

## What Makes Threats Wrong?

The concept of “state coercion” frames and pervades our thinking as political philosophers. We take it to define what we can or must justify, and we seem to see its implications everywhere. Yet I wonder whether we know why. The concept of “state coercion,” I worry, bends the dialectic around it with a force beyond our capacity to articulate why it matters or what it even is.

It would be one thing if this reflected nothing more than our recognition that much that answers to the label of “state coercion” can mar or stunt our lives. If that were all (‘all’?!) there was to it, then we might satisfy ourselves—at least as philosophers limning ideals and principles—by showing that, once everything is taken into account, state coercion, used within such and such bounds, on such and such conditions, for such and such purposes, better provisions us to live our lives. However—again, at least as philosophers—we are given to viewing state coercion as a problem that can’t be solved *simply* by showing state coercion better provisions us to live our lives. If the problem of state coercion is to be solved, the coercing state must *also* meet some further “Condition,” or it must *also* respect some “Limit” on the purposes for which it coerces. Making things better, even in a way that’s fair to everyone, is not enough.

Libertarians, to be sure, think this. More extreme libertarians argue that coercion must be limited to enforcing prohibitions of assaults against person and property, unless a Condition of consent is fulfilled (Simmons 2000). Less extreme libertarians expand these Limits to the ends of the “minimal state” (Nozick 1974). The state may coerce people to contribute to the enforcement of prohibitions of assaults against person and property. But the state may not coerce people to contribute to the provision of other goods, such as nutrition and medical care. And yet few libertarians would dispute that these goods leave people better off: that, for example, a reason to pity victims of command economies is how little they have of these goods.

If it were only libertarians who thought that state coercion posed such a problem, then we might discount this thought as one more extreme tenet of an unabashedly purist doctrine. But most liberals also insist on Limits to state coercion. According to the Harm Principle, roughly, the state may coerce people only to prevent harm to others (Feinberg 1984). Hence, the state cannot coerce people to avoid choices that are bad for themselves alone, even if that would better position them to lead fulfilling lives. And liberals insist that the state meet a Condition, at least if it coerces beyond the Limits of the Harm Principle. John Rawls, and the many theorists of “public reason” who have followed him, argue, very roughly, that the state’s actions, or a special class of the state’s actions, must meet the Condition of having a “public” justification, which does not rest on sectarian premises (Rawls 1993, 136–37; Nagel 1991, ch. 14). For Ronald Dworkin, state coercion requires political obligation, which in turn requires, as a Condition, a “community of principle” (1986 191). For Joseph Raz, state coercion, at least beyond the Limits of the Harm Principle, requires a Condition of “trust” (2001). And it is a common idea that state coercion requires a Condition of democracy (e.g., Guerrero 2010).

The burgeoning literature on the morality of borders offers further illustrations. Some argue that economic justice demands more within than across borders. Those *within* a state’s borders are exposed to its coercion, the argument runs, and the objection to this coercion can be met only by a Condition of economic justice beyond mere humanitarian aid (Blake 2001; Nagel 2005). No doubt, a minimal state makes people better off than they were in a state of nature. But that’s not enough to make it permissible. When the minimal state starts to coerce, it provokes a new objection, which must be met by this further Condition, that it become more than minimal. Others argue that since those *outside* a state’s borders are also exposed to its coercion, a further Condition, such as democracy, must be met with respect to them (Abizadeh 2008).

So the thought is widespread: state coercion poses a problem that is solved not merely by leaving people better placed to live their lives, but instead by some Condition or Limit. But why? We should find this more puzzling than we do. After all, it's hardly true, in general, that actions that benefit others, or protect them from harm—as state coercion must do, if it is to be justified at all—must meet Conditions, or respect Limits. If I drain a stagnant pool in my yard, protecting my neighbors from mosquito-borne disease, I don't need their consent, or a public justification, or economic justice, or a relationship of trust. Nor do I, if I urge them not to embark on some self-destructive course of action. Yet neither the drainage nor the advice aims solely to prevent assaults on person and property. And the advice is manifestly an attempt to influence a self-regarding choice, of the sort protected by the Harm Principle. So why, then, when the state benefits us, or protects us from harm, by coercing us, does it face some objection that must be met with Conditions or Limits?

The word “coercion” is so supple, and so poorly lit, that it's hard to know where even to begin. Still, we need to begin somewhere. And, to a first approximation, what people have in mind by “state coercion” seems to involve two things: first, the state's threatening us that it will visit unwelcome consequences on us if we flout its orders, and, second, its following through on those threats, by visiting those unwelcome consequences on those of us who do flout its orders. Kolodny (2016) considers the possibility that it is the state's following through on its threats, against violators, that presents an objection that must be met by some Condition or Limit. Here, I consider the possibility that it is the state's threatening all of us, violators or no, that presents an objection that must be met by some Condition or Limit.

I approach this by asking a more general question, which has nothing in particular to do with the state or with threats: Why “conditioning or announcing a response to someone's choice”

might wrong someone. That is, why might Hablo—our generic threatener—wrong Audito—our generic threatenee—by “conditioning a response to choice”: making it the case that Hablo will Stick if Audito does not Obey and that Hablo will Carrot if Audito does Obey? And why might Hablo wrong Audito by “announcing a response to choice”: communicating to Audito that Hablo has conditioned a response in the sense just defined?

“Conditioning and announcing a response to choice” is both broader and narrower than “threatening” in common usage. So, I admit, this paper’s title is guilty of some false advertisement. Some threats neither condition nor announce a response to choice. Hablo, a predestinarian, can threaten Audito with hellfire regardless of any choice Audito might make. And some announcings or conditionings of responses to choice do not threaten. Hablo may “offer” to Carrot if Audito Obeys. Or Hablo may “warn” Audito that Hablo will Stick if Audito does not Obey. The Stick need not be force, violence, or confinement. The conditioning and announcing need not give Audito “no choice,” or get him off the moral hook for Obeying, or vitiate his consent. For our purposes, distinctions among threat and offer, threat and warning, and so on, which preoccupy classic discussions such as Nozick 1999, are worth drawing only insofar as such distinctions matter to permissibility. That remains to be seen.

Our ambition, again, is to use this account of the morality of conditioning and announcing responses to choice to evaluate whether state coercion, understood as the sum total of the state’s threats, faces some objection that is met only by Conditions or Limits. Recall that this objection is supposed to arise even when state coercion leaves people better placed to live their lives. So, to sharpen our focus, let us consider the state, when we return to it, in an idealized form. Its threats, let us suppose, leave people not only better placed, but also as well placed as the state has within its power to leave them. This is to say that the state’s threats make

each person's choice situation as good as the state can make it, compatibly with distributive fairness to others.

Underlying this idealization is the assumption that what the state primarily distributes is not, as it were, the consumption of goods, but instead situations of choice. To be sure, among the things that make one's choice situation better are the goods that one might ultimately "consume" by choosing appropriately: such as food, water, shelter, medical care, education, freedom from physical constraint, and so on. And, to be sure, in some cases, one might be put in a position to enjoy some of these goods, such as an environment free of certain pathogens, no matter how one chooses. (Indeed, providing such an environment is arguably one of the most important extensions of state activity of the past few centuries.) But, in most cases, one's enjoyment of a good, like the hydration of the proverbial horse, depends on one's making some choice. For the most part, what the state does, when it does what it is supposed to do, is to lead one to water: to put one in a position to choose to enjoy certain goods.

Granted, this idealization—that the state's threats make each person's choice situation as good as the state can make it compatibly with distributive fairness to others—may mean that the state's threats automatically meet one of the Conditions that we canvassed: namely, economic justice beyond mere humanitarianism. This idealization may also mean that the Limit of the Harm Principle is largely respected. For threatening people away from bad self-regarding choices often does not improve their choice situation. (In the terminology of section 2, the adverse "cost" and "value-of-compliance" effects of such threats may not be compensated for by the beneficial "influence" and "compliance-of-others" effects.) But I see no reason to assume that threatening people away from bad self-regarding choices, in violation of the Harm Principle, *never* improves their choice situation (Kolodny ms a). And, in any event, our idealizing

assumption does not mean that the state's threats satisfy the other aforementioned Conditions or respect the other aforementioned Limits.

