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0521537843 - Is There a Duty to Obey the Law?

Christopher Heath Wellman and A. John Simmons

Excerpt

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I Samaritanism and the Duty to Obey the Law

Christopher Heath Wellman

I Why I Am Not an Anarchist

I don't have many vivid memories from childhood, but among those that stand out, I distinctly remember sitting at a stoplight and seeing a bumper sticker that proclaimed "Taxation is slavery!" This sticker made a great impression on me because I found it so bewildering; I could not fathom why anyone would compare *taxation* – a natural and appropriate part of our lives – to *slavery* – a horribly unjust institution. Indeed, at the time (I think I was about ten), I positively *looked forward* to the day when I would pay taxes. This may sound farfetched, but I was in awe of all that the state accomplished. In particular, I used to sit in the car and marvel at the incredible network of roads; I remember being amazed that people were able collectively to build such an extensive system of streets by merely pooling a portion of their individual incomes. Thus, I looked forward to paying my taxes principally because I wanted to share in the credit for what I considered a monumental communal achievement.

Probably because I thought it was too outlandish to be explained, I did not ask my father why anyone would compare taxation to slavery. As a consequence, it was not until many years later that I finally understood the point of the bumper sticker.¹ Taxation and slavery are alike insofar as both involve others nonconsensually taking at least a portion of the fruits of one's labor. Just

1 The "light bulb" moment occurred for me the summer after my first year of graduate school when I had the good fortune to hear a series of lectures by the extremely compelling anarcho-libertarian Randy Barnett.

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as a slave owner essentially puts a gun to the heads of her slaves and forces them to work, the state essentially puts a gun to the heads of its constituents and demands that they hand over some of their wealth. Indeed, not only does the state coerce its constituents, it forcibly helps itself to a portion of their money in order to finance its continued coercion. Thus, if a government takes a third of one's income, for instance, then there is a very real sense in which the state appears morally tantamount to a slave owner who enslaves her slaves for only a third of their working lives.²

Although it might initially seem ludicrous to compare citizenship to slavery, upon closer inspection it proves surprisingly difficult to show why this comparison is inapt. One might protest that citizenship is importantly distinct from slavery insofar as the former is consensual, but the truth is that widespread political consent is a fiction.³ Governments could not function effectively without uniformly coercing virtually everyone within their territorial boundaries; therefore, states cannot afford the luxury of imposing themselves upon only those who have (or would have) consented. One might suggest that political coercion is legitimate because it produces benefits (and, more importantly, produces benefits for the citizens), but the institution of slavery also produces benefits (and, insofar as slave owners provide food, shelter, and clothing for their slaves, slavery also benefits the slaves themselves). Moreover, one cannot object to slavery on the grounds that it does not provide a *net* benefit to slaves for two reasons. First, it is implausible to suppose that absolutely everyone is better off because of the state's presence (think, for instance, of the rugged individualist who would prefer to take her chances in the state of nature), and thus one could not justify the state's coercion in terms of the net benefits to all those

2 Perhaps the most celebrated comparison between political coercion and slavery is Robert Nozick's "Tale of the Slave" in *Anarchy, State, and Utopia* (New York: Basic Books, 1974), 290–2.

3 See A. John Simmons, *Moral Principles and Political Obligation* (Princeton, NJ: Princeton University Press, 1979), especially Chapters III and IV on the absence of consent.

coerced. Second, even if everyone benefited from political coercion, it would be objectionably paternalistic to suppose that this alone justifies the state's imposition because each of us has a right to choose whether and precisely how we would like to be benefited. (An investment company could not justify taking control of my life savings without my permission merely on the grounds that its money management would benefit me, for instance.) Finally, it will not suffice to point out that political subjects are generally *happy* to be citizens or that compatriots typically *identify with* one another because not all citizens are happy to be coerced or identify with their compatriots. What is more, even if all citizens were either happy to be coerced or identified with one another, it is not clear why this would justify the coercion; certainly slavery would not be justified even if one's slaves were happy with the arrangement or identified with one another.

Thus, when one pauses to look closely at the comparison between slavery and political imposition, one sees that it is surprisingly difficult to distinguish between the two. The key shared element is *nonconsensual coercion*. This feature that makes slavery impermissible is also utilized by all governments and thus places the burden upon any of us who are reluctant to label all political states unjust. Thus, the analogy between slavery and political coercion appears not only apt, it is helpful insofar as it motivates the central and most important question of political theory: Why not be an anarchist?

A Defense of Statism

I am not an anarchist because I believe political states provide vitally important benefits that could not be secured in their absence, and they supply these benefits without requiring their subjects to make unreasonable sacrifices. This defense of statism openly depends upon the truth of three claims: (1) political states supply crucial benefits, (2) these benefits would be unavailable in the absence of political states, and (3) states can render their services without imposing unreasonable costs upon those they

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coerce.⁴ Let me quickly explain why I think each of these premises is plausible.

