may illuminate the structure of Estlund's (2009) defense of democracy: very roughly, that no alternative to democracy is acceptable. The immediate difficulty, which Estlund himself raises, is that it isn't clear that democracy itself is acceptable. Estlund replies that because democracy does not subject some to "rule by others" in the same way, it enjoys a kind of a kind of default status; it does not need to meet the same conditions of acceptability as alternatives (36–38). For a time, this reply struck me as ad hoc. But if acceptability is a response to the Subordination Complaint, then it isn't ad hoc at all. If democracy doesn't subordinate, then it simply doesn't raise the objection that acceptability is required to meet.

[27] This response to the Subordination Complaint may also respond to the style of anarchist argument in Huemer 2013. "Your initial intuition," the argument runs, "is that you have no objection when the state does what it does to you, although you would have an objection if your neighbor did the same thing. You would object, for example, if your neighbor imprisoned you in his basement because you violated the (admittedly ideal) directives that he issued to improve your local sewer system. However, on reflection, there is no relevant difference between your neighbor and the state. So to be consistent, you ought either to deny that you have an objection to your neighbor, or to concede that you have an objection to the state. Since the thought that you have no objection to the state can, among other things, be plausibly explained as false consciousness, you ought to concede that you have an objection to the state." Our response is that, on the one hand, if we set aside the concern about subordination, neither what state nor what neighbor does to you is any different from what Flintstone's fellows do to him, which many anarchists would find acceptable. On the other hand, if we include the concern about subordination, then perhaps it explains our initial intuitions. In issuing orders to you, backed by threats of confinement, your neighbor puts you in a relation of subordination *to him*. ("But, like," you might grumble, languishing in his basement, "who died and made him king?") Things are different when the issuing and enforcing of commands is not his personal fiat, but is instead regulated by a process that is no more his diktat than one's own.