

# “Are States Necessarily Coercive?”

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“Covenants, without the Sword, are but Words, and of no strength to secure a man at all”, Thomas Hobbes famously proclaimed.<sup>2</sup> He exaggerated. As I shall point out later, his position is more subtle than that suggested by this famous citation. But there is no doubt that he thought the sword to be of central importance to the state. This is one of the very few matters about which there is little disagreement with Hobbes; state power is widely thought to be coercive. The view that governments must wield force or that their power is necessarily coercive is widespread in contemporary political thought. For instance, John Rawls claims that “political power is always coercive power backed up by the government’s use of sanctions, for government alone has the authority to use force in upholding its laws.”<sup>3</sup> He is not alone in thinking this, as we shall see. This belief in the centrality of coercion and force seems to play an important but not well appreciated role in contemporary political thought. However, it is an idea which should not be accepted innocently.

Rawls’ belief in the coercive nature of political power appears to be significant for his liberal theory. It is one of two special features of “constitutional regimes” central to his influential conception of political legitimacy – the first being that “Political society is closed: we come to be within it and we do not, and indeed cannot, enter or leave it voluntarily.”<sup>4</sup> Indeed, it is these two features that give rise to “the question of the legitimacy of the general structure of authority...” Rawls thinks that

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<sup>2</sup> Thomas Hobbes, *Leviathan*, ch. XVII, p. 117.

<sup>3</sup> John Rawls, *Political Liberalism* (New York: Columbia University Press, 1996 [1993]) p. 136.

<sup>4</sup> Rawls, *Political Liberalism*, p. 136.

our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason. This is the liberal principle of legitimacy.

Rawls distinguishes the “special domain of the political identified by the two features above described” and distinguishes it from “the associational, which is voluntary in ways that the political is not... and the personal and the familial, which are affectional, again in ways the political is not.”<sup>5</sup> The political is marked by the prevalence of coercive power.

Rawls, as I said, is not alone in emphasizing the coercive powers of states and in attributing special significance to them. Contemporary libertarian thinkers, as we should expect, do the same. In his well-known discussion, Robert Nozick takes anarchist challenges to the state as his starting point: “I treat seriously the anarchist claim that in the course of maintaining its monopoly on the use of force and protecting everyone within a territory, the state must violate individuals’ rights and hence is intrinsically immoral.”<sup>6</sup> The objection to state coercion is also a mainstay of anarchism. While a few anarchists hope that a stateless world would be one without coercion, most object to the manner in which states centralize and seek to monopolize force. Michael Taylor usefully characterizes anarchy in terms of the dispersal of force, not its absence: “a minimum test, a necessary condition, for the existence of a state is that there is *some* concentration of the means of using force, or equivalently some inequality in its distribution... Conversely, in a *pure anarchy* force is perfectly dispersed, not concentrated at all.”<sup>7</sup>

The view that states are essentially coercive needs to be examined in part because of its significance to contemporary political thought. As we saw, it is central to Rawls’ particular conception of political legitimacy. It seems to be especially important to the thinking of many contemporary left-liberal theorists. Thomas Nagel argues that

if you force someone to serve an end that he cannot be given adequate reason to share, you are treating him as a mere means – even if the end is his own good, as you see it but he doesn’t. In view of the coercive character of the state, the requirement [that one should treat humanity never merely as a means, but always

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<sup>5</sup> Rawls, *Political Liberalism*, p. 137.

<sup>6</sup> Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), p. xi.

<sup>7</sup> Michael Taylor, *Community, Anarchy and Liberty* (Cambridge: Cambridge University Press, 1982), pp. 5-6.

as an end] becomes a condition of political legitimacy.<sup>8</sup>

Nagel thinks of politics as a domain “where we are all competing to get the coercive power of the state behind the institutions we favor – institutions under which we all have to live...” He is concerned not only about conflicts of interests between people “but conflicts over the value that public institutions should serve, impartially, for everyone.” He asks whether there is “a higher-order impartiality that can permit us to come to some understanding about how such disagreements should be settled?”