Finally, let us suppose that the state does not wrong those it threatens by following through on those threats. To be sure, this does not necessarily follow from our assumption that the state is ideal. Granted, if the state is ideal, then following through on the threats that, so long as they are credible, make choice situations as good as they can be is itself necessary to make choice situations as good as they can be. For unless the state follows through, those threats will no longer be credible. However, one might object, the mere fact that following through on a threat is necessary to make choice situations as good as they can be does not necessarily make it permissible to follow through. For following through on a threat may involve a form of treatment, such as the use of force, which, in general, violates a deontological constraint, even when it achieves a greater good. Indeed, what some may have in mind by "coercion"—what some may think calls for a Limit or Condition—is precisely the *use* of force, violence, or confinement, not the *threat* of that or of anything else. However, Kolodny (2016) argues that the anxiety about "state coercion" cannot be, or cannot wholly be, an anxiety about the violation of such a deontological constraint. For that anxiety seems to persist even after we imagine that the state threatens something that is not governed by a deontological constraint, but instead, say, the forceless withholding of a good, such as release from natural imprisonment. And, in any event, Kolodny (2016) argues that this deontological objection, along with neighboring objections, can be overcome without Limits or Conditions. The ideal state, at least, does not wrong violators when it follows through on its threats, even absent Limits or Conditions. My question in this paper, again, is whether the state's *threats themselves*, addressed to all of us, violators or no, might face an objection that must be met by some Limits or Conditions.

## 1. From Inheritance to Risk

So, why does it wrong a person, when it does, to condition or announce a response to his choice?

Many favor a simple answer:

*Inheritance*: Hablo's conditioning or announcing a response to Audito's choice wrongs him when and because the response itself (i.e., either Sticking when Audito does not Obey or Carroting when Audito Obeys) would wrong him (at least suggested by Haksar 1976; Murphy 1980 22; Scanlon 2008 76; Berman 1998, 2002, 2011; Shaw 2012 168).

Thus, McGer's conditioning and announcing to McGee, "Your money or your life," is wrong at least because it would wrong McGee to take McGee's life if he does not surrender the money (i.e. to Stick if he does not Obey).

Note that McGer's conditioning and announcing may also be wrong, according to *Inheritance*, because it would wrong McGee to let him live but take his money if McGee does surrender it (i.e. to Carrot if he does Obey). McGee's consent to transfer the money under such a threat may not be valid, because of a "value-of-compliance effect," of a kind to be described in section 2. So, McGer's taking the money may be theft. Other paradigmatic wrongful threats, such as threats used to commit sexual assault, have this same structure. Carroting involves doing something to Audito that wrongs him unless he validly consents, and yet the conditioning and announcing itself invalidates his consent. Let us bracket, however, the possibility that the response that wrongs McGee is Carroting without McGee's valid consent, and suppose that the only response that wrongs McGee is Sticking: i.e., killing McGee. If you like, imagine that McGer demands not that McGee give him money, but instead that McGee twiddle his thumbs for a count of three.

If Inheritance were the whole story, we would be home free. For we are supposing that the state does not wrong people by following through. So, for all that Inheritance tells us, the state does not wrong people by threatening to follow through.

However, there are counterexamples to Inheritance. First, some announcements of wrongings don't wrong. If, in *Akratic Warning*, King Fuse the Short can't control himself, and His Majesty, Fuse, will wrongfully thrash Jester if Jester does not put a cork in it, and His Majesty wishes to keep Jester safe, His Majesty may permissibly warn Jester of this (Julius 2013 362, with names and stations added).

Second, even some conditionings of wrongings don't wrong. In *Wrongful Retaliation*, Capitalia, left with no other recourse, may permissibly announce and condition nuclear retaliation in response to a first strike by Communia (and vice-versa). However, to follow through on this threat would be, if not the gravest wrong ever, the clear runner-up (Berman 2011).

And why should Inheritance be true? Why should a threat to wrong someone itself wrong him? It is clear why McGee has an objection to McGer's killing him. That deprives McGee of his life and the goods it promises. It is also clear why McGee has an objection to McGer's taking steps that *make this more likely*, which *conditioning* may do. But this would support not Inheritance, but instead:

*Risk*: If Hablo would wrong Audito by Sticking, then Hablo may, for that reason, wrong Audito by making it sufficiently likely that Hablo Sticks.

Wrongful Retaliation is no counterexample to Risk. If there is a good chance that Communia will attack no matter what, then it may well be wrong to condition retaliation, precisely because Capitalia makes it likely that it will do something wrong.

Scanlon (2008 76) also suggests that McGee has an objection to being made to *fear* that McGer will wrong him, which *announcing* may do. This would suggest:

*Fear*: If Hablo would wrong Audito by Sticking, then Hablo may, for that reason, wrong Audito by getting Audito to fear that Hablo will Stick.

However, it's unclear why Fear should be true. Indeed, Akratic Warning is a counterexample. The truth in the vicinity would seem to be a general objection to being caused unnecessary distress. However, as His Majesty Fuse's akratic warning illustrates, not all announcements of wrongings cause "unnecessary" distress. And one can be caused distress about things other than being wronged, let alone being wronged by the person causing the distress. So this general objection is at best tangentially related to Inheritance.

In any event, if Risk and Fear were the whole story, then we would again be home free, since, like Inheritance, they apply only when what is threatened is independently wrong. The trouble is that neither Risk nor Fear explains why McGer's paradigmatically wrongful threat wrongs McGee. For McGer's conditioning and announcing, "Your money or your life," may neither make it more likely that McGer takes McGee's life, nor make McGee fear that McGer will. Both may know full well that McGee will Obey and that McGer, being the professional he is, won't shoot (Anderson 2011).

## **2. Choice**

So how does McGer wrong McGee? Perhaps simply by making his choice situation worse—worse, that is, than he owes McGee to make it.<sup>1</sup> In a formula:

*Choice*: Hablo's conditioning or announcing a response to Audito's choice wrongs him when and because it leaves his choice situation worse than he is entitled to from Hablo.

Choice is just a special case of a tautology: namely, that Hablo wrongs Audito when and because he leaves Audito's choice situation worse than Audito is entitled to from Hablo.

It is sometimes suggested that threats make choice situations worse simply insofar as they reduce one's "options" or one's "liberty," indeed sometimes where this is meant in a baldly quantitative way, where one is literally left with a lower number of options (Feinberg 1984 207, Gaus 2010 499). But this is surely too crude. There are many different ways in which choice situations can be better or worse, and many different ways in which conditionings and announcements, in particular, can make them better or worse. Let us focus on five such effects (although I suspect that there are still others): "cost (or benefit)," "influence," "capacity," "value-of-compliance (or non-compliance)," and "compliance-of-others."

### **2.1. Cost**

The "cost" effect is that Hablo's Sticking is added to Audito's not Obeying. If Hablo's Sticking is bad for Audito, this tends to make Audito's choice situation worse, other things equal. When Hablo's Carroting is good for Audito, then we can speak of a corresponding "benefit" effect, which makes Audito's choice situation better, other things equal.

The cost effect of attaching Sticking to Audito's not Obeying depends on how difficult or costly it is for Audito to Obey and so to avoid the Stick. Suppose Audito is making a move to turn down the Ethel Merman, which is giving him a splitting headache. Now Hablo comes along and threatens Audito with a noogie unless Audito turns the Merman down. Now, a noogie's a noogie. But, still, Hablo's threatening Audito with a noogie unless Audito turns the Merman down, as he is desperately moving to do anyway, has a less pronounced cost effect than his threatening Audito with a noogie unless he keeps it blaring. In the latter case, Audito avoids the cost only at the price of a forgone good: respite from the Merman.

Not all forgone goods count alike, however. According to what we might call the “Wrongful Gain Principle,” Audito’s having to forgo the goods of dis-Obedience does less to amplify the cost effect when Audito has a duty to Obey. Audito can’t claim as a hardship that in order to avoid the costly Stick he must forgo what he would have gained only by failing in his duty. This helps to explain why the threat in Wrongful Retaliation, but not in McGer’s mugging of McGee, is permissible. It would be wrong for Communia to launch a first strike. Given that, and given the Wrongful Gain Principle, Communia has a fairly weak complaint that the consequences attached to a first strike make the benefits of a first strike prohibitively costly to obtain. By contrast, it would not be wrong for McGee to keep his own wallet. So McGee has a very strong complaint against a choice situation that makes keeping it prohibitively costly.

## **2.2. Influence**

The “influence” effect is that of making Audito more likely to Obey. If Obeying would be better for Audito (for reasons other than the avoidance of the Stick), the influence effect tends to improve Audito’s choice situation, other things equal. (Of course, other things may not be equal; an adverse cost effect, or adverse “value-of-compliance” effect, for example, may outweigh this beneficial influence effect.) Such is the brief, at least, for paternalistic threats, meant to steer Audito from bad self-regarding choices.<sup>2</sup> On the other hand, if Obeying would be worse for Audito, the influence effect tends to worsen Audito’s choice situation. Tempting someone to make a deal that is bad for them, even when this does not involve deception, can worsen their choice situation in this way.

