*Chunk 3*

**Complaint against the state: Force**

Commonplace claim: Complaint against the state, met only by legitimating condition or limit to legitimacy. What’s the complaint? “State *force* violates the Force Constraint.”

**Reply last time: Subtraction Test (my nonsense about the Omittites)**

**Reply this time: Spare-Justification Test**

1. *Natural Imposition*: The Force Constraint is lifted, for purposes of deterrence, when the target has violated *the Force Constraint itself*.
2. Best explained by *Avoidance Principle*: The Force Constraint is lifted when and only when adequate opportunity to avoid the use of force.
3. Which implies: *State Imposition*: The Force Constraint is lifted, for purposes of deterrence, when the target has violated *a state directive*.

“No, what explains Natural Imposition is that Flintstone had a *duty*!”

* First, if Flintstone *had a duty* to refrain from force, but *complied*, still wrong to scapegoat.
* Second, case of Block: no duty to step aside, but given fair warning that if he doesn’t, our aid mission is comin’ through.
* Finally, two theories of error for Duty Permission/Requirement:
  + *Condemnation Principle*: *unfitting to condemn the target for wronging others* when she hasn’t.
  + *Wrongful Benefits Principle*: that the fact that Violet had a duty to X may (help to) make her opportunity to avoid force by X-ing adequate. Violet cannot cite forgoing “ill-gotten gains” of violating a duty to X as a reason why her opportunity to avoid force by X-ing was inadequate.

“But State Imposition is *different* from Natural Imposition!” How so?

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

* Rules out State Imposition, since deterrents often serve goods *other than* protection from *Violet’s* force.
* But *also* rules out Natural Imposition, since deterrents on Flintstone often to protect people from *the force of others*, e.g. Dieter.

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

* Licenses the minimal state, but no more.
* Weak LP has no plausible or stable rationale.
* Strong LP rests on (even if it takes to extremes) a plausible distinction: between what *S does to* others, regarding which “morality makes relatively strong claims” on *S*, and what *merely happens* to others, regarding which morality makes weaker claims on *S*.
* SLP doesn’t say, “Not *bad* when some ill befalls someone *without S*’s doing, only bad when *from S*’s doing.” That’s cray-cray.
* No, SLP just says: “Not S’s doing, so not S’s mess.”
* But Weak LP freely allows that what “merely happens to” others—namely, Dieter’s use of force on Vic—can make “strong” claims on Flintstone. If can use force on Flintstone to protect from violence of others, then why not to protect ourselves from ravages of wild animals? The ravages of microbes?

**Complaint against the state: Threat**

“Complaint is against state’s *threat* to impose, not its imposing.”

Two differences between force and threat.

1. Opportunity to avoid *force*, but no opportunity to avoid *threat*.
2. Clear what counts as invading someone’s *body*, what the Force Constraint fences off against transgression. Less clear what counts as “invading someone’s *choice,*” what a “Threat Constraint” might fence off against transgression. After all, we *change* people’s choices all the time. (When a political philosopher speaks of “interference in choice,” don’t assume that you or they know what they mean.)

**Reply: Subtraction Test: Myth of Our Trusting Future**

* Tomorrow the backstop of jails and gallows is removed. But state continues issuing directives.
* And, since people continue following them (as salient coordination points, or from reflexive obedience), state continues to shape our natural and social environment as it currently does.
* Would the complaint against the state disappear? Would, e.g., requirement of public justification no longer apply?

**Reply: Spare-Justification Test**

* When and why does Hablo wrong Audito by *conditioning* a response to choice—making it the case that Hablo will Stick if Audito does not Obey and that Hablo will Carrot if Audito does Obey?
* Or by *announcing* a response—communicating conditioning?
* Does the state then wrong, in that way, by threatening, absent a legitimating condition or limit to legitimacy?

*Inheritance:* Hablo’s conditioning or announcing a response to Audito’s choice wrongs him when and because Sticking when Audito does not Obey would wrong him (e.g., taking McGee’s life when he doesn’t cough up the dough).

