

## 2.6 The Natural Duty Argument

Suppose, however, that the state does not have the Guardian's luxury. It must use force in its deterrents. Might the complaint against the state then be the Deontological Complaint: that the state uses force in imposing deterrents, thereby violating the Force Constraint? This brings us to our second test of candidate complaints. This Spare-Justification Test, recall, asks whether we can answer the candidate complaint *without* appealing to a special legitimating condition (such as consent or reasonable acceptability) or a special limit on legitimacy (such as the harm principle or the minimal state) by using only sparer resources to which those who believe that there is such a complaint are anyway committed. If so, then the candidate cannot be our sought-after complaint against the state, for that complaint is said to call for some special legitimating condition or limit of legitimacy.

I think that we can answer the Deontological Complaint with sparer resources. That is, those who press a complaint against the state cannot, consistent with their other commitments, take there to be a complaint against the state's deterrent use of force, even when the state does not meet a legitimating condition or respect a limit on legitimacy. In the following sections, I explain why this is so.

In this section, however, I consider a different proposed explanation, the *Natural Duty Argument*, which I believe fails. Why study a failure? First, because many implicitly rely on it, even if they don't make it explicit.<sup>9</sup> And, second, because

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<sup>9</sup> 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.

Wellman (1996, 219 n. 13) claims 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

how it fails is instructive. In particular, the Natural Duty Argument not only fails, but also backfires. It makes the Deontological Complaint look harder, rather than easier, to answer.

The Natural Duty Argument runs as follows: “Even would-be proponents of the Deontological Complaint, who believe that state force violates the Force Constraint, must accept that:

- (1) Each individual has a natural *Duty to Improve*: to help meet others’ claims to improvement, i.e., to promote the public interest.

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 public interest.

So, it follows that:

- (3) The uniquely best way for any individual to help promote the public interest is to comply with state directives.

So, it follows that:

- (4) Each individual’s *Duty to Improve* 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.

Therefore, the state’s use of force does not violate the Force Constraint, even if the state does not meet a legitimating condition or respect a limit on legitimacy.”

Even if the Natural Duty Argument were sound, it would have limited dialectical reach. First, some might deny *Duty Permission*.<sup>10</sup> In particular, they might say that the Force Constraint is lifted for violations of duties not to invade, but not for violations of other duties. Would they thereby draw

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merely because an emergency rescue is underway. After all, our motivating case, of toppling Uno to save Duo and Trio, was an emergency rescue.

<sup>10</sup> 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.

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 Improve. They may accept only that there is only a natural duty to respect rights—or, at most, to provide aid in extreme circumstances.<sup>11</sup>

But set aside these reservations, namely that some might not accept the premises of the Natural Duty Argument. Even granting those premises, the Natural Duty Argument 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 help meet claims to improvement is to comply with state directives.<sup>12</sup>

Simmons's well-known "particularity problem" supplies one reason for this *Directive/Duty Gap*: this divergence between what natural duty requires and what an ideally directive state directs. Suppose that individuals' Duties to Improve are "global": to contribute to meeting the improvement claims of all people, without respect to national boundaries. And suppose that an individual can contribute to meeting the improvement claims of all people at least as well by complying with the directives of a foreign state as by complying with the directives of his own state. For example, a Swede, Gustavus, might contribute just as well by paying Danish taxes instead of Swedish taxes. Gustavus's Duty to Improve does not imply a duty to comply with the directives of the Swedish state to pay Swedish taxes, only a more permissive duty to pay Swedish or Danish taxes (Simmons 1979, ch. 6; 2005, sect. 7).

But the Directive/Duty 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 discussions of rule utilitarianism. There is often no way for the state to carve out an exception for benign individual actions without worse consequences overall. To put it schematically: Although it serves the public interest at least as well for those in condition C to X, it detracts from the public interest 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.

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<sup>11</sup> Simmons (2000, 137), however, accepts a natural Duty to Improve.

<sup>12</sup> Compare Murphy's "basic structural point" (2014, 130).

Myriad examples fit this schema. (A) In the case of coordination problems, it might promote the public interest at least as well for those in a condition in which enough others will coordinate to promote the public interest in some other way, although it detracts from the public interest for those in a condition in which not enough others will coordinate to do so. (B) Similarly, it might promote the public interest 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 public interest 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. (C) Similarly, it might promote the public interest 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 public interest 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 the natural Duty to Improve. Because of the Directive/Duty 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 Directive/Duty Gap with political obligations: moral requirements to follow state directives. But it is not clear that there are political obligations, a point that we will return to in *Political Obligation*.

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 Directive/Duty Gap, even an ideal state (unless it is, like the Omittite Empire, forceless) will routinely violate the Force Constraint in imposing deterrents

for violations of its directives. That is a simple and powerful complaint against a relation of rule.<sup>13</sup>

It is worth noting that, somewhat surprisingly, Raz may be committed to this consequence. On the one hand, Raz seems to accept (ii) that there are not, in general, political obligations. On the other hand, Raz seems to accept (i) the Duty Requirement. According to his Harm Principle, “coercion,” at least, is permissible (absent a legitimating condition of “trust”) only to prevent someone from violating a duty of autonomy. 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.” Presumably, by “moral duties,” Raz means duties of autonomy that people have independent of any duty to obey the law. However, by Raz’s own lights, the state enforces many directives to do things that people have no independent reason, let alone duty of autonomy, to do. For example, people with specialized skills or knowledge in a given area, he observes, will often not have reason to follow the state’s directives in that area (which is why, according to his “Normal Justification Thesis,” those directives will not have authority over them) (74). These are just the (B) cases described a few paragraphs back. So, Raz

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<sup>13</sup> See Nozick 1974, 6; Dworkin 1986, 191; 2011, 319–20; Klosko 2005, 49–50; Quong 2011, 115. This is why Dworkin holds, as noted earlier, 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 from private enforcement.

