

Legitimate Coercion: What Consent Can and Cannot Do

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1. A NEW ARGUMENT FOR DUTIES TO AID THE GLOBAL POOR

Globalization and Global Justice's first chapter sketches a traditional autonomy-based argument for human rights, arguing, like others have done, that coercive institutions must ensure that their subjects secure food, water, and whatever else they need for sufficient autonomy. Unfortunately, this argument is not likely to convince skeptics about positive rights. So, the book provides a new argument for significant duties to the global poor. This symposium focuses on its most controversial claim: To be legitimate, coercive institutions must ensure their subjects secure sufficient autonomy to consent to their rule. I thank Charles Goodman, Peter Stone and Kok-Chor Tan for this opportunity to sharpen this claim further in response to their insightful criticisms and the LEAP editors, particularly Paula Casal, for constructive observations throughout this exchange.¹

2. UNDERSTANDING LIBERTARIANISM: REPLY TO GOODMAN

In his probing commentary, Charles Goodman denies my claim that libertarians must endorse actual consent theory. Goodman starts with an interesting question: “how, exactly, would the libertarian state use coercion against merely potentially autonomous citizens?” (Goodman 2014: 169). He wants to know what libertarian rights states violate if they do not ensure that people secure basic capacities. Goodman does not think libertarians must accept actual consent theory to avoid violating rights.²

I believe that when states claim a monopoly on the exercise of coercive force within a traditionally defined territory without securing their rights-respecting subjects’ consent, they violate individuals’ basic libertarian rights to protect their rights. Libertarians often talk about rights to person, property,

1. I am also grateful to Marcus Arvan, Thom Brooks, and Darrel Moellendorf for helpful comments on this reply.

2. Libertarians’ reluctance to endorse any obligation to ensure that people secure basic capacities is part of what makes my argument interesting.

and punishment. Nonetheless, I believe libertarians are also concerned with protection as they do *not require* individuals to punish rights violators. So states need justification to prohibit even potentially autonomous citizens from protecting their rights (or punishing others who pose a rights-violating threat to them). Libertarians should agree that these people must be able to consent (and must actually consent) to the state, otherwise it is illegitimate. States cannot take money to pay for protective services from rights-respecting people who have not consented to give up their property. Taking money from them would violate their property rights. People may also prefer to maintain their right to protect their rights or hire others to do so. So those who would institute a state must ensure that potentially autonomous people secure the capacities they need to consent (and actually consent) before prohibiting these people from protecting their rights. Of course, in our world, states already exist. Still, to legitimately coerce people in the future (to exist as legitimate states) they must ensure that everyone secures what they need to consent (and secure consent). States do not take away individuals' right to self-defense. They wrongly limit this right. They claim a monopoly on the exercise of coercive force. *They* specify which things count as self-defense and which do not. Without consent, libertarians *should* maintain that this violates the basic libertarian right to self-defense.

Moreover, libertarians will reject Goodman's claim that we do not wrong potentially autonomous people capable of punishing without violating rights by prohibiting them from doing so. Goodman misleadingly asserts that a potentially autonomous person with this capacity who is prohibited from exercising it "would be no more wronged than an unusually mature and responsible fifteen-year-old who is denied the right to drive a car" (Goodman 2014: 172). Libertarians believe these are both grievous wrongs.

As Goodman points out, some potentially autonomous people receive the help they need from their families, friends, or benefactors, but some do not. Even some of those with resources require help. They must consent to others using their resources even for this purpose.³

Goodman wrongly suggests that the state can coerce potentially autonomous people for paternalistic reasons. If states can ensure their subjects secure the capacities they need to consent, the cost of doing so cannot justify riding rough-shod over basic libertarian rights. I allow that it may be acceptable to coerce people for their own benefit. Still, I doubt libertarians will take this line in general. We cannot take sleeping people's money and give them some benefit when we can wake them. Even if it costs something to wake them and get their consent, we must do it. So I do not see how we can "conclude... that, in requiring those potentially autonomous

3. It is not enough if people can, in some way, obtain the help they need (e.g. if they participate in the right way in markets), they must have the capacities they need for consent.

beings on their territory who own valuable resources to contribute some of those resources to the defense of their society from violence, the libertarians would not wrong those beings” (Goodman 2014: 170). Libertarians may also deny that every person benefits from being a part of a state.⁴

Goodman plausibly claims that, to punish others, people “need those faculties which Locke calls ‘calm reason and conscience’”, but some non-autonomous people have these abilities (Goodman 2014: 171). Some who have these faculties cannot consent to a state. There are schizophrenics, for example, who can work, drive, and defend themselves and others, but are unable to engage in much political reasoning.