Perhaps the best way to get a sense of the benefits of political society is to imagine what life would be like if your state were to go completely out of existence. Unless one lives in a very close-knit, face-to-face community where everyone knows each other and is invested in the group as a whole (which almost none of us does), it seems unrealistic to think that life without a political state would be anything but a horribly chaotic and perilous environment where one would lack the security necessary to pursue meaningful projects and relationships. In other words, for the vast majority of us, it would be virtually impossible to live a rewarding life.

Let me stress that in positing this gloomy picture, I do not mean to suggest that all humans would be revealed to be inherently evil; rather, I believe that even well-meaning, rational people would end up in a horrible environment if there were no state. I think that unless the state is present to establish, enforce, and adjudicate a clear and uniform set of rules that everyone must follow, trouble would ensue. The problem is not that everyone would seek to violate the moral rights of others simply because they knew that they were unlikely to be punished (though some undoubtedly would); it is that conflicts would inevitably arise even among morally good people who genuinely prefer a stable and just peace.

Consider briefly just three things that social contract theorists have traditionally cited as unavoidable sources of chaos. First, in the absence of a state there would be no definitive body to establish a salient set of rules; as a consequence, conflicts would abound even among well-meaning people who sincerely disagree over what justice requires. The point here is that, even if one supposes that moral rights exist and are often generally recognizable and recognized by the vast majority of us, devils lurk in the details. Consider, for instance, property rights. Let us

4 I understand "statism" to be merely the denial of anarchism. Thus, all statists believe that political states *can* be justified, and many believe that (at least some) existing states *are* in fact legitimate. The defense of statism I offer here draws upon ideas I introduced in "Liberalism, Samaritanism and Political Legitimacy," *Philosophy & Public Affairs* 25 (1996): 211–37.

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assume that everyone agrees that each of us is morally entitled to the fruits of her labor. Even if we all agreed to this general directive and conscientiously sought to respect it, there would be plenty of room for conflict. Problems would inevitably emerge because, although it would presumably be relatively clear that I have a right to the fish I catch in the ocean, very few of modern life's possessions are acquired in such a simple fashion. Our elaborate and sophisticated system of commerce would be impossible without an equally elaborate and sophisticated system of rules to govern property, and such a detailed set of rules is underdetermined by the vague pronouncement that each person has a moral claim to the fruit of her labor. And because people typically care passionately about who gets to keep what property (especially when both parties sincerely believe themselves to be in the right), there is every reason to suppose that these conflicts will often be intractable and not infrequently lead to violence.

Second and more obviously, even if we assume that most people are well-intentioned folks who would never purposely violate the moral rights of others, it is clearly implausible to suppose that *everyone* would be so disposed. Think of it this way: if there is already a nonnegligible number of us who regularly violate the clear rights of others despite the imposing presence of an enormous punitive system designed to apprehend and punish criminals, it seems unrealistic to assume that there would not be considerably more criminal activity if that system were dismantled. (Indeed, it does not require great imagination to appreciate this point; one need only reflect upon what has happened in virtually all cases in which natural or social causes have even temporarily disabled those authorities responsible for enforcing the criminal law.) Moreover, notice that these relatively few criminally oriented people are likely to be a corrupting influence on many of those who would otherwise be inclined to play by the rules. It is not just that borderline people will be more likely to succumb to temptation when they see others routinely getting away with taking from others (though this effect should not be minimized). The more dangerous problem is how the initial victims will react when they realize their relative impotence either to catch and

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punish those who have wronged them or to ensure that they are not victimized again in the future. It does not seem unreasonable to think that these victims might be more inclined to violate the rights of others (in a misguided attempt to restore themselves to the level to which they consider themselves entitled) and to spend less time and energy on productive projects (the fruits of which are vulnerable to being stolen) and more time on defensive (if not preemptive) efforts designed to retain what is most precious. In fact, one need not have been a victim oneself to recognize the rationality of adopting this defensive strategy; anyone who comprehends the incentives of life without an effective system of criminal law can appreciate the folly of working to acquire portable goods and the wisdom of striving instead to limit one's vulnerability to others. Of course, as people generally produce fewer and fewer new goods, this will increase the temptation to steal those already in circulation, and thus interpersonal relations will continue to deteriorate as each person becomes increasingly fearful of the threat posed by others. In the end, then, it is clear that even if most of us are antecedently disinclined to mistreat others, the absence of an effective system of criminal punishment would create dangerous incentives for those few who do not respect moral rights, which in turn would set in motion a number of other, mutually reinforcing trends whose cumulative effects would be dramatic.

Third and finally, let us suppose that a victim does apprehend someone whom she is convinced has violated her rights. In the absence of a legal system, it now falls upon the victim and her allies to exact restitution and/or mete out punitive justice. And when the punishment is imposed by the victim herself rather than by an impartial third party, three types of complications are prone to arise: (1) the victim may punish an innocent person; (2) the victim may overpunish the wrongdoer; and (3) even if the victim punishes the criminal in accordance with her guilt, the criminal might sincerely believe that she has been either wrongly punished or overpunished.