There is a different principle in the vicinity of Duty Requirement, put forward in 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.

appears to be committed to the conclusion that such enforcement is wrong.

## 2.7 The Avoidance Principle

The unmet ambition of the Natural Duty Argument was to show, by appealing to resources anyway accepted by those who press the complaint against the state, that, even if the state does not meet a legitimating condition or a limit of legitimacy, its use of force in imposing deterrents does not violate the Force Constraint.

In this section, I propose to show this in a different way. Even if the state does not meet a legitimating condition or a limit of legitimacy, its use of force in imposing deterrents does not violate the Force Constraint, so long as it is at least permissible, as Locke would have put it, to enforce the “law of nature.” I take it that most who press a complaint against the state would accept at least this elementary, Lockean idea. Let us express the idea as:

*Natural Imposition:* The Force Constraint is lifted, for purposes of deterrence, when the target has violated *the Force Constraint itself*.

If we assume Natural Imposition, I will argue, then the best explanation of Natural Imposition will also imply:

*State Imposition:* The Force Constraint is lifted, for purposes of deterrence, when the target has violated *a state directive*.

Put another way, there is no relevant moral difference, between imposing deterrents for the violation of natural rights and imposing deterrents for the violation of state directives. This is so even though the ideally directive state’s directives go way beyond prohibiting the violation of natural rights against the use of force. Again, they include directives to cooperate to help to meet claims to improvement in many other ways: for example, to contribute to police protection and public education, in the specific manner that the state has decided. However, I will argue that *these differences* between natural rights against the use of force and state directives simply *don’t matter* to the permissibility of imposing deterrents for their violation. This line of argument does not assume Duty Permission, or political obligations, or even a natural Duty to Improve. 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 right against 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 the:

*Avoidance Principle:* The Force Constraint is lifted when and only when the target of the force has or had adequate opportunity to avoid the use of force (Hart 1968, Scanlon 1998, 1999, Otsuka 2003, Ch. 3).

"Adequate" is determined by fairly balancing the two main things 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 she does not control.<sup>14</sup> On the other hand, there are the burdens that others may have to bear in order to provide her with such 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 right, in order to impose a deterrent. This would make the deterrent empty,

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<sup>14</sup> I don't claim that this interest in control explains why the Force Constraint has a "deontological" or "agent-relative" character. After all, when we refrain from using force on Uno to save a greater number from force, the greater number might ask why *their* interests in control do not outweigh Uno's interest. 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.



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 meets their claims to improvement in a fair way: in particular, their claim to a choice situation in which they are left free from force under a wide range of choices. Hence, a weaker form of control seems adequate in Flintstone's case: the control exercised in not violating natural rights. Flintstone's adequate opportunity to avoid force was his opportunity not to violate natural rights.

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? This is the line of thought that seems to lie behind Duty Permission and Duty Requirement.

First, a point so straightforward that it is apt to be overlooked. 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.

Third, 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. Imagine (suppressing yet again a healthy sense of embarrassment about this sort of casuistry-of-bonking example) 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.<sup>15</sup>

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<sup>15</sup> 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 *The Distributive Complaint*.

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, that 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?

Finally, we can offer two theories of error for Duty Permission and Duty Requirement: reasons why Duty Permission and Duty Requirement might seem true, even if they are in fact false.<sup>16</sup>

First, we may confuse the Duty Requirement with the *Condemnation Principle*, which *deems unfitting condemning the target for wronging others* when he hasn't, in fact, wronged others: hasn't violated a duty owed to them. The Condemnation Principle, however, does not imply Duty Requirement. So long as the state, when it imposes its deterrent on Violet for violating its directive, succeeds in "subtracting" any expression of thereby condemning Violet for wronging others, it would not be, as far as the Condemnation Principle is concerned, unfitting (let alone impermissible) for the state to impose its deterrent on Violet for violating that directive, even if Violet had no duty to comply with it.

Second, we may confuse Duty Permission and Duty Requirement with the *Wrongful Benefits Principle*: that the fact that Violet had a duty to X may itself contribute to making it

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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.

<sup>16</sup> For other criticism of the Duty Requirement, see De Marneffe 2005 130, 2010 76; and Tadros 2016, ch. 6 (although his doubts seem prompted by exceptional cases).

the case that her opportunity to avoid force by X-ing was adequate. This is because Violet cannot cite having to forgo the benefits of violating a duty to X—"ill-gotten gains"—as a reason why her opportunity to avoid force by X-ing was inadequate. Thus, the fact that Violet has a duty to X can be part of what explains why Violet's opportunity to avoid force by X-ing was adequate, and so why, according to the Avoidance Principle, it is permissible to impose a deterrent on Violet for not X-ing. Still, the Wrongful Benefits Principle does not, even in combination with the Avoidance Principle, imply Duty Requirement. Violet's having a duty to X is just one factor among others that can help to explain why her opportunity to avoid force by X-ing was adequate. When other factors are present, her opportunity to avoid force by X-ing can be adequate even though she did not have a duty to X. In that case, the state's imposition of the deterrent would be, as far as the Avoidance Principle is concerned, permissible.