This question is part of the wider issue of political legitimacy – the history of attempts to discover a way of justifying coercively imposed political and social institutions to the people who live under them, and at the same time discover what those institutions must be like if such justification is to be possible.<sup>9</sup>

A coercive conception of states seems to play an equally important role in the thinking of Ronald Dworkin. A consideration which he thinks supports his favored principle of integrity in politics is that “a political society that accepts integrity as a virtue thereby becomes a special form of community, special in a way that promotes its moral authority to assume and deploy a monopoly of coercive force.” Dworkin argue that

A conception of law must explain how what it takes to be law provides a general justification for the exercise of coercive power by the state... Each conception’s organizing center is the explanation it offers of this justifying force. Every conception therefore faces the same threshold problem. How can *anything* provide even that general form of justification in ordinary politics. What can ever give anyone the kind of authorized power over another that politics supposes governors have over the governed... This is the classical problem of the legitimacy of coercive power.<sup>10</sup>

I wish to examine critically this thesis about the central importance of coercion and force to states. It is, as I said, widely shared, but I do not think that its significance has been well appreciated. The coercive nature of states is thought to have two important implications for political theory, both of which are well illustrated by the work of the theorists I have cited. The first implication is that states are very hard to justify because of their coercive nature. It is the

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<sup>8</sup> Thomas Nagel, *Equality and Partiality* (New York: Oxford University Press, 1991), p. 159.

<sup>9</sup> Nagel, “Moral Conflict and Political Legitimacy”, *Philosophy & Public Affairs* 16, 3 (Summer 1987), pp. 215, 216, 218.

<sup>10</sup> Ronald Dworkin, *Law’s Empire* (London: Fontana Press, 1986), pp. 188, 190-1.

state's special power to coerce that makes it so difficult to justify; state legitimacy is problematic principally because of its coercive power. And, secondly, only certain kinds of justifications are likely to succeed as a consequence. It will not, for instance, suffice to ground state legitimacy on its pursuit of the good if this will, as Nagel argues, involve treating people as mere means, or, as Nozick argues, violate their rights.<sup>11</sup> And consent will not help either if it is not available ("Political society is closed: we come to be within it and we do not, and indeed cannot, enter or leave it voluntarily.") As Charles Larmore argues,

To avoid the oppressive use of state power, the liberal goal has therefore been to define the common good of political association by means of a *minimal moral conception*...[T]he terms of political association must now be less comprehensive than the views of the good life about which reasonable people disagree. More precisely, fundamental political principles must express a moral conception that citizens can affirm together, despite their inevitable differences about the worth of specific ways of life.<sup>12</sup>

It seems that only special kinds of justifications will permit the state to use force.

This assumption about the state's coercive nature is misleading. I shall suggest. How does it come to be so widely shared? Andrew Levine, a Marxist thinker, thinks that "States are 'grounded' in force in the sense that, by definition, they are coercive: they coordinate behavior through the use or threat of force."<sup>13</sup> Why might we think this to be true *by definition*? Now we are taught from an early age that we must "define our terms" or at least explain what we mean by them. So when thinking about something as complicated and perplexing as the state, we ought to say what we mean. Perhaps we stumble upon this coercive conception when forced to "define our terms". Jonathan Wolff notes that

Before deciding how best to justify the state, we had better be sure what it is... [I]t has been noted that there are some things that all states have in common... States clearly possess, or claim to possess, political power. The sociologist Max Weber (1864-1920) made a similar point, if in more startling language: states possess a

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<sup>11</sup> Nozick argues that "the state may not use its coercive apparatus for the purpose of getting some citizens to aid others, or in order to prohibit activities to people for their *own* good or protection." *Anarchy, State, and Utopia*, p. ix.

<sup>12</sup> He goes on to argue that "It is in this light that we should understand the traditional liberal concern for the protection of individual liberty." Charles Larmore, "Political Liberalism" (1990), reprinted in *The Morals of Modernity* (Cambridge: Cambridge University Press, 1996), p. 123.

<sup>13</sup> Andrew Levine, *The End of the State* (London: Verso, 1987), p. 176.

monopoly of legitimate violence... All legitimate violence or coercion is undertaken or supervised by the state.”<sup>14</sup>

The search for a “definition” of the state in contemporary political theory invariably refers us to Weber’s famous claim that “a state is a human community that (successfully) claims the *monopoly of the legitimate use of physical force* within a given territory.” Weber goes on to note that “the right to use physical force is ascribed to other institutions or to individuals only to the extent to which the state permits it. The state is considered the sole source of the ‘right’ to use violence.”<sup>15</sup> We may be tempted, then, to say that states are coercive *by definition*.