## **2.3. Capacity**

The “capacity” effect is a worsening or improvement of Audito’s capacity to evaluate and select among the options he has. Informing Audito of what his options are tends to improve his

capacity. By contrast, misinforming Audito of what his options are tends to worsen it. This is one reason why bluffing announcements can worsen a choice situation even without conditioning. Similarly, bringing to Audito's attention an option that will distract or confuse or terrify him, or flooding him with options so as to exhaust or paralyze him, also worsens his capacity.

#### **2.4. Value of compliance**

“Value-of-compliance” (or “value-of-noncompliance”) effects are subtler and more varied.

These effects involve a change in the value or normative character of Audito's Obedience itself (or alternatively, of Audito's dis-Obedience itself). First, Hablo's conditioning or announcement may change the *permissibility* of Audito's Obeying. For example, it may be permissible for Audito to break a promise if coerced at gunpoint to do so. Second, even when it does not make it permissible for Audito to Obey, it may make him *less blameworthy* for it. Third, it may keep Audito's Obeying from having its *usual normative effect*. When Audito says “Yes” under threat, it may no longer count as a binding promise, or valid consent, or transfer of property. This is why McGer's taking the money that McGee surrenders amounts to theft.

Fourth, fear of Hablo's Sticking, or anticipation of his Carroting, might corrupt or crowd out the motivations that Audito would otherwise have had for Obeying. Thus, even if Audito makes what would otherwise have been a good choice, he does so for the wrong reasons, draining the choice of the value it would otherwise have had. It may be important, for example, that Audito apologizes because he is sorry, not because he fears a penalty.

Fifth, some choices may have a certain kind of value only if they are (to coin a term) “selected” from an adequate range of acceptable alternatives. For Raz 1986, such selection is partly constitutive of “autonomy.” If Hablo attaches sufficiently grave costs to alternatives to

Obeying, for example, then they may no longer count as acceptable. And if he does this to a sufficient number of alternatives, then there may no longer be an adequate range of acceptable alternatives left for Audito. Therefore, when Audito Obeys, he does not count as selecting from an adequate range of acceptable alternatives.

Sixth, some choices have a certain kind of value only if their causal history was suitably free from certain kinds of deliberate influence by other wills. For Raz 1986, such “independence” is also partly constitutive of “autonomy.” Suppose, for simplicity, that we begin with only two options, Bad and Good. If Audito is prevented from choosing Bad by *natural* causes, then Audito can still independently choose (although presumably not select, in the sense just described) the one remaining option, Good. But if Audito is *deliberately* influenced away from Bad—say, if Hablo threatens Audito to get him to avoid Bad—then Audito cannot independently choose Good (or so it might be said).

It is important to note, however, that this effect on independence is often negligible. If Audito is deliberately influenced away from badminton, then perhaps Audito cannot independently pursue the “negative” option of “not-badminton.” Still, if Audito pursues some other, “positive” option, such as tennis or ping-pong, then Audito may count as independently pursuing *that* option (Miller 2010). This distinction is especially important for the state’s threats. Even if, when threatened by the state, we cannot independently pursue the negative option of “not violating the state’s orders,” we may still be able to independently pursue specific, positive options compatible with not violating the state’s orders: such as this or that religion or career. And those latter options may be the options that it is important to pursue independently.

Seventh, Hablo’s announcement or conditioning may give Audito reason to feel regret or remorse for his choice when he would not have otherwise. Suppose Audito’s child will die

without an operation, and Hablo offers to pay for it, if Audito commits a murder. When Audito dis-Obeys, by refusing the offer, he may share, or at least feel that he shares, responsibility for his child's death. As Tadros (2016, Ch. 12) observes, the famous choice put to William Styron's Sophie, to decide which of her children to save, made her a monstrous parent, or at least left her to feel that she was. (And this value-of-compliance effect is distinct from the horrific influence effect: that Sophie is pressed to make known to herself and others that she has a favorite.)

Finally, Hablo's announcement or conditioning may change the sort of relations to Hablo that Audito's Obedience would constitute. The very fact that Audito would be complying with a threat may make Obeying humiliating and servile (Scanlon 2008, 78).

Not all announcements or conditionings have these value-of-compliance effects. Perhaps, as we will discuss in section 3, what deprives Audito's Obedience of independence, for example, is that Hablo gives Audito "no choice." Or perhaps, what invalidates Audito's consent is that Hablo's conditioning, announcing, Sticking, or Carroting wrongs Audito (Pallikkathayil 2011).<sup>3</sup> Moreover, different standards may apply to different kinds of consent (Feinberg 1986 254). And perhaps even these threats don't automatically have these effects. It may depend on how the threat affects Audito's deliberations. Of course, it's worth asking when and why conditionings and announcings have these value-of-compliance effects. In fact, these questions, rather than the questions of when and why conditionings and announcings are permissible, are often the focus of philosophical treatments of "coercion." Thankfully, for our purposes, we don't need to settle here the questions when and why conditions and announcings have these value-of-compliance effects. As we will see, it's enough to observe that they can have these effects and that, when they do, this can worsen the choice situation.

## **2.5. Compliance of others**

Turn now from the value of Audito's compliance to the compliance of others. Conditioning and announcing has "compliance-of-others" effects on Audito's choice situation insofar as it gets others to act in ways that worsen or improve Audito's options. The state's threats, in particular, have important effects via the compliance of others. The fact that Audito is threatened may assure others so that they cooperate with Audito. Or the fact that they are subject to the same threat may induce them to act in ways that benefit Audito or protect him from harm.

## **2.6. Entitlements to choice situations**

These various factors—the cost, influence, capacity, value-of-compliance, and compliance-of-others effects—conspire to make Audito's choice situation better or worse. To know whether, in a given case, Audito is entitled to a better choice situation from Hablo, and so to apply Choice, we need to balance the burdens on Audito of a worse choice situation, on the one hand, against the burdens that Hablo (and others) would have to bear for Hablo to make Audito's choice situation better, on the other.

If, in balancing these burdens, one considers only the burdens to Audito of a worse choice situation, and neglects the burdens that Hablo (and others) must bear to make Audito's choice situation better, one is liable to underestimate the explanatory power of Choice. Consider *Spit Bus*, a case of Stephen White's. When I take this bus seat, I remove your option to sit there. Evidently, you are not entitled from me to a choice situation in which that option remains. However, it seems that I wrong you if, while not removing the option, I threaten to spit on you if you sit there (Julius 2013, 362). But this choice situation seems better, or at least no worse, for you. When I sit there, I remove your option to sit there, spat upon or unspat upon. When I threaten, I remove only the option to sit there unspat upon. So, it seems, Choice can't explain

why this threat is wrong. (Risk, by contrast, might explain it, assuming that I would wrong you by spitting on you and that there is some chance you will defy my threat.)

But this is to consider only *your* side of the balance sheet, neglecting *my* side. You are not entitled to my not worsening your choice situation when *I* have good reason for worsening it. I have good reason to sit, reason as good as you have. So I may sit and so worsen your choice situation. But you are entitled to my not worsening your choice situation, even to a lesser degree, when this is gratuitous. I have no good reason for threatening. It only keeps you from a taking a seat that would otherwise go to waste. So I may not threaten and so worsen your choice situation even to that lesser degree.

Alternatively, if I may sit there permissibly in such a case, it may have to do with the structure of property rights that the morality of public transit assigns. For whatever reason, the morality of public transit assigns the person who gets there first something like a right of first refusal. If he refuses the seat, then the next person in line has the right to refuse it, and so on. But if that's right, then you are *conditionally* entitled from me to a certain choice situation: entitled, *on the condition that I do not sit there*, to choose to sit there unmolested or to turn the seat over to the next person. If I sit, I don't deprive you of that entitlement. I just make it the case that the condition of the entitlement does not obtain. Falsifying the condition of an entitlement need not deprive the entitled person of what they are entitled to. If I don't sit, but threaten to molest you if you take it, by contrast, then I do deprive you of a choice situation to which you are entitled.

Is there any general rule telling us how to strike the balance between Audito's interests in a better choice situation and the burdens that Hablo (and others) must bear to provide it? I doubt it. To be sure, the fact that Audito is entitled from Hablo to Hablo's *not Sticking* when Audito

does not Obey (or to Hablo's not Carroting when Audito does Obey) may be a *strong indicator* that Audito is entitled from Hablo to a *better choice situation than one in which* Hablo announces or conditions to Stick if Audito does not Obey (and to Carrot otherwise). In other words, the fact that Hablo would wrong Audito by following through is a strong indicator that Hablo wrongs Audito by threatening to follow through. Indeed, I suspect, this is why many are drawn to Inheritance. Deep down, they are drawn to Choice, and they assume that Inheritance is what Choice entails.