## 2.8 Objections to the Avoidance Principle

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, of refraining from using force, was death. He would have died from organ failure had he not harvested the vital organs of his victim. The reply is the Wrongful Benefits Principle. Flintstone 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.<sup>17</sup> 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

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<sup>17</sup> 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).

Flintstone freedom from force provided that he does *not* violate the Force Constraint, 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.

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If the Avoidance Principle is what explains Natural Imposition, then the Avoidance Principle explains State Imposition just as well. There is no relevant difference between Flintstone's and Violet's situations. This means that the Deontological Complaint collapses. The state's use of force in imposing deterrents on Violet no more violates the Force Constraint than Flintstone's neighbors' use of force in imposing deterrents on Flintstone violates the Force Constraint.

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 improves their situation, by protecting them from invasion, so too they rely on the deterrent in Violet's case to sustain the credibility of a threat that induces behavior that improves their situation, either by protecting them from invasion or in some other way.<sup>18</sup>

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<sup>18</sup> 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

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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 harder to answer than does relaxing the assumption that its directives are ideal.

## 2.9 *Avoiding State Imposition*

To salvage the Deontological Complaint, then, 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. Recall the Wrongful Benefits Principle: 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 respect natural rights—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 Improve, then this is less likely to present a problem—although, admittedly, this assumption somewhat limits the argument's range of application. For the situation will often be as follows. One can satisfy the Duty to Improve in way X or way Y. Neither is markedly more burdensome than the other, but either is markedly more burdensome than refusing to comply with the Duty to Improve. 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 comply with the Duty to Improve. But, since one has a Duty to Improve, 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 Improve, complying with *many* state directives, such as the state's 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 support State Imposition as it supports Natural Imposition. Yet the Deontological Complaint, one might have thought, was supposed to be more categorical.

## 2.10 Two Libertarian Principles

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 the:

*Strong Libertarian Principle:* 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 the Strong Libertarian Principle 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 Strong Libertarian Principle, *Vic's* interest in being free from *Dieter's* force cannot justify imposing a deterrent on *Flintstone*.<sup>19</sup>

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<sup>19</sup> 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 don't think the argument succeeds.) 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

To be sure, those committed to the Strong Libertarian Principle 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 advocates of the Strong Libertarian Principle have squarely faced. If we reject Natural Imposition, then morality leaves Vic defenseless in cases like those just discussed.<sup>20</sup>

Compatible with Natural Imposition, by contrast, is the:

*Weak Libertarian Principle:* Absent consent, force may be used on *S* only to protect others from *anyone’s* force.

The Weak Libertarian Principle is fully compatible with the minimal state, which imposes deterrents for violations of directives to contribute to efforts to protect rights: e.g., to supply service or taxes to support policing and defense. So the Weak Libertarian Principle would support the Deontological Complaint only against a more expansive state. This would support the view, embraced by Nozick, that the minimal state represents a limit of legitimacy.

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did nothing to serve that interest. All the same, following through on the threat serves Vic’s interest in deterring Dieter.

<sup>20</sup> 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 the Strong Libertarian Principle, 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.

In any event, the Weak Libertarian Principle is far less stable than the Strong Libertarian Principle, extreme though the latter may be. The Strong Libertarian Principle builds on a distinction that, vague and contested though it is, is accepted, in some form, by most non-consequentialists: 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 the Strong Libertarian Principle 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 Strong Libertarian Principle 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 Strong Libertarian Principle 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 the Strong Libertarian Principle—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 else can we defend the Weak Libertarian Principle—how else can we deny that their interest in protection from *ills other than force*, which are also 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 the Weak Libertarian Principle, 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.

In conclusion, if we accept Natural Imposition, then we must accept State Imposition as well. This means that those who press the complaint against the state, so long as they accept Natural Imposition, cannot consistently hold that the state, by using force to impose deterrents for violations of its directives, violates the Force Constraint, even if the state does not satisfy a legitimating condition or a limit on legitimacy. This suggests what the Myth of the Omittites, in which the complaint against the state seemed to apply even to a state that used no force, suggested in another way: namely, that the complaint against the state is not that it uses force in imposing deterrents for violations of its directives. The target of the complaint must be some other relation of rule that the state involves. But what other relation of rule?

### 3 JUSTIFYING THE STATE: THREAT

In the previous chapter, we considered and rejected the possibility that the complaint against the state, the complaint that fuels the demand for its “justification” or “legitimation,” is a complaint against its *imposition* of deterrents: either that this is distributively unfair (the Distributive Complaint) or that, because it uses force, it violates the deontological Force Constraint (the Deontological Complaint).

In this chapter, we consider the possibility that the complaint against the state is instead a complaint against the state’s *threatening* to impose deterrents, whether or not the state actually imposes them. This is a natural next thought. By “coercion,” after all, many have in mind a species of threat.

### 3.1 *The Myth of Our Trusting Future*

We begin with the Subtraction Test. As we did in *The Myth of the Omittites*, we remove the candidate relation of rule and see whether this removes the intuitive complaint against the state. In this case, the candidate relation of rule is the state's *threatening* to impose deterrents on those subject to it.