Finally, consider Goodman’s example of Annie —intended to show that even when someone does need help, it may be impermissible for private citizens in a libertarian state to provide it. In laying out the case, Goodman starts by asserting that:

almost all of the land in the libertarian society will be privately owned. The only exceptions would be facilities associated with the state’s legitimate protective role, such as police stations, courts, and military bases. It would not be difficult to justify refusing to let Annie stay in these facilities. If the society’s military bases and police stations were transformed into homeless shelters, those structures would no longer be able to carry out their rights-protective functions effectively. So libertarians would be on firm ground in claiming that, if Annie is going to live in the libertarian state, she’ll have to stay on private property (Goodman 2014: 174).

So Goodman asks if it would be permissible:

for a property owner to allow Annie to stay on his land, but without providing her with what she needs in order to grow up and become autonomous? ... by giving Annie permission to stay on his land, the property owner in question is consenting to a situation whose moral result will be the existence of an obligation, binding on his fellow libertarian citizens, to provide Annie with resources. In allowing Annie to stay on his land ... the property owner is arguably violating their negative rights by imposing costs on them without their permission (Goodman 2014: 174).

4. That is, it is a live question why it would be in their interest to be a part of a large protective organization —some may prefer to be in small organizations. Incidentally, Nozick has to bring in considerations of consequences to justify depriving them of their right to do so. I believe the anarchists rightly object to this and say consent is required for consistent adherence to basic libertarian principles. The upshot of my argument is that consent leads to welfarism as opposed to anarchism.

Consider a few reasons to worry about this case. First, this response relies upon some questionable empirical claims. If people would consent to any state at all, they might consent to giving a state more land than needed to secure some public goods—like national parks. Even if this is not the case, the libertarian state could expand to help people by purchasing land from citizens to create homeless shelters. Of course, the money to do so would presumably come from taxes. So this would be a kind of libertarian welfare state. This kind of taxation poses a threat to the coherence of libertarianism, but I am completely happy if my argument establishes that libertarianism is incoherent because it both requires and prohibits a welfare state. Moreover, “by giving Annie permission to stay on his land” the property owner may not be “consenting to a situation whose moral result will be the existence of an obligation” that amounts to violating negative rights of co-citizens (Goodman 2014: 174); many uses of property impose costs that do not violate libertarian rights. Goodman must offer more argument to make his case. That said, the idea that we must prohibit private property owners from doing what they want with their property would only provide reason to think that libertarians face another terrible dilemma, and that we should reject their view.

Goodman’s final proposal is most promising but also unsuccessful. He says that “it would be legitimate for the citizens of the libertarian state to make an agreement, perhaps at the constitutional convention that establishes their form of government, restricting the ability of landowners to harbor indigent potentially autonomous persons such as Annie” (Goodman 2014: 174).⁵ If no one offers voluntary aid, Goodman says “Annie would [have to] effectively be expelled from the libertarian state” (Goodman 2014: 174-75). He takes this as an alternative to rejecting libertarianism. However, I take it that the distinction between libertarianism and anarchism hangs on whether or not states can maintain a monopoly on coercive force within a territory without having to cede land to the non-autonomous. Libertarians believe they can. Anarchists reject this conclusion. At least, Annie cannot be removed from land she owns within the libertarian state’s borders. People would also violate her basic libertarian rights if they forced her to sell her land or removed her from un-owned (state) land. If all of this land is necessary to protect negative rights, that poses yet another problem for libertarians and provides reason to reject their theory.

5. Not everyone in a libertarian state would be so uncharitable.

3. BEYOND THE SOCIAL CONTRACT: REPLY TO STONE

In his thought-provoking commentary, Peter Stone worries that many liberals will reject the claim that legitimate coercive institutions must ensure that their subjects secure sufficient autonomy. Stone thinks my argument relies on an ambiguous idea of consent. Moreover, he says some liberals deny “that people have a right to dissent from the rule of coercive institutions by conscientious objection, non-violent protest, passive resistance, and so forth’ (Stone 2014: 185).” Stone notes, for instance, that “the democratic theorist and the hypothetical consent theorist ... have very different things in mind when they identify political systems as consensual, even if both endorse democratic institutions” (Stone 2014: 187). For the “hypothetical consent theorist, it would not be the democratic rights that form the critical locus of consent. It would be the hypothetical consent itself” (Stone 2014: 186-87).