However, in some circumstances, Audito is entitled to Hablo's *not Sticking*, without being entitled to a choice situation in which Hablo does *not condition or announce* that Hablo will Stick. The counterexamples to Inheritance illustrate how these entitlements can come apart. First, holding fixed conditioning, announcing tends to have a beneficial capacity effect. If a cost has been attached to Audito's not Obeying, Audito is better off knowing about it. This is what His Majesty Fuse's akratic warning enables Jester to do. Holding fixed His Majesty's uncontrollable temper, the warning makes Jester's choice situation as good as His Majesty can make it. While Jester is entitled to His Majesty's not thrashing him, he is not perversely "entitled" to a choice situation in which His Majesty refuses to warn him.

Second, conditioning (provided it is announced) can have benefits that Sticking does not have. Capitalia's following through is pointless, and so it has no reason to follow through. By contrast, Capitalia's threatening deters a first strike, and so it has good reason to threaten. So while Communia is entitled to Capitalia's not nihilistically following through, it isn't entitled, once Capitalia's reasons are taken into account, to a choice situation in which it is free to launch a first strike with impunity.

So, again, I doubt there is a general rule telling us how to strike the balance between Audito's interests in a better choice situation and the burdens that Hablo (and others) must bear to provide it: a general rule telling us when Hablo owes Audito a better choice situation. Fortunately, we don't need such a rule to say whether the state's threats wrong us in the way that Choice describes. They do not, if, as our idealization supposes, the state's threats leave the choice situation of each of us as good as the state has it within its power to leave it, compatibly with distributive fairness to others. How could any of us be entitled to a better choice situation from the state?

### **3. Coercion, strictly speaking**

At this point, one might protest that while we've been discussing *threats* (and, elsewhere, *following through* on threats), we have neglected *coercion, strictly speaking*. There is, one might continue, a *distinctive* objection to coercion, *strictly speaking*, which is not captured by Risk or Choice. This distinctive objection is answered only by a Limit or Condition. And the state's threats (or its following through) are coercion, strictly speaking—the genuine article.

But what is “coercion, strictly speaking”? The difficulty is not that “coercion,” like other terms with a natural history, has vague boundaries. It's instead that “coercion” is used in different ways, as context and purpose vary (Berman 2002). Perhaps all will agree “coercion” always “steers”: that is, intentionally gets someone to do something or intentionally brings about a certain position or location of his body. But beyond that there's little unity. So in what sense of “coercion” does “coercion” provoke this distinctive objection?

Several natural answers don't help at this point of the dialectic. Does “coercion” mean: “*wrongful steering*”? But then we still need to be told when and why certain steerings are wrong. Does “coercion” mean: “steering that *uses force*”? But, again, we consider this elsewhere

(Kolodny 2016). Does “coercion” mean: “steering that *threatens force*”? But it doesn’t seem wrong to threaten force as such. It seems instead to depend on whether the force would be permissible, or whether the threat deprives someone of the choice situation to which he is entitled. And that just leads us back to Risk and Choice.

Perhaps, then, “coercion, strictly speaking”—that is, “coercion” in the sense that provokes a distinctive objection—means “compelling steering” (Hayek 1960, Raz 1986). Hablo “compels” Audito by giving him “no other choice,” in a way that has pronounced value-of-compliance effects—so that, for instance, he is justified or excused for Obeying, or so that his Obedience is not independent—or by physically forcing his body into a position or location—so that there is not even an action to justify or excuse, or to be independent.

But why should compelling steering involve a distinctive wrong, not already accounted for by Risk and Choice? Granted, compelling steering has pronounced value-of-compliance effects. But Choice already takes such effects into account.

Raz seems to suggest that compelling steering distinctively expresses disrespect for, or lack of concern for, autonomy (1986 378, 416), unless a condition of trust is met (1986 157, 419; 2001). But this is puzzling. For one thing, the value of autonomy, for Raz, derives from the value of a worthwhile life that one selects and independently values. Insofar as compelling steerings improve our choice situations, they position us to live such a life. So why should they express disrespect for our autonomy, if they clearly aim to secure what gives our autonomy its value (Quong 2010, 58)?<sup>4</sup> Nor can it be said that compelling steerings necessarily disrespect Audito’s *capacity* for autonomy. They manifestly address Audito’s ability to choose, and they may steer him toward a more challenging field of choice. For another thing, literally expressed

lack of concern for someone's autonomy (or capacity for it), by blunt declaration, presumably does not distinctively wrong as "coercion" is supposed to.<sup>5</sup>

Setting aside what might *explain* the distinctive wrong, is there *positive evidence* that compelling steering involves a distinctive wrong? Such evidence might be provided by a clear case in which, holding fixed the effects on the choice situation, a non-compelling steering becomes impermissible by becoming compelling. It's not clear what such a case would be. Moreover, there seems *negative evidence* that compelling steering does not involve a distinctive wrong. Some compelling steerings are permissible, absent conditions or limits, so long as they pass muster with Choice and Risk. It seems relatively uncontroversial, for example, that compelling defensive threats in a state of nature are permissible.<sup>6</sup>

In any event, the state's threats are not, as a rule, compelling steerings. To begin with, many people defy even threats of serious penalties such as long-term imprisonment (perhaps because they see the chances of being caught as sufficiently low as to be worth the risk). So although these threats are paradigms of "state coercion," they actually don't compel many of those whom they threaten. Moreover, even if a given state threat does compel, the state might moderate the penalty (e.g., to a fine, to a loss of privilege, to a brief, non-forcible imprisonment) so that, while still supplying a disincentive, the threat no longer compels—so that it leaves those it threatens with "another choice." Would moderating penalties in this way suffice to assuage the worry about "state coercion"? Would the harm principle, or the requirement of public justification then lapse?

One might reply that even when a given state threat does not compel, it is still "backed by coercion" (with "coercion" still understood as compelling steering). But what does "backed by" mean? That *if* *Audito* resists the state's following through on its noncompelling threat, then the

state will compellingly steer Audito? Even if this were true, what would follow? Why should there be an objection of the relevant kind to mere conditional exposure to compelling steering? (If the Forces of Darkness come to power, they will compellingly steer me and I will then have an objection to this. But do I now have an objection to this conditional exposure: that, if they come to power, they will compellingly steer me?) In any event, it isn't (generally, non-trivially) true that if Audito resists the state's following through on its noncompelling threat, then the state will compellingly steer Audito. The state may be able to follow through on the noncompelling threat in a way that Audito is unable to resist in the first place.<sup>7</sup>

#### **4. Exceptions to Choice and Risk?**

So, again, we have found Choice and Risk to be the most plausible explanations of why threats are wrong when they are. One may worry, however, that even Choice and Risk together are not the whole story. A class of threats, which tend to attract the label, "blackmail," notoriously challenges Inheritance. Since these threats wrongly threaten to do something that is not itself wrong to do, Inheritance can't explain why these threats are wrong (Murphy 1980, Berman 2011, Shaw 2012). By the same token, Risk cannot explain it. And for similar reasons, it may seem that Choice can't explain it either. For in such cases, Hablo seems to *improve* Audito's choice situation *beyond* what Audito was entitled to from Hablo.

To be sure, the wrongness of some cases of blackmail is easily explained by Choice. In *Bedwetter*, Connolly approaches Blair for a pay off to refrain from telling Wilkes that Blair wet his bed. At least against a baseline in which there is some possibility, out of Blair's control, that Connolly might tell Wilkes, this might well improve Blair's choice situation. Now Blair has a way to keep Connolly quiet. But this is no objection to Choice. For Blair is presumably entitled from Connolly to a choice situation in which Connolly doesn't tell Wilkes even if he is not paid

off. Even setting aside the concrete consequences of the disclosure (such as a beating from Wilkes), Blair's general privacy interest, his interest in controlling how he presents himself to others, would seem to account for this. Provided that Wilkes does not have a compelling claim to be informed, Connolly should respect Blair's wishes, period.

But other cases can seem more challenging. In *Hush*, a third party, Tercero, unlike Wilkes, does have a compelling claim on Gabby to be informed about Gil T.'s misdeeds, which trumps whatever privacy right Gil T. might have. Gabby offers Gil to keep quiet if Gil pays her off. In this case, Gil, unlike Blair, isn't entitled to choice situation in which Gabby doesn't tell. So Gabby's offer, unlike Connolly's, seems to make Gil's choice situation better than he is entitled to from Gabby. So if Gabby's offer wrongs Gil, Choice and Risk cannot explain why.

But does Gabby's offer wrong Gil? There's no doubt that Gabby does something *wrong*: she requests a bribe to refrain from informing Tercero.<sup>8</sup> But whether Gabby wrongs *Gil* is unclear. Suppose that it's a one-off trade—cash for negatives, to be quaint—between people who otherwise have nothing to do with one another. And suppose that there is no asymmetry of power. Gabby needs the cash that only Gil can give her just as desperately as Gil needs Gabby's silence. In this case, at least, I don't have any firm intuition that Gabby does wrong Gil, not any more than if she openly tried to sell to Gil stolen goods.