Consider the *Myth of Our Trusting Future*. Imagine that tomorrow common knowledge of dispositions to comply with the state's orders were to emerge spontaneously. And imagine that the state were to cease to back up its directives with threats. It 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 (Sangiovanni 2007).

Would the complaint against the state disappear? Would the harm principle, say, or requirement of public justification then no longer apply (Wall 2005; Bird 2013; Quong 2013, 271–273)? 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 of legitimacy and legitimating conditions would answer yes.

### 3.2 *Conditioning and Announcing*

This brings us to our second test, the Spare-Justification Test. Can the complaint against the state's threats be answered only by a legitimating condition or limit of legitimacy? Or can it be answered with sparer resources, which those who press the complaint anyway accept?

We first need to clarify what the complaint against the state's threats might be. The way to get a handle on this, one might think, is to ask the general question of when and why *anyone* has a complaint against *anyone's* threats. However, I believe that we carve the subject more closely at the moral joints if we ask a similarly general, but somewhat different question: When and why does someone wrong someone else by, as I will put it, "conditioning" or "announcing" a response to their choice? That is, why might Hablo wrong Audito by "conditioning" a response to choice: by 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: by 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. 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. 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 for whether someone has been wronged, or has a complaint. That remains to be seen.



### 3.3 Two Contrasts with Imposing Deterrents

From the outset, it is worth highlighting two general differences between a complaint against the state's imposition of deterrents, which we considered in the previous chapter, and a complaint against the state's threats, which we are considering now.

First, a complaint against the state's threats cannot be answered, as the complaint against the state's imposition of deterrents was answered, by appealing to opportunity to avoid. 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 born to such threats.

Second, it is hard even to formulate (let alone defend) an analogue to the Force Constraint: as it were, a Threat Constraint. It may be that, just as force is wrong because it crosses deontological barrier against invading another's *body*, so too threats are wrong because they cross a deontological barrier against invading another's *choice*. But while it is relatively clear what counts as invading another's body, it is less clear what counts as invading someone's choice. We know, more or less, what it is to touch your body without your consent. What is it, as it were, to "touch your choice" without your consent? Presumably, it isn't just to *change* your choices. *Whatever* I do changes your choices in *some* way. If I turn off my phone, calling me (and getting through) is no longer an option. Nor is touching your choice situation, more specifically, *conditioning and announcing a response* to your choices. I don't, in general, violate your rights by proposing exchanges, for example.

Political philosophers routinely speak of "interference in choice." But the routine should not lead us to assume that we know what they mean—or even that they know what they mean.

### 3.4 From Inheritance to Risk and Fear

So, when and why does Hablo wrong Audito by conditioning or announcing a response to Audito's choice? Many are drawn to 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 Obeyes) would wrong him (at least suggested by Haksar 1976; Murphy 1980 22; Scanlon 2008 76; Berman 1998, 2002, 2011; Shaw 2012 168; White ms.).

Thus, McGer's conditioning and announcing to McGee, "Your money or your life," wrongs McGee 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 wrong McGee, according to Inheritance, because it would wrong McGee to take his money (even while letting McGee live) 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 later. So, McGer's taking the money may be theft. Other paradigmatically wrongful threats, such as threats used to commit sexual assault, have this same structure. Hablo's 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 concluded in the previous chapter that the state does not wrong people by *following through* on its threats. 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 does not wrong Jester by warning him of this (Julius 2013 362, with names and stations added; compare Cohen's 2008 40 "schizoid kidnapper").

Second, even some conditionings of wrongings don't wrong. In *Wrongful Retaliation*, Capitalia, left with no other recourse, may permissibly condition—so long as it also announces!—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).

Even before we saw these counterexamples, Inheritance should have called out for explanation. Why should a threat to wrong someone itself wrong him?

One thought is that *conditioning* to wrong can McGee wrong McGee by *making it more likely* that McGer wrongs him. However, this thought supports not Inheritance, but instead:

*Risk*: If Hablo would wrong Audito by Sticking, then Hablo, for that reason, wrongs Audito by making it sufficiently likely that Hablo Sticks, which Hablo may do by conditioning to Stick.

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.

Risk says nothing about why *announcing* to wrong McGee might wrong McGee. Scanlon (2008 76) suggests that McGer wrongs McGee by making McGee *fear* that McGer will wrong him. Perhaps the underlying principle is:

*Fear*: Hablo wrongs Audito by causing, without sufficient reason, Audito to fear something.

Since, as a rule, Hablo does not have sufficient reason to wrong Audito, Hablo *usually* does not have sufficient reason to cause Audito to fear that Hablo will wrong Audito. Akritic Warning and Wrongful Retaliation represent exceptions, in which there is sufficient reason to cause such fear: to help Jester avoid a thrashing that Fuse can't control and to prevent a nuclear conflagration.

In any event, if Risk and Fear were the whole story, then we would again be home free. Risk, like Inheritance, applies only when the threatened Stick is wrong. And Fear applies only when there isn't sufficient reason for the fear that the threat may cause. But there is sufficient reason for whatever fear the state's threats cause.

However, it seems doubtful that Risk and Fear are the whole story. Consider a case in which both McGer and McGee know full well that McGee *will* Obey and that McGer, being the professional he is, *won't* shoot (Anderson 2011). Then neither Risk nor Fear explains why McGer's threat wrongs McGee. For McGer's conditioning and announcing, "Your money or your life," neither makes it more likely that McGer takes McGee's life, nor causes McGee to fear that McGer will.