My argument does not rely on an ambiguous idea of consent. *Pace* Stone (2014: 177), I do not claim people must actually consent to coercive institutions’ rules. Contrary to what stone claims, I believe that people must have the *capacities* to consent. I give a detailed account of these capacities on which everyone must be able to do at least some (instrumental) reasoning and planning. I then derive the premise that legitimate coercive institutions must ensure their subjects secure sufficient autonomy to consent from several contractualist (and non-contractualist) theories. I argue that on plausible hypothetical, democratic, and actual consent theories, legitimate coercive institutions must ensure that their subjects secure these *capacities*. I believe we should reject theories on which rulers legitimately coerce people who lack basic freedoms under their rule. We should, for instance, reject hypothetical consent theories on which people cannot even object to coercive rule (Stone 2014: 187). We cannot justify existing coercive institutions by appeal to the idea that people “could conceivably consent to arrangements without democratic rights” (Stone 2014: 187). People should at least be able to maintain basic freedoms under coercive rule. Similarly, we should reject any account of democracy that does not involve a constitution, or some other means of protecting basic capacities. Such views fail to respect individual freedom. This does not beg the question against them. It provides reason to reject implausible versions of the views once we see their shortcomings clearly.

Stone, rightly, notes that my argument can be expanded. After explaining the general argumentative strategy, I take libertarianism to be the stalking horse for liberalism. I do not engage with the details of every, or even a wide range of, communitarian, democratic or hypothetical consent theories. However, I devote a whole chapter to arguing that on actual consent theory, and libertarianism, legitimate coercive institutions must ensure their subjects

secure sufficient autonomy. Moreover, even some of those I do not address—including some consequentialists—might accept this conclusion.⁶

Both Stone and Kok-Chor Tan worry, however, that libertarians will reject the idea that consent requires any basic capacities. As Stone puts it, “many libertarians are very attracted to the idea that consent authorizes practically anything. If someone wants to consent to slavery, then so be it” (Stone 2014: 185). Tan also worries that, on libertarianism, people need not have sufficient autonomy to consent to coercion (Tan 2014: 200). Moreover, Stone points out that actual consent theorists and “libertarians are usually lukewarm at best about democratic rights” (Stone 2014: 185). He says that “if people grant consent to arrangements with such rights, fine, but they could just as easily consent to some other arrangement... Indeed, the entire idea of a “right to dissent” must seem strange to an actual consent theorist” (Stone 2014: 186).

Even if libertarians maintain that people can consent into slavery, they should not deny that free consent requires basic capacities. At least, people should be able to object to coercive rule until, and unless, they give up their right to do so. The severely mentally disabled, young children, the comatose, and those deluded by hunger cannot enter into free contracts. For contracts to be free, people must be able to consent. Libertarians defend slavery because they want to ensure the fidelity of free contracts.⁷ Still, people need basic capacities to enter into free contracts.

4. BASIC RIGHTS: REPLY TO TAN

In his helpful essay, Tan worries that my argument is circular, starting from an “‘autonomy-based’ human right to food, water and other means of subsistence” (Tan 2014: 207).⁸ He suggests this undermines the strand of my argument addressed to libertarians, in particular. Libertarians notoriously deny a right to autonomy exists.

My argument does not start by assuming a right to autonomy. Rather, I address liberals who believe that people must maintain a basic minimum of

6. Philosophers like John Stuart Mill endorse basic rights, e.g. to freedom, even if they offer an indirect or instrumental justification for them that appeals to consequentialist considerations (Mill 1983, Ch. 5). My argument rules out views that ride rough-shod over individuals’ rights and allow that it is normally acceptable to coerce some people just for others’ benefit. My argument will address consequentialists, and others who reject natural rights, as long as they agree that it is generally necessary to justify coercion to the coerced and this justification requires that people at least have the capacities they need to object, or consent, to coercive rule.

7. Stone is right that “those deeply concerned with rights of democratic participation (like most egalitarian liberals) have little use for actual consent” (Stone 2014: 186).

8. If that were the case, Kok-Chor Tan would be right to object that since “there is an autonomy-based *human right to subsistence*, it is not clear why the presence of coercive institutions is ... a necessary condition of the duty to provide subsistence” (Tan 2014: 198).

freedom under legitimate coercive rule.⁹ The key idea is that people should be free to shape their relationships with their coercive institutions.¹⁰ Different liberals understand this freedom in different ways but, I argue that, on plausible liberal theories, it entails a commitment to sufficient autonomy. Although people might not be able to do without coercive institutions, they should at least get to decide for themselves how to react to their subjection.¹¹ People should at least be able to object, or consent, to coercive rule. If people require assistance to secure the requisite autonomy, and no other agent or institution provides it, their coercive institutions must do so, on pain of illegitimacy.

It is easiest to see how my argument against libertarians does not presuppose a right to autonomy. Libertarians believe people have basic rights to person, property, and to self-defense.¹² I argue that libertarians must endorse actual consent theory because coercion constrains an individual's exercise of these basic libertarian rights. Roughly, if rulers claim a monopoly on coercive force over all of their rights-respecting subjects within a traditionally defined territory without securing their consent, they violate people's rights to protect themselves.¹³ At least rights-respecting potentially autonomous people must consent to such coercive rules. To actually consent to coercive rules, people must be able to consent.¹⁴ Moreover, this requires sufficient autonomy (the ability to reason and plan). So, if no one provides these people with the assistance they need, even libertarians should agree that their coercive institutions must do so.¹⁵

Tan rightly suggests that my argument provides the missing premise in an argument for egalitarian duties. I argue that many coercive *international* institutions exist. So, if coercion grounds egalitarian duties, like Michael

9. Coercion threatens to violate individual's basic freedom (as well as their equality and autonomy). It does not always undermine freedom, equality, autonomy, or harm people, but it is certainly capable of doing so.