* Counterexamples: (i) *Akratic Warning* (ii) *Wrongful Retaliation*
* And what might explain Inheritance in the first place?

*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.

* Akratic Warning doesn’t apply, Wrongful Retaliation not a counterexample.

*Fear*: Hablo wrongs Audito by causing, without sufficient reason, Audito to fear something—which Hablo may do by *announcing* to Stick.

* AW and WR exceptions, where there is good reason.

If Risk and Fear were the whole story, then the state’s threats would not wrong.

* But Risk and Fear not the whole story. If McGer and McGee know full well that McGee *will* Obey and that McGer *won’t* shoot, then no risk or fear.

*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.

* Special case of a tautology.
* “interfere in Audito’s choice” = make Audito’s choice situation worse than Audito is owed.

Various features of conditioning and announcing make choice situations better or worse:

* *Cost*: Sticking/Carroting added to option.
  + Depends on how costly it is to Obey.
  + And, if a duty to Obey, then not costly.
* *Influence*: Makes Audito more/less likely to Obey.
* *Capacity*: Worsens/improves Audito’s ability to evaluate and select among options: e.g., informing A., paralyzing A. with a flood of options.
* *Value of compliance*: change value of Obeying. Among other changes:
  + Crowds out “right” motives.
  + Narrowing range of options impairs *selection* (e.g., Razian autonomy).
  + *Deliberate* influence by other wills impairs *independence* (e.g., Raz again).
* *Compliance of others*.

No 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.

* That Hablo owes it to Audito *not to Stick* when Audito does not Obey may be a *strong indicator* Hablo owes Audito a *better choice situation*. Why Inheritance seems plausible.
* But Akratic Warning and Wrongful Retaliation explain how these can come apart.

If we add Choice to Risk and Fear, state threats still not wrong, since ideal state threats make choice situation as good as the state can make it.

“A *distinctive* complaint against *coercion, strictly speaking*. The state *coerces*.”

Coercion =?

“steering” (= *aims* to get A. to Obey)

+ that “compels” (= gives A. “no other choice”)

* Why a *distinctive* complaint? Doesn’t Choice already take relevant effects on choice situation into account?
* Is there positive evidence *of* distinctive complaint against compelling steering? Holding fixed effects on the choice situation already accounted for by Choice, a non-compelling steering becomes impermissible by becoming compelling? What’s the case?
* State’s threats aren’t/needn’t be compelling steerings: e.g., lessen the penalty.

“Yes, some state threats don’t themselves coerce, but they are still *backed by* coercion.”

Backed by coercion =? *If* A. resists follow through, *then* state will actually coerce.

* Why care, so long as one isn’t *in fact* coerced? Not in general true that if I *would have had* a complaint against suffering something *had* I suffered it, I *do* havea complaint about that counterfactual’s being true.
* State’s threats not always “backed by” coercion in this sense. State might follow through on non-compelling threat to withhold a good, in a way A. can’t resist.

So, we are *close* to having a spare justification: that state threats don’t wrong, even without legitimating conditions or limits to legitimacy. But “exploitative offers” not covered by Choice, Fear, and Risk.

* *Car Wash*: Suppose Boss may fire Employee, and Boss may keep E. on.
* Still, B. wrongs E. by saying, “Unless you wash my car, you’re fired.”
* But gives E. a *better* choice situation. Now E. can keep the job, if E. wants.

This is just a loose end that we won’t be able to tie up yet, until we discuss corruption…

**Complaint against the state: Taxation**

“Complaint against the state’s use of our *external property*, e.g., in taxation.”

* Contrast: state’s *use of our bodies* = force. Already discussed.
* Contrast: state’s *use of our labor* = threats to get us to act. Already discussed.