### 3.5 Choice

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

*Choice:* Hablo's conditioning or announcing a response to Audito's choice wrongs Audito when and because it leaves Audito's choice situation worse than Audito has a claim on Hablo to provide.

Choice is just a special case of a tautology: namely, that Hablo wrongs Audito when and because, in *whatever* way, he leaves Audito's choice situation worse than Audito has a claim on Hablo to provide. Choice represents, I think, the best sense that we can make of the idea of "interfering in someone's choices." To interfere in Audito's choice, in a way against which Audito might have a complaint, is simply to make Audito's choice situation worse than Hablo owes it to Audito to make it.

It is sometimes suggested that threats make Audito's choice situations worse simply insofar as they reduce Audito's "options" or "liberty," indeed sometimes where this is meant in a baldly quantitative way, where Audito is literally left with fewer options—a lower count (Feinberg 1984 207, Gaus 2010 499). But this is too crude. There are many different ways in which choice situations can be better or worse, and many different ways in which conditionings and announcings, 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."

*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 something like the Wrongful Benefits Principle that we considered earlier, Audito's having to forgo the goods of disobedience 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 this analogue to the Wrongful Benefits 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.

*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 (which we will consider later), meant to steer Audito from bad self-regarding choices. 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.

*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 him, or flooding him with options so as to exhaust or paralyze him, also worsens his capacity.

*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 (or 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. Or it may be impermissible for Audito to stroll quietly through the gallery if Hablo threatens to deface the *Mona Lisa* unless Audito stops and sings the *Marseilles* (compare White ms.). 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, and this is a point that we will return to in *Value-of-Compliance Effects*, 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 Obey, he does not count as selecting from an adequate range of acceptable alternatives.

Sixth, another point we will return to in *Value-of-Compliance Effects*, 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).

Seventh, Hablo’s announcement or conditioning may give Audito reason to feel regret or remorse for his choice when he would not have otherwise (compare White ms.). 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 forced 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 *Value-of-Compliance Effects*, what deprives Audito’s Obedience of independence, 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). 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. No doubt, it is worth asking when and why conditionings and announcings have such and such 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 conditionings and announcings have these value-of-compliance effects. For our purposes, it’s enough to observe that they can have these effects and that, when they do, this can worsen Audito’s choice situation.

*Compliance of others:* Turn now from the value of Audito’s compliance to the value of 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.

In sum, 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 has a claim on Hablo to a better choice situation, 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; White ms.). 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.

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.<sup>21</sup>

Is there any general rule telling us how to strike the balance between Audito's claim to 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 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,

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<sup>21</sup> 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 person who gets there first has 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.

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 the state is ideally directive: if no alternative system of directives and enforcement would better meet our claims to improvement. In that case, its threats leave the choice situation of each of us as good as the state has it within its power to leave it, compatibly with fairness to others. How could any of us be entitled to a better choice situation from the state?

### 3.6 Coercion, Strictly Speaking

At this point, one might insist that there is a *distinctive* complaint against *coercion, strictly speaking*, which is not captured by Risk or Fear or Choice. And the state's threats, or its following through on its threats, are coercion, strictly speaking. This is the complaint against the state: that it coerces, strictly speaking. It is because the state coerces, in this strict sense, that it must satisfy some legitimating condition or limit of legitimacy.

What is "coercion," in this stricter sense? My best guess is that it is "steering" that "compels" (Hayek 1960, Raz 1986, Yankah 2008). Hablo "steers" Audito, let us say, when Hablo *intentionally* gets Audito to do something or *intentionally* brings about a certain position or location of Audito's body. And Hablo "compels" Audito when either (i) Hablo gives Audito "no other choice," or "no reasonable alternative," in a way that has pronounced value-of-compliance effects (so that, for instance, Audito is justified or excused for Obeying, or so that Audito's Obedience is not independent) or (ii) Hablo physically forces Audito's body into a position or location (so that there is not even an *action* to justify or excuse, or to be independent).

But what *distinctive* complaint might Audito have against coercion, so understood: against compelling steering? That is, what complaint might Audito have against coercion that is not already accounted for by Risk, Fear, and Choice? Granted, compelling steering has, by definition, pronounced value-of-compliance effects. But Choice already takes such effects into account.<sup>22</sup>

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<sup>22</sup> Raz seems to suggest that compelling steering distinctively expresses disrespect for autonomy (1986 378, 416), unless a legitimating condition of "trust" is met (1986 157, 419; 2001).

But why should the *state's* compelling steerings express disrespect for autonomy? The value of autonomy, for Raz, derives from the value of a worthwhile life that one selects and independently values. Insofar as the state's compelling steerings improve Audito's choice situation, they position Audito to live such a life. So why should they express disrespect for Audito's autonomy, if they clearly aim to secure what gives Audito's autonomy its value (Quong 2010, 58)?

A further puzzle is that Raz does not think that compellingly steering Audito *to get him to fulfill his duties to*

Setting aside *what* Audito's distinctive complaint against compelling steering might be, is there any positive evidence *that* Audito has a distinctive complaint against compelling steering? Such evidence would be provided by a clear case in which, holding fixed effects on the choice situation already accounted for by Choice, a non-compelling steering became impermissible by becoming compelling. It's not clear what such a case would be.