Regarding (1), victims are more liable to punish innocent people whom they mistake as wrongdoers because they are doubly

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biased: Not only might their affections/aversions give them a prejudiced sense of who is guilty and innocent, their personal stake in revenge would understandably lead them (however unconsciously) to reduce the burden of proof for conviction. (Whereas a legal system might be designed to ensure that ten guilty people are let go before one innocent person is wrongly convicted, it seems wildly implausible to suppose that a victim seeking personally to impose a punishment on the person she believes violated her rights would effectively operate according to anything like that directive.) Impartial judges and jurors, on the other hand, are not as personally invested in the case. Their paramount concern is simply to see that justice is served, and as a result they are much less likely to convict the innocent. Analogous reasoning applies to (2): Because the victim is so concerned to be avenged/restored, she may be inclined to demand too much compensation and/or impose too stiff a penalty. Finally, concerning (3), it is important to note that even if, as an objective matter, the criminal is not subjected to excessive punishment, she is likely genuinely to *believe* that she has been treated unfairly. This belief could emanate from any of three sources: First, it would not be surprising for a wrongdoer to incorrectly but sincerely believe that she has not violated the victim's moral rights (this is especially likely in an anarchic environment where there is no authoritative body to establish and promulgate an undisputed code of criminal law). Second, the same personal bias that often leads the victim to believe that the criminal deserves a harsher penalty would lead the wrongdoer to favor her own perspective, and thus sincerely to believe that she deserves a more lenient punishment. Third, given that the punishment meted out by the victim herself appears more personal and less authoritative, the person punished is all the more likely to regard the punishment as an excessive personal indulgence rather than as an appropriate execution of justice.

Now, (1)–(3) are all significant because each one is likely to inspire retaliation. To appreciate the importance of this point, consider how Jennifer and her friends and family would likely react if Jane imposed punishment X upon Jennifer for crime Y,

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and either (1) Jennifer is in fact innocent of crime Y, (2) punishment X is excessive for crime Y, or (3) for whatever reason, Jennifer and her allies sincerely believe that punishment X is excessive for crime Y. In each case, Jennifer and her supporters would be convinced that Jane has wrongly harmed Jennifer and thus are likely to set out to exact retribution for what they regard as Jane's wrongful or excessive punishment. The problem, of course, is that Jane and her allies will not believe that the initial punishment violated Jennifer's rights, and thus they will regard any attempt to punish Jane as a mere criminal attack. As a consequence, the longer Jane's allies are able to protect her from punishment, the more Jennifer and her supporters will be likely to resort to extreme measures to exact some sort of revenge. If Jennifer and her allies are able swiftly to impose a punishment, on the other hand, then we should expect Jane and her friends and family to be especially incensed that Jennifer has (at least from Jane's perspective) now violated Jane's rights for a second time. In short, if the state were to disappear and criminal punishment were then left up to those sufficiently interested in the particular crimes to take matters into their own hands, it is hard to see how things would not soon deteriorate into a bloody mess.

To recapitulate, in the absence of a political state, one should expect three especially glaring problems to emerge. Without an authoritative legislative body to establish a definitive set of rules that everyone must follow, there will be conflicts even among well-intentioned people who genuinely seek to treat each other according to the demands of morality. Without an effective executive body to ensure that a reasonable percentage of rule breakers are caught and punished, those disinclined to respect the moral rights of others will not be sufficiently deterred and, ultimately, everyone's incentives to pursue productive projects and meaningful relationships will diminish markedly. Finally, without a standing judicial body to impartially adjudicate conflicts and assign criminal punishments, attempts to exact revenge and mete out justice will lead to increasingly bloody conflicts. Moreover, it is important to recognize that the cumulative effect of these three

factors is more than additive; these elements will combine to create a vicious cycle in which each consideration presents an aggravating factor that exacerbates the others.

It is hard to exaggerate how horrible life would be in the absence of political security, but one theorist who has been accused of doing so is Thomas Hobbes. He famously describes life without political order (often referred to as the “state of nature”) as follows:

Hereby it is manifest, that during the time men live without a common Power to keep them all in awe, they are in that condition which is called Warre; and such a warre, as is of every man, against every man. . . . Whatsoever therefore is consequent to a time of Warre, where every man is Enemy to every man; the same is consequent to the time, wherein men live without other security, than what their own strength, and their own invention shall furnish them withall. In such condition, there is no place for Industry; because the fruit thereof is uncertain: and consequently no Culture of the Earth; no Navigation, nor use of the commodities that may be imported by Sea; no commodious Building; no Instruments of moving, and removing such things as require much force; no Knowledge of the face of the Earth; no account of Time; no Arts; no Letters; no Society; and which is worst of all, continuall feare, and danger of violent death; And the life of man, solitary, poore, nasty, brutish, and short.⁵

Certainly there is reason to quibble with various details of Hobbes’s description of the state of nature as well as his elaborate argument in support of that description, but it strikes me as difficult to deny the general picture. Put plainly, for the vast majority of us, life without political order would be a horribly perilous environment.

Part of the explanation for why I am not an anarchist, then, is that states perform incredibly important legislative, executive, and judicial functions. Given that states are nonconsensually coercive, however, it is not enough to point out that states perform these beneficial functions. Clearly, we would prefer to have these

5 Thomas Hobbes, *Leviathan*, Part I, Chapter 13, paragraphs 8 and 9.