**Subtraction Test:** Complaint against Omittite Empire would remain, even if Emperor self-financed the Empire.

**Spare-Justification Test:**

* If “external property” is just what results from a system that promotes the public interest, then no complaint against taxation that is part of that system. So, complaint would have to assume *natural property rights*. So, can’t be, e.g., Nagel’s complaint against the state, since he denies natural property.
* Also adequate opportunity to avoid, e.g., carbon tax.
* But what if taxation invades natural property, without adequate opportunity to avoid? OK, but a pretty weird position: No complaint against the state’s use of *our labor*: its directing us, under threat, to act in certain ways. Only a complaint against the state’s use of the *material fruits* of our forced labor. By contrast, Nozick argues that taxation is wrong *because* it is “on a par with forced labor.”

**Complaint against illiberal intervention**

New, albeit related, commonplace claim: a complaint against “intervention” in “protected” choices, e.g. religion, relationships, pastimes.

* Suppose that the choice is, in fact, bad for Prudie.
* Set aside pragmatic considerations, e.g., Prudie knows best.

To get a sense of the complications, consider **ambiguities in Mill’s Harm Principle**:

1. Which *interventions* are prohibited? Penalties? Taxes? Subsidies? Choice architecture? Withholding means? Is the *state* even permitted to *advise* people against a religious choice?
2. Which *choices* “harm others” and so are *not* protected? Bad choices? Only force?
3. Some interventions to prevent “harm to *self*” *permissible*.
   1. Granted, prohibited: “end interventions,” designed to steer people from bad choices of final, organizing ends, such as religion.
   2. But still permitted: “means interventions,” designed to steer people from bad choices of all-purpose materials for pursuing such ends, such as health, safety, or financial security.

So, what is the complaint about illiberal interventions?

**“Illiberal steering worsens Prudie’s choice situation.”**

* On the one hand, positive “influence” effect.
* On the other hand, negative “cost” effect.
  + Mitigated by being attached to a less valuable choice.
  + Cost might not be severe, e.g., a whine.
  + Moreover, need not be any cost. Interventions might instead:
    - *lower the cost* of Prudie’s avoiding the bad choice: e.g., subsidies.
    - make the *psychological feat* of the bad choice *harder* or *less likely*: e.g., choice architecture (see Sunstein and Thaler, *Nudge*).
    - make *successful execution* of the bad choice harder or less likely: e.g., prohibit production and sale, but not use.

**“Illiberal intervention worsens Prudie’s choice situation by negative, value-of-compliance effects. *Impairs even good options*.”**

* Good, intrinsic motives crowded out, corrupted by, e.g., worries about costs?
  + Do, e.g., subsidies, choice architecture displace good, intrinsic motives?
  + Relative costs of options change “organically” all the time, through, e.g., market forces, changing winds of fashion. Doesn’t, in general, impair good options. Rather, what impairs good options seems to be *deliberate steering* toward good options, or away from bad ones.
* “Selection” not possible, because range of options too narrow?
  + Banning a single religion, say, might still leave an adequate range.
  + Market forces also remove options. Doesn’t explain why *steering* special.
* “Independence” *is* specially impaired by deliberate steering.

When and why does steering impair independence?

* “Subjugation” (Raz?):
  + Prudie the steerer’s “tool”
  + Only *compelling* steering impairs independence
* “Achievement” (Dworkin):
  + Not *Prudie’s* achievement.
  + Only *end* steering impairs independence.

Problems for *subjugation* model:

* Not all illiberal interventions are compelling, e.g., moderated fines.
* Implausible that compelling steering away from one option impairs independence of other options. If it did, then ordinary criminal law, which steers us from a life of crime, already impairs independence across the board.

Problems for *achievement* model:

* Implausible that *private* end-steerings impair independence. Private efforts to end-steer people to arts or religion are pervasive, but these still count as people’s achievements.
* But if *private* end-steerings don’t impair independence, then why should *public* end-steerings impair independence? In either case, help is coming from some *other* agency. Isn’t that all that matters for whether it counts as *one’s own achievement*?