However, let us suppose, for the sake of argument, that Audito does have some distinctive complaint against compelling steerings. Could this be Audito's complaint against the state's threats?

One difficulty is that the state's threats are not, as a rule, compelling steerings. Many people (not unreasonably) 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). After all, if the state's threats *were* compelling steerings, wouldn't prisons be empty? Although these threats are paradigms of "state coercion," they actually don't *compel* many of those whom they threaten.

Moreover, even if we find a given state threat that does compel, we can perform the Subtraction Test on it. We can, in thought, gradually moderate the threatened bad consequence (e.g., to a fine, to a loss of privilege...) so that, while supplying some deterrent, the threat no longer compels—so that the threat does leave those it threatens with "another choice." Would moderating penalties in this way suffice to assuage the worry about "state coercion"?

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*support the autonomy of others, even absent a relationship of trust, expresses disrespect for his autonomy* (1986 157, 419; 2001). What does express disrespect for Audito's autonomy is compellingly steering him (absent trust) for the sake of *Audito's* autonomy. Why does only coercion for the sake of *Audito's* autonomy, but not coercion for the sake of *others'* autonomy, express disrespect the *Audito's* autonomy? One might have expected precisely the opposite.

In any event, if coercion somehow distinctively wrongs, one doubts that this can be explained in terms of what coercion expresses. For presumably coercion is supposed to wrong in a way that a blunt declaration of disrespect, for autonomy or whatever else, does not.

Would the harm principle, or the requirement of public justification cease to apply?

I suspect that many will grant that, yes, some state threats don't themselves coerce. Still, they will say, all of the state's threats are still "backed by" coercion. That—backing by coercion—is what the complaint is about.

What does this mean to say that the state's threats are "backed by coercion"? My best guess is that it means that *if* Audito resists the state's following through on its non-coercive threat, the state will then coerce Audito (Yankah 2008). If Audito refuses to pay the moderate, non-compelling penalty, the state will then lock him up. In other words, if Audito complies with the noncoercive threat, or does not comply but does not resist the state's following through, then Audito will at no point have been coerced. However, if Audito does not comply with the threat, and does resist the state's following through, the state will *then* respond by coercing Audito.

Suppose that the state's threats are "backed by" coercion in this way. Even if we grant that Audito has a complaint against *actually* being coerced, it's not clear why it should follow that Audito has a complaint against *counterfactually* being coerced: against its being the case that he would have been coerced had things gone otherwise. It is not generally true that if I *would have had* a complaint against suffering something *had* I suffered it, I *do* have a complaint about that counterfactual's being true.

In any event, the state's threats are not always even "backed by" coercion in this sense. That is, it is not always the case that if Audito resists the state's following through on its noncoercive threat, then the state will coerce Audito. The state may be able to follow through on the noncoercive threat in a way that Audito is unable to resist in the first place. The state might simply withhold a benefit.

To be sure, there is something to the ideas that even the state's non-coercive threats are "backed by" coercion and that this itself points to a complaint against the state. It's just that we haven't been able yet to put our finger on what this something is. We will, however, return to it.

### 3.7 *Exploitative Offers*

So far, I have argued that Choice, Fear, and Risk offer the most plausible explanations of when and why threats wrong. Should we conclude, then, that Choice, Fear, and Risk, taken together, are the whole story? Is it the case that, for every threat that is wrong, either Choice or Fear or Risk explains why it is wrong? Or is there some case that they don't capture?

The answer matters for our search for the complaint against the state. If Choice, Fear, and Risk, taken together, are the whole story, then the complaint against the state cannot be a complaint against its threats. For, as we have seen, neither Choice nor Fear nor Risk implies that the state's threats are wrong. If there is some case of a wrongful threat that they don't capture, however, then some other principle besides Choice, Fear, and Risk must be invoked to explain why at least some wrongful threats are wrong. And perhaps that other principle, unlike Choice, Fear, or Risk, implies that the state's threats are wrong. In that case, the complaint against the state might be a complaint against the state's threats after all.

So let's consider some cases that might seem to elude Choice, Fear, and Risk. In *Hush*, a third party, Tercero, has a 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.

If Gabby's offer wrongs Gil, then Risk can't explain why, since Gabby doesn't wrong Gil by telling. (This is why threats of blackmail are often viewed as counterexamples to Inheritance. Murphy 1980, Berman 2011, Shaw 2012.) Nor can Fear explain why, since Gil has sufficient reason to tell. Nor, finally, can Choice explain why, since Gil isn't entitled to a choice situation in which Gabby doesn't tell.

But does Gabby's offer wrong *Gil*, in particular? Perhaps Gabby does something *wrong*: she requests a bribe to refrain from informing Tercero. But whether Gabby wrongs *Gil*, in particular, is unclear. Suppose that it's a one-off trade—cash for photographic 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.

However, Choice explains this case in much the same way as it explains Spit Bus.<sup>23</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.<sup>24</sup>

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<sup>23</sup> My discussion here is greatly indebted to Berman 2011 and Shaw 2012. Compare Tadros 2016, Ch. 12.

<sup>24</sup> This does leave us with a puzzle about why garden-variety bargaining isn't wrong in 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 don't we treat these cases in the same way?

Two basic differences may account for our different treatment of the cases. 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-



So far, Choice, Fear, and Risk, at least to my mind, handle the cases. But there are other cases, which we might call “exploitative offers,” that I think they don’t explain.

