

#### Chunk 4

#### Complaint against the state: Threat

"Complaint is against state's *threat* to impose, not its imposing."

#### **Spare-Justification Test:**

- *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.
- State threats not wrong according to Choice (or Fear or Risk) since the ideal state's 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* have a 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 (or Fear or 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*.
  - a. Granted, prohibited: “end interventions,” designed to steer people from bad choices of final, organizing ends, such as religion.
  - b. 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* brings about a special kind of loss.
- “Independence” (Raz) is specially impaired by a certain kind of deliberate steering. (Some deliberate steering doesn’t impair: e.g., paying Streep.)
  - Namely, *compelling* steering.
  - Makes Prudie the steerer’s “tool”
  - 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.
- “Achievement” (Dworkin) is also specially impaired by deliberate steering.
  - Namely, *end* steering.
  - Makes what Prudie does no longer *Prudie’s* achievement.
  - 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).

### **Complaint against official corruption**

When and why does official corruption wrong "the public": i.e., everyone related in a relevant way to the office?

### **Duty to Execute:**

*Duty to Execute:* An office-holder, Bent, because she holds that office, owes it to those subject to the office, to take due care to exercise the office well, to make official decisions that serve the public interest.

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*Corruption Makes Worse:* Corrupt decisions, unlike honest mistakes, don't take due care.

But why the Duty to Execute?

*Special case of Duty to Improve?*

- Everyone has Duty to Improve: to serve the public interest.
- If you find yourself in an office, the way to fulfill the Duty to Improve is to exercise the office well. So, Duty to Execute a special case of Duty to Improve.
- Problem: Personal reasons weigh against the Duty to Improve, but not against the Duty to Execute. So, Duty to Execute not just a special case.

*Promissory duty?*

- Official *leads others to expect* that she will make, or take due care to make, good decisions.
- But Duty to Execute does not depend on *actual* expectations or to *actual* steps taken to invite them. But what if Bent makes it clear that she will neglect her office? And what if the public is resigned to this?

Surely, there is a Duty to Execute. But what explains it?

Does corruption violate the Duty to Execute?

- Corrupt uses of office that aren't *exercises* of office.
- Corrupt decisions *predictably* serve the public interest *better* (e.g., taking bribes leads to efficient allocation).
- Corrupt decisions *underdetermined* by the public interest: ties, incommensurabilities. So neither decision violates Duty to Execute.

- But we need to be careful, since there are illusory cases of underdetermination.
  - In cases of distribution of scarce, indivisible resource among compelling claimants, determined decision is a highest-fair-share lottery.
  - Given another decision, Equal Treatment determines this otherwise underdetermined decision.
- Still, officials face genuine cases of underdetermination. So, even assuming a Duty to Execute, we have not yet explained how, in at least some cases, official corruption wrongs the public.

## Unjust Enrichment?

*Office as Property:* Offices are the public's property.

So, public has property rights in proceeds from use of office, to which it hasn't consented.

So, keeping bribes is theft from the public.

Explains: objection to taking bribes for uses that are not exercises, objection to taking bribes to allocate resources efficiently.

But not all corruption involves, in any straightforward sense, the accumulation of property that should be, but is not, shared with members of the public.

## Duty to Exclude

Duty to Exclude: not to use office *for certain, improper reasons*. Applies even when the use would not violate the Duty to Execute, because, say, the official decision is underdetermined.

First, *which* reasons are improper? Personal reasons, at least, but more needs to be said.

Second, are we saying that officials can't be *motivated in certain ways*, e.g., from self-interest? But how can that be? In following anti-corruption laws, out of fear of criminal punishment, officials act from self-interest.

Finally, *why* does Bent *wrong* the public by using the office for improper reasons? Why is it anything more than the revelation of a base motive?

Does Office as Property explain the Duty to Exclude? We, the public, permit the official to use the office, which is our property, only for certain reasons?

- Office as Property must mean more than simply that the official owes it to us, the public, not to use it for certain reasons. That's just the Duty to Exclude.
- We have contributed to the office, so it's our property in a more literal sense?
  - Means that Duty to Exclude not owed to non-contributors.
  - How do we determine what we have consented to?
  - Why should the public care, in the first place, to put such restrictions on the purposes for which its property is used?

Two things to explain:

- *Duty to Execute*: Why don't an official's personal reasons weigh against the public interest in such a way as to permit the official to make official decisions that serve those personal reasons at the expense of the public interest? Why are officials constrained in ways that civilians aren't?
- *Duty to Exclude*: Why does the official wrong the public by using the office *for* personal reasons, even when this does not come at the expense of the public interest (because, say, the decision is underdetermined)?