

Chance Reed

Professor Jon Herington

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The Illegitimacy of a Natural Duty to States

In Princeton University associate professor Anna Stiltz's 2012 publication "Why Does the State Matter Morally?" she proposes fundamental natural duties to States through the Kantian theory of justice that includes a requirement for the constituents of a society to support and comply with just and legitimate social institutions. According to Stiltz, these duties derive justification from natural law obligations of non-coercible beneficence and fairness to our fellow moral agents, and that the State is the mechanism by which this societal end must ultimately be realized. In summary, Stiltz argues:

"Simply as rational agents, we have a duty to establish state institutions and to comply with their laws and policies... This is an unconditional duty that is binding on us independently of any special relationships we may have or any voluntary transactions we may have engaged in" (Stiltz 245).

However, University of Virginia School of Law professor A. John Simmons puts forth meaningful objections to this framework, which will be discussed in detail. Further, there were also worthwhile observations on the nature of property rights, and behavior of States as social institutions that demonstrate the injustices of States made by Harvard University professor Robert Nozick and Austrian School economist Murray N. Rothbard, and these will be duly considered as well. These empirical observations of the State are not intended to be mere straw-

man caricatures, but are meant to illustrate the observable reaction functions to the incentives that institutions that are permitted to operate monopolistically face.

Stiltz claims that the State is required for impartial arbitration and the adequate enforcement of rights in society. Her deontological argument for the State is outlined as follows: (1) Individuals have basic claims to external freedoms. (2) Individuals have general coercible duties to respect others' external freedoms. (3) Because individuals are unable to respect freedoms if they enforce their own rights unilaterally, (4) the only way to respect others' freedom is to set up a State to act as an arbiter. (5) If a State acts in a manner in kind with justice, its subjects have an obligation to directly comply with its laws and decrees in order to fulfill (2). The first three points in this argument are not in contention in this paper. It is at points (4) and (5) that the argument loses legitimacy and becomes all but completely bankrupt. Stiltz utilizes Kant's theory of justice, and until point (4), this is a coherently reasoned and sufficient theory. It is only the final two normative procedural steps taken in pursuit of realizing (1), (2), and (3) that require revision. Not only this, but there is also sufficient reason to doubt that any social institution acting as the sole enforcer of rights for which duties of justice must pass through could realistically even perform this role in a just fashion. This is in the same way that a monopolistic firm will not by nature freely elect to generate output and price lower than the point at which the marginal cost of its production equals the marginal revenue of its production. The nature of absolute power is that it gives way to exploitation. It is important to clarify though that this is not a direct critique of any of Stiltz's claims, as she does not assume a prima facie moral obligation to *any* decree by an omnilateral arbiter, only to one behaving justly, and thus avoids the logical correlativity problem outlined by Professor Joel Feinberg. However, there is still no obligation to States should they pass acceptable decrees.

At first glance, the assertion that a State ought to be erected in support of equal protection under law for the constituents of a society seems a noble and practical solution. There are limits of legitimate authority, and in theory we can easily imagine a sole institution that protects rites of passage, spheres of private freedom, equal treatment under law, and consults its constituents in the law-making process without overstepping its bounds. Such a system would allow us to do justice by others. The associative bonds of such a system would be strong, and citizens would be held accountable to one another. But is the creation of a State, a functional social monopoly, the *only* method by which society may realize secure guarantees of external freedoms? I suggest that uncoordinated enforcement is indeed possible, and that this invalidates the notion that the construction of a State is necessary for respecting rights. If moral agents indeed have a duty to respect the rights of other moral agents, why does this then *necessitate* the establishment of a State? We may doubt this necessity simply by imagining a free-market design. Privately operated, competitive arbitration institutions may issue equivalently analytical interpretations of law and enforce justice just as well as a solitary State, with the most successful arbiters providing the best service at the cheapest cost. The desirability of such a system is disputable, just as the terms of any form of social organization imply a series of trade-offs. An uncoordinated design runs the risk of abandoning its principles of justice for popular demand, but then again, submission to a solitary authority runs the risk of sworn allegiance to a singular organization that will conflate its idealized purpose with its desired ends through supremacy. At the very least, we can imagine a possible world where a State is not an absolute requirement for a system of enforcing rights, and this should lay the foundation for doubting the notion that establishing a State is the only solution to the problem of preserving unilateral protections under law.