Consider *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 (who knows why). All the same, Boss would seem to wrong Employee by conditioning and announcing, “Unless you wash my car, you’re fired.”

Risk isn’t engaged by Boss’s conditioning and announcing, since, for all that has been said, neither of Boss’s responses would wrong Employee. Nor is Fear engaged, for similar reasons. Nor, finally, does Choice apply. 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. Now Employee can’t give Boss a free gift that he never had any intention or reason to give. Big whup.

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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. Of course, what counts as a fair division in any isolated transaction is vexed and many cases may have no definite answer (Wertheimer 1996).

Hence, Choice does not explain the case either; for all it says, the offer is permissible.

One might reply: “*For as 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. 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.

### 3.8 Creation and Steering

Why care that Choice, Fear, and Risk seem unable to explain why exploitative offers like the one in Car Wash are wrong? Again, the worry is that in order to explain why exploitative offers are wrong, we may have to invoke some further principle. Perhaps this further principle, unlike Choice, Fear, or Risk, implies that the state's threats are wrong.

Indeed, this is what Julius 2013 seems to suggest. He proposes what I will call the:

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

This would prohibit the state's threats as a rule.

However, I don't see any good argument for the Julian Principle, apart from despair at the prospects of explaining cases like Car Wash otherwise.

Julius analogizes from an alleged principle governing self-regarding action. It is somehow amiss 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. By analogy, it should follow that I wrong *another* person by creating new reasons for him in order to get him to do something. However, what seems amiss in the intrapersonal case is simply doing something—throwing my clothes out the window—which is pointless and which, worse, is likely to get me to do something—going outside naked—which (apart from having done the first pointless thing) is itself pointless. It's not clear why this implies a general moratorium on creating new reasons for oneself in order to get oneself to do something, a moratorium which would rule out, say, publicly committing to quit smoking, so as to make a hostage of the embarrassment of breaking the commitment. And even if we grant that there is a kind of incorrectness in the intrapersonal case, it's obscure why this should imply that there is an analogous interpersonal wrong.

Moreover, there are arguments *against* the Julian Principle. It overgeneralizes. Ordinary proposals of fair exchange, which offhand appear both to create and to steer, are, to my

mind, decisive counterexamples.<sup>25</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.

Indeed, the problem of overgeneralization seems worse still. For as broad as the Julian Principle is, it is not broad enough to account for slight variants of Car Wash. 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). However, the Julian Principle requires *both* creation *and* steering. So how are we supposed to explain why this creation without steering is wrong? Are we to say that creation *on its own* suffices for a wrong? 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). But, again, the Julian Principle requires both creation and steering. So how are we supposed to explain why this steering without creation is wrong? Are we to say that steering *on its own* suffices for a wrong? We knew already that the Julian Principle already overgeneralizes. But if, in response to *Silent Car Wash*, we must say that creation alone wrongs, and if, in response to *Akratic Car Wash*, we must say that steering alone wrongs, then the overgeneralization becomes all the more overgeneral.

Note a further lesson of *Silent Car Wash*. 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. Boss does nothing to influence Employee's choice or affect his deliberations. That isn't the source of the problem.

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<sup>25</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.

We have, since *The Myth of Our Trusting Future*, been considering the possibility that the complaint against the state is not its following through on threats, but instead its making the threats themselves. We now leave the discussion partly, but not entirely, resolved. We will return to it.

In the meantime, this is what we have found thus far. Insofar as Risk, Fear, and Choice together explain why threats wrong someone when they do, the state's threats do not wrong anyone, since they do not violate Risk, Fear, or Choice. However, exploitative offers like Car Wash suggest that some threats—or, more generally, some announcements or conditionings—can wrong in a way that is not explained by Risk, Fear, or Choice. So, until we say what this way is, we haven't ruled out the possibility that the state's threats may wrong in this way. But, bracketing this possibility for now, let's move on to consider other possibilities.

## 4 JUSTIFYING THE STATE: LOOSE ENDS

### 4.1 *Political Obligation*

We have been searching for the complaint, as opaque as it is familiar, against the state. We thought the target of the complaint might be the state's enforcement of its directives, either in the form of imposing deterrents for violations of its directives, or in the form of threatening such imposition. But neither seemed to fit the bill.

We have not yet discussed "political obligation": a moral duty to comply with state directives, as such. 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.

Might the complaint against the state, then, be somehow a complaint against political obligations?

Recall that our ideal state issues directives to contribute to the public interest, to meeting claims of improvement. As we saw, such directives go beyond the prohibition of the Force Constraint. And because of the Directive/Duty Gap, such directives will also go beyond any natural Duty to Improve. 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 Improve.

One can speak, intelligibly enough, of an "objection" to being bound by political obligations. Presumably, this "objection" doesn't *grant* that there are political obligations and *then* rail against Moral Reality for having put us in chains. Instead, the "objection" comes earlier, as a reason why Moral Reality doesn't in fact so obligate us. In general,

the thought would be, agents who would be bound by any putative moral requirement have at least pro tanto “objections,” of a kind, to being so bound. In Scanlon’s 1998 terms, they have reasons to reject principles that would require them to act in the relevant way. Unless those “objections” are outweighed by sufficiently important values that the requirement serves, there simply is no such moral requirement. Since the “objections” to being bound by political obligations are not answered by sufficiently important values, the thought concludes, there are no political obligations.