**“Illiberal intervention violates Force Constraint.”**

If we accept Natural Imposition, then why not also accept:

*Illiberal Imposition*: The Force Constraint is lifted, for the purposes of deterrence, when the target has violated the *state’s illiberal prohibition of a bad choice*?

Is there any difference between Flintstone and Prudie? After all, in both cases, adequate opportunity to avoid, and the threat fairly improves everyone’s choice situation.

But, actually, there *is* a difference; there *is* a reason why illiberal force is especially problematic. (Here I’m sort of pushing back against myself.)

* Force on Flintstone protects Vic from harms that are *not* from Vic’s own choices
* Force on Prudie protects Sage from harms that *are* from Sage’s own choices.
* Why isn’t it on Sage, not Prudie, to protect himself from those harms?
* Explains why “soft-paternalistic” force, which deters uninformed, impaired “choices,” may be permissible when “hard-paternalistic” force, which deters informed, cool-hour **CHOICES!**, is not.
  + “Soft-paternalistic” force on Prudie protects Sage from harms that are *not* from Sage’s **CHOICES!**—like protecting Vic.
  + “Hard-paternalistic” force on Prudie protects Sage from harms that *are* from Sage’s **CHOICES**! But that should be on Sage, not Prudie.
  + So, it’s not that hard-paternalistic force is paternalistic; it’s just *unfair*.

In any event, do illiberal interventions need to use force?

* Imposition of cost without force: e.g., Omittites, automatically deducted fines.
* Again, no imposition of cost at all: subsidies, structuring choices, making means unavailable, or, finally, simply advising.

**“Illiberal intervention violates a requirement of reasonable acceptability, or public justification (e.g., Rawls)”**

1. Prudie has an objection to being treated in certain problematic ways, unless she could “reasonably accept” grounds that, if true, would justify that treatment.
2. Illiberal interventions treat Prudie in these problematic ways.
3. There is no justification of illiberal interventions that Prudie can reasonably accept.
4. So, Prudie has a complaint against illiberal interventions.

Against (1), what is the “problematic treatment,” and why is reasonable acceptability required to solve the “problem”? If “problem” is force or threat, then isn’t the solution adequate opportunity to avoid or leaving choice situation no worse? What supports the further insistence on reasonable acceptability?

Against (2), we’ve seen that illiberal intervention need not involve force or threat. No barrier to illiberal interventions in the Omittite Empire or our Trusting Future. Those might as well be like the sermons of private citizens.

**“Illiberal intervention is *paternalistic*, *strictly speaking*”**

1. Prudie has a complaint against paternalism, strictly speaking: that is, others aiming to benefit her by means other than advice, when she in advance refused, or now refuses, to consent to being so benefitted.
2. Illiberal interventions are paternalistic, strictly speaking.

Against (2), not all illiberal interventions, treat Prudie paternalistically.

* First, if *aiming* to benefit Prudie is required for paternalism, then just aim not to benefit Prudie, but instead to please God.
* Second, not only Prudie, but also her neighbor, Prudhomme, benefits from the state’s intervention. And the state cannot benefit Prudhomme without benefitting Prudie; either the state illiberally intervenes with both or neither. So in illiberally intervening with both *with the aim of benefitting Prudhomme*, the state needn’t treat *Prudie* paternalistically. (And it needn’t treat *Prudhomme* paternalistically if he consents to it.)
* Finally, mere advice is, by definition, not paternalistic. But, again, a liberal state does not advise against particular religious choices.

Against (1), what is Prudie’s complaint against paternalism, strictly speaking? That it expresses that her judgment about her own good is inferior?

* But not wrong to *report* (politely, etc.) that Prudie’s judgment is inferior. That’s just stating the facts.
* Why is it wrong to express that Prudie’s judgment *about her own good* is inferior, but not her judgment *about other matters*? Many people take more pride in judgment about other matters (e.g., the cliché of the detective who invariably cracks the case, but whose personal life is a shambles).