In *Spite Structure*, I am permitted, or so it might seem, to build on my property something that you would find an eyesore (Berman 2011). That is, if I build it, because it's to my taste, I don't deprive you of a choice situation to which you are entitled. Nevertheless, I might seem to wrong you if I condition and announce that I will build it unless you pay me off, merely as a way of getting the pay off from you. Yet this seems to improve your choice situation. Now you can keep the structure from going up, if you choose.

To a first approximation, however, this is explained in much the same way as Spit Bus (with the difference that building the structure, unlike spitting on you, is, in some specifications of the case, permissible).<sup>9</sup> It's fine for me to leave your choice situation worse, by committing to building it, if I have reason to build it, such as that it's to my taste—just as it's fine for me to take the seat. But I shouldn't leave your choice situation worse, even to a *lesser* extent, if I don't have a reason—just as I shouldn't threaten to spit on you if you use a seat that's going to waste.

So far, so good, although it does leave us with the question why we don't treat garden-variety bargaining the same way. In *Tchotchke*, there's a knick-knack languishing in my attic that you would like very much to buy at a given price, and that I would be willing to sell to you at that price. However, simply in order to get more from you, I hold out for more. This seems like permissible bargaining. But it seems parallel to asking to be paid off not to build the spite structure. In both cases, simply in order to get more out of you, I make your choice situation worse than I could—by committing not to build the eyesore period or by offering you the curio at no more than my “reservation price”—simply in order to get more out of you. Why do we treat these cases differently?

There seem to be two basic differences. First, I should be at liberty simply not to sell the gewgaw. It would be invasive, undermine a kind of control in which I have an interest, if I was morally obligated to part with something I (in other respects) own whenever someone else wanted it more, even if I had no use for it. By contrast, I have a less pressing interest in building new structures on my land in which I have no interest.

Second, whereas exchanging the trinket is a kind of fruitful cooperation—now someone will enjoy a tchotchke that would otherwise go to waste—the spite structure pay-off only moves wealth around pointlessly (compare Nozick 1974 84 on “unproductive exchange”). Now it is

admittedly compatible with my being free not to transfer the doo-dad to you, that if I do transfer, I may not ask for more than my reservation price. But why shouldn't I ask for more? Why should you enjoy all of the fruits of our cooperative exchange: the whole "transactional surplus"? Holding out for a split within the range of fair divisions doesn't seem to be worsening your choice situation gratuitously.<sup>10</sup>

There are other cases, however, that it is less clear that Choice or Risk can explain. In *Car Wash*, legitimate business reasons (e.g., declining sales, tardiness) make it the case that Boss would not wrong Employee by firing him. And presumably Boss does not wrong Employee by *not* firing him. Unless more is said, whether or not Employee has washed Boss's car has no bearing on this. That is, Boss would not wrong Employee by firing him in circumstances in which (in a more usual case) he has not washed her car. Nor would Boss wrong Employee by not firing him in circumstances in which (in a less usual case) he has washed her car.<sup>11</sup> So unless more is said, Risk isn't engaged by Boss's conditioning and announcing, "Unless you wash my car, you're fired."<sup>12</sup> And yet Boss would seem to wrong Employee by conditioning and announcing that.

Furthermore, Employee is not entitled from Boss to a choice situation in which Boss does not fire Employee, period. And the offer would seem to give Employee a better, or at least no worse, choice situation. Now Employee has the option of keeping the job if he wants. Granted, the offer has an adverse value-of-compliance effect. Before the offer, Employee could volunteer to wash Boss's car as a "free gift," which was in no way "servile obedience." After the offer, washing Boss's car can no longer be a gift, and it does look like servile obedience. So, in one way, this makes Employee's choice situation worse. But this effect seems negligible. So now

Employee can't give Boss a free gift that he never had any intention or good reason to give. Big whup. Hence, Choice does not explain the case either; for all it says, the offer is permissible.<sup>13</sup>

How else are we to explain this, if not by Choice or Risk? It might seem tempting to look to Boss's vicious motive (Berman 1998; Berman 2011 n. 121). Granted, some might resist the idea that a mere vicious motive can make it the case that Boss *wrongs* Employee. Instead, they will say, it is, or reveals, something about Boss that Employee has grounds to resent. I don't think that this, in itself, should trouble us so much. Is it so clear that Boss wrongs Employee, as opposed to simply revealing something about himself that Employee has grounds to resent? Our intuitions may not distinguish these two possibilities.

Moving forward with this suggestion, what would the vicious motive be? Employee has an objection to Boss's Sticking. Reasons obtain that are adequate to meet that objection, so as to make it permissible to Stick. However, if Boss Sticks because Employee has not Obeyed, Boss will not Stick *for* those reasons, but instead for reasons that are somehow inadequate to meet that objection. What's vicious is not what Boss will do, given the situation and what she knows about it. She exercises due care; she would not Stick unless she knew that adequate reasons obtained. What's vicious is instead the disconnect between what she will do and her recognition of those reasons. The fact that Boss conditions and announces that she is willing to act for those inadequate reasons itself reveals something about her for Employee to resent.

The trouble is that too many cases seem to share this motivational structure. Suppose that Aida does not save Uno, but instead a greater number, believing that the numbers count. However, the true spring of her action is not that belief, but instead the promise of a gold star from the Numbers Count Society. Surely Aida's receipt of a gold star is not adequate to meet

Uno's objection to Aida's failing to save him; only the rescue of the greater number is adequate. And that might be something for Uno to resent. Yet more seems to be going on in Car Wash.

Now, one might wonder why we even need to explain Car Wash. What Boss is up to may seem miles away from anything that our ideal state is up to, assuming that its officials are not corrupt. But here's one reason to worry. In order to account for such cases, we may have to appeal to some more sweeping principle. And this more sweeping principle, unlike Choice or Risk, might apply to the state's threats.

## 5. Creation and steering

Indeed, this is what Julius 2013 seems to suggest. Consider the following principles:

*Creation:* Hablo's conditioning and announcing a response to Audito's choice wrongs Audito when and because it *creates new reasons* for Audito—stronger form—to do *something*, or—weaker form—to do something that Audito *does not already have sufficient reason to do*.

*Steering:* Hablo's conditioning and announcing a response to Audito's choice wrongs Audito when and because it *steers*: that is, aims to get, Audito—stronger form—to do something, or—weaker form—to do something that Audito does not already have sufficient reason to do.

Officially, Julius argues for an amalgam of the stronger form of both principles:

*Julian Principle:* Hablo's conditioning and announcing a response to Audito's choice wrongs Audito when and because it creates new reasons for Audito to do something in order to get him to do it.

However, Julius's arguments (at least in that article) appear to support only an amalgam of the weaker forms:

*Quasi-Julian Principle*: Hablo's conditioning and announcing a response to Audito's choice wrongs Audito when and because it creates new reasons for Audito to do something in order to get him to do it, *when he does not otherwise have sufficient reason to do it*.

Of the two arguments he offers, the more persuasive, to my mind, is that we need the Julian Principle to explain why conditionings and announcings like Car Wash are wrong. But the Quasi-Julian Principle explains this just as well, since Employee doesn't have sufficient reason, prior to the offer, to wash the car.<sup>14</sup>

Whereas the stronger forms of Creation and Steering, and the Julian Principle prohibit state threats as a rule, the weaker forms and the Quasi-Julian Principle prohibit state threats only if those under the state do not already have sufficient reason to comply with the directives that the threats enforce, prior to being threatened (as individuals). With many others, I doubt that there is always a duty to comply with state directives, even when the state is ideal. But it is more often the case that there is at least sufficient reason to comply. All the same, it is not guaranteed. So even if only the weaker form of Creation, or the weaker form of Steering, or the Quasi-Julian Principle, is true, there may be some basis for an objection even to the ideal state's threats.

However, even the weaker forms of Creation and Steering, and the Quasi-Julian Principle, seem overgeneralizations, without any compelling motivation that I can see, other than despair at the prospects of explaining the cases otherwise. Does it, as a rule, wrong someone to create new reasons for him to do something, or to steer him to do it? Not obviously. Ordinary proposals of fair exchange, which offhand appear both to create and to steer, are, to my mind, decisive counterexamples.<sup>15</sup> Financial incentives to certain forms of behavior, such as subsidies for installing solar panels, or the Federal Reserve's open market operations, represent another

class of apparent counterexamples. And, setting aside the question of whether such principles are extensionally adequate, what might explain them? Why should it wrong someone to create new reasons for him, or try to get him to do something?