Duties of respecting the rights of other moral agents are considered to be *proxemic* by Waldron – one only owes these duties to those agents in the immediate vicinity, because these are the agents that are threatened by breaches of justice: “Valid principles of justice, then, can be range-limited, imposing moral duties on those adjacent to one another that are not owed to everyone else” (Simmons 172). What may actually count as sufficient proximity to entertain a claim of a violation of one’s rights is unclear and not explained. Even if we accept this notion, it must be stressed that the nature of this duty is that it is justified by the property of *moral agency* of the *individuals* in society, not the organizations from which they associate. How then, if there is ultimately no clear and distinct distance that constitutes an injustice between physical individuals, can there be any meaningful identification of what would constitute a special violation of duties to the State, which arbitrarily determines its size and scope through making impassioned claims of legitimate jurisdiction over some specified area?

One could argue that for enforcing justice, an institutional structure is for practicality reasons required, and that institutions acting as arbiters of justice must have their decrees respected in order to realistically facilitate a rule law. Let this be granted. How then does a moral agent determine which of these States *in particular*, however they may have defined the scope of their borders, truly holds the legitimate claim on a moral agent’s dutiful compliance with its rules? For Stiltz’s argument to hold, there must then be an adequate selection criterion determining the States in which these duties are truly owed. Perhaps natural duty is owed to all States, but then, how can one fulfill one’s natural duty if two or more of the duties imposed by states conflict? If in this case we may just as well weigh and pick the most just principle of the list, what purpose then remains to continue to submit to States? It appears that the allocation of one’s duty to a State is contingent on the area that one happens to be standing in, but how can

this be? In the context of private property rights, it seems to make intuitive sense that an owner of a house possesses a primary privilege to enforce a dress code on visitors to the house, and because these visitors do not own this property, they do not possess a right to exist in the homeowner's space without consenting to the homeowner's contract. An offending individual may be asked to leave, and if stubborn, be forcibly removed for aggressing on the property. This is only lawful because the homeowner owns this property, and in just this way, it is ownership that gives the homeowner contingent authority to enforce rules with respect to this property.

What explicit contract is stated and consented to by the moral agents in a State? States, historically, have only been "born in conquest and exploitation" (Rothbard 16). One could argue that there is implied consent to contracts with a State while one is operating within the bounds of its specified territory, and should free passage and thus free choice between residual States be viable and accessible options, concerns against implicit consent should be considered nullified. Even if implied consent and open passage are granted, how did any territory for which any State claims it possesses sovereign powers of arbitration come to be *owned* by that State? Consider Nozick's criteria for distributive justice utilizing the principles of just-acquisition and just-transfer of property (emphasis added):

"A *person* who acquires a holding in accordance with the principle of justice in acquisition is entitled to that holding. A *person* who acquires a holding in accordance with the principle of justice in transfer, from *someone* else entitled to the holding, is entitled to the holding. No *one* is entitled to a holding except by repeated applications of these" (Nozick 151).

In light of this, it seems absurd to suggest that refusing to comply with a State's decrees or violating a State's rules consequentially directly violates individuals' conversely wholly

legitimate claims on the general coercible duties of other individuals. As Simmons plainly states: “It is this premise that supports the claim that our natural duties can be particularized to imply a moral duty of domestic legal compliance. But that crucial premise of the argument is false” (Simmons 179). Neither then do the constituents of a society have duties to comply with a State when it *does* act justly, because any argument for an obligation of fair play must rest on the constraint that it “governs a man’s actions only when some benefit or harms turns on whether he obeys” (Smith 957). Since compliance/non-compliance with a State is not deterministic over whether individuals’ have neglected their duties to other individuals, there is no threat of harmful transgression, and thus no natural duty is then imposed on any individual to obey any State by nature, by proximity, by contract or even by debts of gratitude should the institution behave justly. These arguments illustrate that a natural duty argument for compliance to States requires revision if it is to be legitimate. Natural duty does not necessitate the formulation of States, and neither does natural duty provide the grounds for the belief that rational beings should obey States, even if States should act ethically.

Works Cited

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