10. I take it we should respect everyone, free or not; people should be able to shape their relationships with their coercive institutions.

11. Hassoun 2012: 58.

12. Although I am not convinced people have such inviolable rights, in addressing the libertarian, I consider what follows from this claim. One might worry that in attempting to address all liberals, the book does not adequately address any of them, but doing so fully would have been exhausting. So the book focused on providing a detailed look at how the argument might go in the hard case of the libertarian and on illustrating the general argumentative approach. I hope that it provides fertile ground for future inquiry. Whether or not one sees the book as offering a unified argument or several distinct arguments will depend on whether one looks only at the major premises of the argument or at its sub-premises.

13. GGJ does not address anarchists who think that states can simply cede territory to rights-respecting people who do not consent to their rule nor those who claim international institutions' coercion can be justified without ensuring that all of their subjects secure sufficient autonomy.

14. On the view that libertarians are committed to requiring actual consent, see, e.g., Simmons 1999 and Long and Machan 2008.

15. On some liberal views, autonomy is constitutive of the basic freedom at issue, but my argument does not rely on this being the case.

Blake, for example, maintains, there are *international* egalitarian duties.¹⁶ I also agree with Tan that people might not have the capacity to consent to, or reject, coercive offers in situations of extreme inequality.¹⁷ None of this, however, undermines my response to the libertarian. Moreover, *pace* Tan, I do not endorse skeptics' attempts to raise "the justificatory bar for global justice ...[or] duties of humanitarian assistance" (Tan 2014: 199) by recognizing their existence and taking the time to see where their arguments go astray. Rather, I try to extend the consensus on these important duties.

5. CONCLUSIONS

Let me recap. First, *pace* Goodman, libertarians hold that if we prohibit people from protecting their rights without consent, we wrong those capable of protecting their rights without violating others' rights. People can only be deprived of the right to protect their rights with consent. Most libertarians do not believe we can coerce such people for paternalistic reasons. Rulers cannot rightly expel these people from, at least their own, privately held property. If we must prohibit private land owners from letting non-autonomous people onto their land, that only worsens the dilemma at the heart of libertarianism. It provides further reason to reject the view. Second, *pace* Stone, my argument does not rely upon an ambiguous understanding of consent. I argue that, whatever account of consent contractualists endorse, they should agree that legitimate coercive rule requires that people have basic capacities to consent. Moreover, my argument addresses many non-contractualists, including some consequentialists. Third, *pace* Tan and Stone, even if libertarians believe that people can freely consent to whatever contracts they like, they should agree that people need some basic reasoning and planning capacities to enter into free contracts. Finally, *pace* Tan, my argument is not circular. The idea of freedom from which it starts does not presuppose, but grounds a right to, autonomy. Libertarians, for instance, hold that people only have basic rights to person, property, and punishment. I argue that coercion, in constraining the exercise of these basic rights, requires justification. On libertarianism, I suggest, states must secure consent to avoid violating rights and people require sufficient autonomy to consent. Tan and Stone are right, however, that it is possible to extend my argument in many ways. It may even ground global egalitarian obligations. Much room remains for future research.

16. I do not, however, endorse Blake's view.

17. Elsewhere (e.g. Hassoun 2013) I defend much more robust obligations to aid people above this threshold than in the book.

BIBLIOGRAPHY

- Goodman, C., 2014: "Libertarian Welfare Rights: Can We Expel Them?", *Law, Ethics, and Philosophy* 2: 166-176.
- Hassoun, N., 2012: *Globalization and Global Justice: Shrinking Distance, Expanding Obligations*, Cambridge: Cambridge University Press.
- 2013: "Human Rights and the Minimally Good Life", *Res Philosophica* 90, 3: 413-438.
- 2014: "Coercion, Legitimacy, and Individual Freedom: A Reply to Sonderholm", *Journal of Philosophical Research* 39: 191-198.
- Long, R., and Machan, T., 2008: *Anarchism/Minarchism: Is a Government Part of a Free Country?*, London: Ashgate Press.
- Simmons, J., 1999: "Justification and Legitimacy", *Ethics* 109: 739-771.
- Stone, P. 2014: "Social Contract Theory in the Global Context", *Law, Ethics, and Philosophy* 2: 177-189.
- Tan, S., 2014: "Coercion and Global Obligations: A Commentary", *Law, Ethics, and Philosophy* 2: 190-209.