Indeed, the overgeneralization is even broader than this. To explain the wrong involved in Car Wash, one would actually have to take the disjunctive view that *either* reasons creation *or* steering suffices for a wrong. Suppose, in *Silent Car Wash*, Boss, to impress her buddy, says: “I’m all set to fire that loser. But—check it out, Biff—if he volunteers to wash my car, then I won’t.” In this case, there is creation (via conditioning) without steering (via announcement). Or suppose, in *Akratic Car Wash*, Boss can’t control herself. She hasn’t said anything to Employee. But if Employee were somehow to volunteer to wash her car, the flush of power would lead Boss to stop the firing. Realizing this about herself, Boss lights on a clever way to get her car washed: to tell Employee about it. In this case, there is steering (via announcement) without creation (via conditioning).

Note that it can be tempting to think that whatever is wrong about Car Wash, it has something to do with Boss’s attempt to get Employee “to do her bidding,” or with Boss’s interference in Employee’s deliberation (Shaw 2012). But if *Silent Car Wash* is wrong in the same way, these are red herrings.

## **6. Subordination**

How are we to explain Car Wash? As Scanlon (2008 84–87) observes, part of what seems objectionable has to do with the control that Boss would have over Employee if Boss could fire Employee for not washing her car, albeit when and only when business reasons sufficient for firing Employee independently obtain. We are apt to be frustrated, however, if we try to identify the objection to this power over Employee by first trying to identify an objection to its *particular*

*exercises*. Again, the particular exercise of the power—the offer—can only *improve* Employee’s choice situation, by giving Employee one last way to keep the job when he was otherwise subject to legitimate dismissal. If “abusing” the power consists in leaving Employee’s choice situation worse, the power can’t be abused.

Perhaps, though, there is an objection to the *control itself* that doesn’t derive from any objection to its particular exercises. What might the objection to the control itself be? The best sense I can make of it starts with the idea, central to the republican (Pettit 1997, 2012, 2014) tradition, that it can be objectionable to be—as I will put it—under the power of others. Stressing the word “others,” this is to say that we have an objection in particular to being exposed to another will. Merely being at the “mercy” of natural forces or one’s own poor choices is not troubling in the same way. Stressing the word “power,” this is to say that we have an objection however the power is actually exercised. The objection is there, as republicans stress time and again, even when, as you can predict, it will be exercised to your benefit.

However, republicans tend to understand the objectionable kind of being under the power of others as a matter of being exposed to another will’s relevantly unconstrained power to interfere with your choices. And this seems both too broad and too narrow (Kolodny ms. b). In two respects, it’s too broad; indeed, it risks indicting human sociality itself. First, the objectionable power is not just any power, but *asymmetric* power: the *superior* power of another will, rather than an equal or inferior power. Second, the objectionable power is the power not of any will, but of the will of *another individual*, rather than a corporate will. This is because, I would suggest, the objection to being under the power of others is rooted in a broader concern not to be subordinate to others within a social hierarchy, or the human equivalent of a pecking order—not to stand to them as an *inferior* to a superior, in the ways that are epitomized by the

standing of slave to master, servant to lord, Brahmin to untouchable, and so on (Kolodny 2014). Put more positively, it is a concern, insofar as one has ongoing relations with others, to stand in relations of equality. This explains why the concern is specifically about being exposed to a *superior* power. And it explains why the concern is specifically about being exposed to the superior power of another *individual*, as opposed to oneself, or to nature, or to a corporate body, such as the Commonwealth of Massachusetts or the Albany Rotary Club, with which one has no intelligible claim to equality. (Although, of course, one can be concerned about the superior power that other individuals exercise *through* their manipulation of one's choices, or natural forces, or corporate bodies over which they, not one, have influence.)

On the other hand, if the root concern is about this sort of subordination, or social inferiority, then focusing on exposure to others' *power to interfere in one's choices*, as republican discussions do, may be too narrow (Pettit 2012). First, what counts as "interference in choice"? A natural answer is something that violates Choice. But then Boss doesn't have the power to interfere in Employee's choice. Second, de facto authority, the power specifically to issue commands in a context in which they are generally followed as commands—the capacity to "boss others around"—is specially significant for relations of social inferiority and superiority. Finally, higher and lower social standing is not simply a matter of power. It is also a matter of attracting greater or lesser "consideration"—concern, deference, respect, and so on—relative to others, even if this does not translate into relations of power between oneself and them.

A number of factors, however, can moderate the threat of subordination that such asymmetries of power and consideration pose. First, the asymmetries can be limited in extent and confined to certain contexts and purposes. Second, the asymmetries may exist only momentarily, as part of a one-off encounter, instead of being woven into the fabric of ongoing

relationships within established social structures. Third, the asymmetries may be entered into with other options available and with adequate information, and the asymmetries may be escapable, at will, with little cost or difficulty. Fourth, the asymmetries may be regulated by higher-order decisions that the relevant parties have equal opportunity to influence. Finally, each party may have a social standing, such as citizenship, which is not marked by those asymmetries, and which is in some way more fundamental than the social standings that are so marked.

So, returning to Car Wash: what is objectionable about Boss's power over Employee, perhaps, is the sort of subordination, or relations of inferiority and superiority, that this power partly constitutes. Even when Boss lacks the power to fire Employee for refusing to wash her car, Employee still stands in a relation of subordination of a kind. Boss gives Employee orders, which Employee is expected to follow, and which Boss can back with the threat of termination. The fact that such employment relations are pervasive should not inure us to threat of objectionable subordination that they pose (Anderson ms.). If this threat is to be defused, certain moderating factors, like those listed above, need to be met. For one thing, Boss can order Employee only when Employee is on the job. After hours, Employee should be able to face Boss as an equal citizen. For another, Boss's orders must be limited to point of the job and, at a minimum, must exclude personal services to the Boss. For yet another, Employee should enjoy conditions of free and informed entry into and exit from employment. For still another, there should be some regulation of relationships of this kind by some higher authority over which Employee has an equal say. There should be some employment law under democratic control.

The reason for insisting on these boundaries and conditions isn't simply that without "safeguards" Boss is liable to "abuse" the power, at least if that means: "do things that unfairly disadvantage Employee." Again, precisely what makes Boss's power to offer what she does so

puzzling is that the offer works to Employee's advantage. The reason for insisting on these boundaries and conditions is instead that without them, the relationship itself would be objectionably subordinating. To wit, if Boss has the power to fire Employee for refusing to follow orders to perform personal favors, then Employee is not simply Boss's employee, but also Boss's personal servant. And while Employee may have signed on to be an employee, he didn't sign on to be a personal servant. Moreover, if bosses in general have Boss's power, then there's no way to sign on for it, for there's no alternative to being employed as, at least in part, your boss's personal servant. It's true that Boss comes by that power only once legitimate business reasons for firing Employee appear on the scene. But it's obscure why, say, a sudden drop in sales should license an otherwise objectionable relationship.

So far we have identified an objection to the *power* that Boss has over Employee if Boss *can* fire Employee for refusing to wash Boss's car, or, more to the point, can condition or announce this. What does it take for Boss to lack the objectionable power? It doesn't require, I don't think, that she would be literally unable to do these things. It might be enough, to describe just one possibility, that her acceptance of the authority of a law or social norm prohibiting such things—her respect for it, reflexive obedience to it, fear of its consequences—means that, under a wide range of conditions, she would not seriously contemplate it.

Why, then, does the *particular act* of firing Employee, or conditioning or announcing it, wrong him? One answer is that it does not, strictly speaking, morally wrong Employee. Instead, it is what a law or social norm would have to deem as wrong—to forbid—for Boss to lack the power to which Employee has an objection. Another, compatible, answer is that the particular action is wrong because of what it expresses.<sup>16</sup> If Boss can't divest herself of the power, at very least she can act in ways whose conventional meaning would communicate that she repudiates it.

And yet Boss's offer conveys precisely the opposite. Even if Boss frames the offer as a "humble proposal, by no means an order," and even if it somehow issues from spotless motives, it's hard to see how Employee can treat it as anything other than an archly worded order, given that it is backed by precisely the same penalty as Boss's usual orders. One can say, if one likes, that the objection is that it humiliates Employee, but the objection is not to the feelings of humiliation, but instead to what, if recognized, would produce those feelings. Even in Silent Car Wash, where there is no offer and so no danger of Employee's *feeling* humiliated, Boss still makes a production of conditioning to dismiss Employee on grounds that would justify the dismissal of personal servant. That's why it's supposed to impress Biff.