In evaluating whether this sort of “objection” to political obligations is our sought-after complaint against the state, we again apply our two tests. First, there is the Subtraction Test. Does removing the target of the complaint remove the complaint? Second, there is the Spare-Justification Test. Can the complaint against the target be answered, at least by the lights of those who insist that there is a complaint, even without the legitimating conditions and limits on legitimacy that they invoke?

Let’s begin with the Spare-Justification Test. Even those who press an “objection” of this kind to political obligations are likely to accept that there are some natural duties. Presumably, there is a pro tanto “objection” to natural duties, as there is against any putative moral requirement. So, they accept that this pro tanto “objection” to natural duties is overcome. Why, then, isn’t the pro tanto “objection” to political obligations also overcome? What is the relevant difference between natural duties and political obligations?

Is the difference, first, that political obligations ask more of those they bind than natural duties, and so give them more to “object” to? But political obligations are not, as a rule, more burdensome. For instance, political obligations to refrain from private enforcement are requirements simply to let the state take a distasteful chore off one’s hands.

Or is the difference, second, 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).<sup>26</sup>

Perhaps, then, the difference is, third, not that it's somehow *more objectionable* to be bound by political obligations than by natural duties, that there's *more to said against* being bound by political obligations, but instead that there's simply *less to be said in favor* of being bound by political obligations, no "sufficiently important values" in the "pro" column. What's to be said *in favor of* complying with political obligations? After all, given the Duty/Directive Gap, one can often serve the public interest at least as well without complying with political obligations. So, even if complying with political obligations is no more burdensome than not complying, what is the *positive point* of complying with political obligations?

Perhaps it may be a sufficient answer that one has *promised* to comply. In that case, the value of fidelity to promises would argue in favor of compliance; it would give complying a positive point. If that's the *only* reason in favor of compliance, however, then something like consent is, after all, a kind of legitimating condition. For the free act of will involved in making a promise would then be a necessary condition for political obligation. Interestingly, on this view, the act of will "legitimizes the state" not by *waiving an objection*, but instead by creating a *positive reason*. That is, the act of will makes for a promise, and it is the value of fidelity to promises that gives one positive reason to comply with political obligations, when compliance would otherwise be pointless.

Let us grant, for the sake of argument, that this is so: that we can't answer the objection to being bound by political obligations without appealing to a legitimating condition like consent. As far as the Spare-Justification Test is concerned, we still have a live candidate for the complaint against the state. However, we still need to consider the Subtraction Test: Does removing the candidate target remove the complaint?

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<sup>26</sup> 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 claims against inferiority.



Imagine that we didn't have political obligations. (Or, if you don't believe that we have political obligations, just remind yourself of what you already believe.) This means that disobeying the state's directives will sometimes violate no moral duty whatsoever. Otherwise, however, imagine that the state relates to us in the same way. It still issues and enforces its directives. Does the fact that we *don't* have political obligations to comply with these directives, which the state nonetheless issues and enforces, silence the complaint? If anything, 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?<sup>27</sup>) For example, although the state freely admits that it holds no *moral* monopoly on enforcing the Force Constraint, it nonetheless announces that it stands ready to imprison anyone else who tries to enforce it. 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? Presumably not.

It may seem obvious what the target of the residual complaint is. The state is *enforcing* our compliance with its directives. 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. If we accept the Duty Requirement, moreover, the fact that we have no political obligations only *intensifies* the complaint about what the state still does to us. But then we are back to enforcement as the target of the complaint. And we have already discussed that.

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<sup>27</sup> 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).

## 4.2 Taxation

Perhaps the complaint against the state, then, is against the state's use of our *external* property, not simply in compensation or deterrent fines, but also in taxation.<sup>28</sup> To be clear, I have discussed complaints against two other state actions that might be described as "the use of our property." First, I have discussed complaints against 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 complaints against the state's inducing us, by threat, to contribute to meeting claims to improvement. 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 complaint that we have not yet discussed is a complaint against 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 the Force Constraint on the use of our bodies, there is a similar 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.

Once again, we apply our two tests. The Subtraction Test, in this case, consists in imagining that the state does not use our external property. We already performed this test, implicitly, when we told ourselves the Myth of the Omittites. We did not assume that the Guardian of the Ladder taxed his subjects. The complaint against his Empire would remain, I take it, even if his Empire was self-financed.

The Spare-Justification Test asks whether those who hold that there is a complaint against the state can consistently hold that state taxation violates a deontological constraint, akin to an invasion of the body, even in the absence of a

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<sup>28</sup> 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."

legitimizing condition or limit on legitimacy. In order to hold this, it seems, they would need to accept:

*Natural Property:* There are rights in property other than those assigned by a system that reliably achieves the public interest: i.e., meets claims to improvement.

For taxation by an ideally directive state is itself part of a system that reliably meets claims to improvement. If one denies Natural Property, if one holds that people have property rights only in what such a system assigns them, then taxation defines, rather than violates, their property rights. So, again, one can hold that state taxation violates a deontological constraint only if one accepts Natural Property. And yet some who hold that there is a complaint against the state reject Natural Property. An example is Thomas Nagel, who voices the complaint in Nagel 1991 while rejecting Natural Property in Nagel and Murphy 2004. So *their* complaint against the state can't be that taxation violates property rights.

Moreover, even if one accepts Natural Property, the Avoidability Principle may still license taxation. With, say, a carbon tax, 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.”