In the absence of an established and ongoing, hierarchical relationship, whether of de facto authority and obedience, or otherwise, asymmetries pose less of a threat of objectionable subordination. But such objectionable subordination can still occur, when the asymmetry is particularly severe. In *Melodrama*, Mater cannot pay for treatment that will save her child's life, and Mustache offers to pay for the treatment in return for sexual favors (Feinberg 1986)—or, dialing back the villainy, a kiss or some obsequious display. If Mustache has a duty of rescue to pay for the treatment, then Choice or Risk might explain straightaway why the offer is wrong. Presumably, she is entitled to a choice situation in which Mustache will pay for the treatment whatever she decides to do, and Mustache would wrong her by not paying for it. But, if the treatment is costly enough, then Mustache's paying for the treatment seems supererogatory. In that case, the offer would seem to improve her choice situation beyond what she is entitled to from Mustache.<sup>17</sup> While there is no established or ongoing hierarchical relationship, Mater is nonetheless in desperate need of what Mustache is able to provide, so desperate that, if not for the excessive cost to Mustache, he would have a duty of rescue to provide it. (In Car Wash, by

contrast, there is an established, ongoing hierarchical relationship, but Employee need not be similarly desperate for what Boss can provide. There may be other only slightly less desirable jobs.) The very fact that it is up to Mustache's personal discretion whether Mater receives the aid seems incompatible with relations of equality between them. In fact, one might have thought that the argument for a social safety net is in part that it would prevent this sort of asymmetry from arising. The argument is not only that people should get aid when they need it, but also that they shouldn't be made dependent in this way on others (Satz 2010). (Perhaps even Hush might have this character, if Gil was sufficiently desperate for Gabby's silence (Fletcher 1993).)

As it happens, though, Mater is dependent on Mustache. Now it's one thing if Mustache acts as he would if he were duty-bound to provide the aid, accepting no more than compensation, a fair return, or a free gift after the fact. And it's one thing if he just opts not to help, as he would if he decided that he has his own life to live. But it's quite another if he conveys that he embraces the relationship of dependence, by demanding favors, or by making a production of the fact that whether the child lives is up to him to decide, say, by ostentatiously flipping a coin.

## **7. Is the Concern about State Coercion a Concern about Subordination?**

Let's retrace our steps. We began with the widespread idea that there is some objection to state coercion that is answered only by certain Limits to, or Conditions on, its use. What, we asked, is this objection? Having taken up, in other work, the possibility that the objection to state coercion was to what the state threatens to do, I focused instead on the possibility that the objection was to state's threats themselves. Accordingly, I asked, roughly, what makes threats, in general, wrong when they are?

I rejected a common answer, Inheritance. The truths in the vicinity of Inheritance, and that account for its appeal, I argued, are instead Risk and Choice. But Risk (and Inheritance, for

that matter) would not support an objection to our idealized state's threats, which threaten to do only what is permissible. And Choice would also not support an objection to our idealized state's threats, which improve choice situations in a way that is fair to all. So what can the objection to state coercion be?

Deepening the puzzle is a point that isn't sufficiently appreciated. Many of those who insist that there is some Limit to, or Condition on, what the state does, would be, I suspect, minded to insist this even with respect to a state that didn't threaten at all. Imagine that tomorrow common knowledge of dispositions to comply with the state's orders were to emerge spontaneously. And imagine that, in this *Trusting Future*, the state continues to regulate our behavior. Its commands, even without the backstop of jails and gallows, continue to serve as decisively salient coordination points, or tap dispositions to reflexive obedience. The state continues to shape our natural and social environment more or less as it currently does, through what are, and what are seen as, commands (as opposed to advice about what people have reason to do anyway). It's just that, holding everything else fixed, there aren't any threats lurking in the background. Would the harm principle or requirement of public justification then no longer apply (Wall 2005; Bird 2013; Quong 2014)? Would the state then be free to prohibit self-regarding choices or pursue policies based on a sectarian doctrine? One doubts that proponents of such Limits and Conditions would answer yes.

So what are we to make of this widespread thought that state coercion provokes some special objection, met only by Limits or Conditions? Perhaps there's nothing to be made of it. In some moods, I'm attracted to that deflationary conclusion. However, in other moods, I see, or seem to see, a way to make something of the thought. Recall that the objection to some conditionings and announcings, such as Car Wash, was explained not by Choice or Risk, but

instead by a worry about relations of subordination. My speculation is that what finds expression as a worry about state coercion is itself a deeper worry about subordination, writ large. The worry, to put it bluntly, is that in virtue of being subject to the state's decisions, we are subordinated to others. 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 vastly greater power and de facto authority of the state. And, second, when the badges and robes are stripped away, the state just is other people.<sup>18</sup>

Indeed, several features of the state, in contrast to the workplace, seem to intensify the worry. For one thing, Boss, we imagined, could be deprived of objectionable power and de facto authority by the enforcement of appropriate legislation. But how is the same true of those who make and enforce the law itself? For another, entry into and exit from Boss's power and de facto authority, we imagined, was part of what made them acceptable. But the state's power and de facto authority are unchosen and inescapable. For yet another, it may moderate Employee's subordination to Boss that Employee influences some higher link in the chain of de facto authority, which regulates Boss's treatment of him, or that there is another relationship in which Employee and Boss can stand as equals, which is in some way more fundamental and which Boss has no greater power to structure. But this possibility is foreclosed in the case of the state. Its power and de facto authority are "final," occupying the apex of the hierarchy, beyond which there is no further appeal (Kolodny 2014).

Why should a worry about subordination find expression as a worry about "state coercion"? Again, it's unclear what political philosophers mean by "state coercion." For some, "coercion" is little more than a cue to call up images of the state's employing, or threatening to employ, violence or confinement, so as to induce compliance. For others, as observed in section

3, “state coercion” is more explicitly defined as the state’s compelling steering. Either way, in the usual run of human affairs, the power to compelling steer, and the power to use or threaten violence or confinement, are necessary for possessing the final power, which upholds the final de facto authority: the power that, ordinarily, regulates and controls the distribution of all other powers, and so supports the de facto authority that regulates and controls all other authorities. Little wonder, then, that a concern about *relations* to those who wield the final power and de facto authority, to those who occupy the apex of the hierarchy, should find expression as a concern about those forms of *treatment* a capacity for which such power and de facto authority usually require: namely, force, confinement, and compelling steering.

Those concerns, however, are about different things. Our Trusting Future pulls them apart. There the state issues no threats at all, let alone threats to use force or imprison. However, the state continues to wield vastly superior, final, and inescapable power and de facto authority. It issues orders that, even if they are not backed by threats, we are expected to follow and that determine what others around us do. Those orders, in turn, have the power to shape our social world more profoundly than any other identifiable earthly agency. So a similar question arises about our relationship to those who issue those orders and wield that power. Perhaps this is why, as I suspect, many political theorists would hold that even in our Trusting Future the state would still face an objection of the kind that we have been trying to understand.

Suppose, then, that the concern about “state coercion” is this concern, that merely in virtue of being subjected to the state’s decisions, we are subordinated to those who make them. How then is the state to address it? Must it respect a Limit, or meet a Condition? Perhaps, but on the face of it there seems a different, perhaps more direct, solution. It is true that in being subjected to the state’s decisions, we are exposed to the greater power and authority of the state.

And it is true that the decisions of the state just are 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 one somehow doesn't stand as an equal among other equals. That would follow only if the decisions of the state represented the superior power and authority of some other individual. Now, suppose that there could be arrangements that gave each person equal opportunity to influence the state's decisions, or the delegation of those decisions to officials who stood as "agents" to the collective "principal" of the citizenry as a whole—arrangements which might be called "democratic," at least on one understanding of that endlessly contested term. No small supposition, of course. Setting aside the improbability of ever realizing the possibility of equal opportunity for influence in practice, it's not even clear that there is a coherent possibility to be realized (Kolodny 2014). But if such arrangements were to obtain, then we would not, merely in virtue of being subjected to the state's decisions themselves—that is, abstracting from their content—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."

If there could be a state whose decisions, in this way, did not represent the subordination of any individual to any other, then there would be no basis for any Limit to, or Condition on, what the (otherwise ideal) state does. The state wouldn't need to restrict its efforts to protecting people from assaults on person and property, but could promote other goods as well. The state wouldn't need to enjoy unanimous consent, or have a public justification for what it does. This is because the objection that would call for such Limits or Conditions, namely the subordination of some to others, simply could not be raised in the first place.

Perhaps, as I in some moods think, the worry about “state coercion” is without substance. But if it has any substance, it’s not the substance that it is usually thought to have. It’s not that the state’s *particular acts* of “coercion” strike against our *freedom* as individuals, whether “freedom” is understood as our enjoying the conditions for a self-directed life, or as a constraint on what may be done to us. It is rather that, given that the state just is other people, the *relationship* of subordination that “state coercion” is apt to call to mind is hard to reconcile with an ideal of *equality* among individuals.

Put another way, the line of thought that we have followed is a kind of slow-motion, anti-libertarian judo. If one pushes hard enough on the idea that there is an objection to the state, one finds oneself in a posture not so much of defense of personal freedom, as of opposition to social hierarchy. Or if one does find oneself defending personal freedom, the conception of freedom at play is not what one might have expected. It isn’t being resourced to chart a worthwhile course through life, or being insulated from invasion. It’s instead something like having no master, or being subordinate to no one.

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<sup>1</sup> Another possibility, which I won't explore here, is that it is an expressive wrong. McGer wrongs McGee by expressing, prospectively, that he "takes lightly" wronging McGee (by murdering him), in the way in which he might wrong (the memory of) McGee by expressing, retrospectively, that he "takes lightly" having wronged McGee (by murdering him), by boasting or erecting a trophy. Even if there is no duty to apologize for past wrongs, especially if such apologies would not be sincere, there may be a duty at least to refrain from "anti-apologizing" in this way—to "show some respect," even if one feels no genuine remorse.

<sup>2</sup> Some might object to paternalistic threats, of course, on the grounds that they are paternalistic. But this objection seems orthogonal to our present inquiry. Some paternalistic actions are not conditionings and announcings of responses to choice, and many conditionings and announcings of responses to choice are not paternalistic.

<sup>3</sup> However, this proposal risks circularity, especially when combined with Inheritance. Suppose Mustache offers Mater offers to save her child in return for sexual favors. And suppose we wish to say that, under such circumstances, her consent to those sexual relations are invalid. On the current proposal, her consent is invalid because Mustache's offer wrongs Mater. But why does the offer wrong Mater? Because, as Inheritance supposes, the sexual relations themselves would wrong Mater? But why would the sexual relations wrong Mater? It's not sufficient that the sexual relations would be unpleasant for Mater. They might not be, and, in any event, unpleasant sex is not wrong so long as it is consensual. Presumably, the sexual relations would wrong Mater because they would not be consensual: because her consent would be invalid. But that's what the proposal was supposed to explain: why her consent would be invalid.

<sup>4</sup> A further puzzle is that Raz does not think that compellingly steering *Audito to get him to fulfill his duties to support the autonomy of others*, even absent trust, expresses disrespect for his autonomy. However, compelling steering, absent trust, for the sake of the *Audito's* autonomy does express disrespect, or lack of concern for, *Audito's* autonomy. One would have expected precisely the opposite.

<sup>5</sup> It might be said that in compellingly steering *Audito*, *Hablo* puts himself in an objectionable relationship with *Audito*, a relation, say, of "domination" (Raz 1986 418). But this line of thought, I suspect, leads us to the concern about "subordination" of section 6.

<sup>6</sup> What explains this, one might reply, is that compellingly steering *Audito* to do his *duty* does not provoke the distinctive objection. Setting aside why this should be so, we could make the same point in the text with other cases, in which it is permissible to compellingly steer *Audito* to do something other than his duty (see Kolodny 2016).

<sup>7</sup> There may still be something to the idea that even the state's noncompelling steerings are "backed by coercion." It's not that if *Audito* resists the state's noncompelling steerings, then *Audito* will be compellingly steered. It's instead, as discussed in Section 7, that usually the state possesses "final" power and de facto authority only by having the capacity to compellingly steer.

<sup>8</sup> Why is it wrong for Gabby to request a bribe, or for Gil to pay it? I'm not sure. One's first thought is that it has to do with the fact that Gabby would wrong Tercero by not telling him.

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But that “fact” isn’t a fact in all of the relevant cases. The bribe seems wrong even if Gabby does not have an all-things-considered duty to Tercero to inform him, because the cost to Gabby of informing him makes it supererogatory, or because someone else, Quatro, has a conflicting claim that Gabby can’t simultaneously honor.

<sup>9</sup> My discussion here is greatly indebted to Berman 2011 and Shaw 2012. Compare Tadros forthcoming, Ch. 12.

<sup>10</sup> Of course, it’s compatible with this that I may not leave you with unfairly little of the transactional surplus (although what counts as a fair division in any isolated transaction is vexed and many cases may have no definite answer) (Wertheimer 1996). In this case, what wrongs you is principally *leaving* you with unfairly little, rather than *proposing* the unfair terms. If, as could be predicted, you simply reject the unfair terms, it’s not clear that the *proposal* wrongs you.

<sup>11</sup> Note that Boss’s Carroting (i.e., not firing Employee), unlike McGer’s Carroting (i.e., taking McGee’s money), is not something that wrongs Employee unless he consents.

<sup>12</sup> One might suggest that if Boss fires employee for not washing her car, Boss will be wronging employee, by using an unfair procedure, sensitive to irrelevant factors and insensitive to relevant ones. Risk might then explain why Boss wrongs employee by conditioning and announcing this. But suppose that Boss, considering the matter fairly, left the pink slip in her outbox. Now, suddenly realizing her car could use a wash, she offers to go back and tear it up. Will Employee really be treated unfairly if Boss *doesn’t* tear it up—if Boss merely *lets stand* the result of an admittedly fair procedure? Or is the thought instead that Employee will be treated unfairly if Boss Carrots because he Obeyed: if she *keeps him on* because he washed the car? But it hardly seems that someone wrongs you if, with your consent, she replaces the outcome of a fair procedure with an outcome biased in your favor. True story: In 2000 Robert Mugabe won a lottery run by Zimbabwe’s state-owned bank. No doubt, the person who rigged the lottery wronged the other Zimbabweans. But did they wrong Mugabe?

<sup>13</sup> Against this, one might suggest: “*So long as* Boss is conditioning to *not* fire Employee if he *does* wash the car, she owes him the *still better* choice situation of not firing him even if he does *not* wash the car. (This is so even though she is free to *cease* conditioning to not fire him if he does wash the car; in that case she would no longer owe him the choice situation of not being fired even if he does not wash the car. And this is so even though, again unless more is said, Boss does not wrong Employee by firing him when he has not washed the car.) Like Spit Bus, what she gains by refusing him that better choice situation is simply too little when compared to what he loses.” A welcome suggestion, if it could be made to work. But, to a first approximation, Boss gains a washed car, and Employee loses the labor of washing a car. Is this “too little”? After all, if I am willing to pay for a car wash from a commercial provider, I don’t owe him the even better choice situation of being willing to pay the same amount for nothing in return. (One can’t reply: “But what Boss gains doesn’t count, because it’s obtained by a *wrongful* conditioning and announcing.” Its being wrongful is what needs explaining.)

<sup>14</sup> His less persuasive argument is that the Julian Principle corresponds to a principle governing self-regarding action. It is somehow incorrect for me to toss my clothes out of the window so as to create new reasons for myself to go outside naked in order to get myself to go outside naked. Likewise, there should be something amiss in creating new reasons for another person to get him to do something, as the Julian Principle says. But the Quasi-Julian Principle corresponds just as well, since I don’t have sufficient reason, *ex ante*, to go outside naked.

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<sup>15</sup> Julius will have none of this. He argues that proposals of exchange, insofar as they are intuitively permissible, simply announce the existence of prior reasons.

<sup>16</sup> A third answer would proceed in two highly questionable steps. First step: If Moral Reality is such that Boss would wrong Employee by exercising the power, then Boss lacks the power. In other words, the objectionable relation is at least partly constituted by the bare normative fact that Moral Reality deems it permissible for Boss to exercise the non-normative power. Therefore—second step—precisely in order to deprive Boss of the objectionable normative power, Moral Reality is such that Boss would thereby wrong Employee.

<sup>17</sup> Needless to say, decisions about sexual relations call for a particularly high standard of consent. Given that her child's life hangs in the balance, Mater simply may not be in a good enough position to withhold consent. If so, then the case has the structure of McGer's mugging of McGee, described in Section 1. Carroting wrongs Audito because it involves doing something to Audito that requires Audito's consent, and the conditioning and announcing has itself vitiated that consent. If so, then so long as Mater has some chance of accepting the offer, the offer may wrong her, according to Risk: it makes it likely that Mustache has sexual relations with her without her consent. (And if there is no chance whatsoever that she will accept, then the offer seems pointlessly cruel, because of an adverse value-of-non-compliance effect of the Sophie's choice variety: having rejected the offer, she then has to watch her child die while knowing that she could have done something to save it.) But this explanation seems insufficiently general. The offer seems wrong even if what is requested of Mater wouldn't require such a high standard of consent.

<sup>18</sup> Perhaps another way to make sense of the thought, even more speculative than the appeal to subordination in the text, is to posit a right against being subject to commands by a final de facto authority, analogous to a right against force. Kolodny ms b explores this in greater depth.