I think contemporary political thought is mistaken in its view of the coercive nature of the state and that this error has led much of it astray in a number of important ways. I shall briefly argue that Weberian definitions of a state are mistaken and that we should not understand coercion or force to be part of the concept of the state. Most importantly, I wish to challenge the centrality contemporary political thinkers accord to coercion.

The so-called Weberian definition of a state is mistaken, first of all, insofar as it is incomplete. There is much more to a state than a claimed monopoly on the legitimate use of physical force in a territory. In fact, as one would expect, Weber himself offered a much more complete characterization elsewhere:

Since the concept of the state has only in modern times reached its full development, it is best to define it in terms appropriate to the modern type of state, but at the same time, in terms which abstract from the values of the present day, since these are particularly subject to change. The primary formal characteristics of the modern state are as follows: It possesses an administrative and legal order subject to change by legislation, to which the organized corporate activity of the administrative staff, which is also regulated by legislation, is oriented. This system of order claims binding authority, not only over the members of the state, the citizens,... but also to a very large extent, over all actions taking place in the area of its jurisdiction. It is thus a compulsory association with a territorial basis. Furthermore, today, the use of force is regarded as legitimate only so far as it is

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<sup>14</sup> Jonathan Wolff, *An Introduction to Political Philosophy* (Oxford: Oxford University Press, 1996), p. 39.

<sup>15</sup> Max Weber, “Politics as a Vocation”, in *From Max Weber: Essays in Sociology*, H. Gerth and C. Wright Mills tr. and eds. (New York: Oxford University Press, 1946 [1919]), p. 78.

either permitted by the state or prescribed by it.<sup>16</sup>

It is not clear that one can offer a genuine definition of a cluster concept as complex as that of the state, but at the least it is a certainty that its characterization must refer to a number of attributes, themselves quite complex. Simple definitions like the standard one attributed to Weber are inadequate. (Elsewhere, I offer a general characterization of a modern state in terms of a cluster of attributes.<sup>17</sup>)

The incompleteness of Weberian definitions is only part of my objection to them. The second concern is about understanding coercion or force to be part of the *concept* of the state. I should have thought, to the contrary, that states without coercion or force are *conceivable*; if so, state and coercion and force cannot be conceptually connected. Consider a “state” without law or one where its jurisdiction was not territorial. We would not consider it to be a state. Law and territoriality are essential properties of states, part of the concept of a state. Contrast these properties with coercion or force. We can conceive of a state which does not employ coercion or force. It seems that, unlike law or territoriality, coercion and force are not part of the concept of the state.

This claim may be controversial. And I need, in any case, say more at this point about how we should think about coercion and force. Part of the attempt to understand the relation

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<sup>16</sup> Weber, *The Theory of Social and Economic Organization* (Part I of *Wirtschaft und Gesellschaft*), A.M. Henderson and T. Parsons tr. (New York: Oxford University Press, 1947), p. 156.

<sup>17</sup> See my *Essay on the Modern State* (Cambridge: Cambridge University Press, 1998), pp. 45-6, where I characterize a state in terms of a number of interrelated features: (1) *Continuity in time and space*. (a) The modern state is a form of political organization whose institutions endure over time; in particular, they survive changes in leadership or government. (b) It is the form of political organization of a definite and distinct *territory*. (2) *Transcendence*. The modern state is a particular form of political organization that constitutes a unitary public order distinct from and superior to both ruled and rulers, one capable of agency. The institutions that are associated with modern states – in particular, the government, the judiciary, the bureaucracy, standing armies – do not themselves constitute the state; they are its agents. (3) *Political organization*. The institutions through which the state acts – in particular, the government, the judiciary, the bureaucracy, the police – are differentiated from other political organizations and associations; they are formally coordinated one with another, and they are relatively centralized. Relations of authority are hierarchical. Rule is *direct* and *territorial*; it is relatively pervasive and penetrates society legally and administratively. (4) *Authority*. The state is *sovereign*, that is, the ultimate source of political authority in its territory, and it claims a monopoly on the use of legitimate force within its territory. The jurisdiction of its institutions extends directly to all residents or members of that territory. In its relations to other public orders, the state is autonomous. (5) *Allegiance*. The state expects and receives the loyalty of its members and of the permanent inhabitants of its territory. The loyalty that it typically expects and receives assumes precedence over that loyalty formerly owed to family, clan, commune, lord, bishop, pope, or emperor. Members of a state are the primary subjects of its laws and have a general obligation to obey by virtue of their membership.

between states and coercion and force must involve a clearer understanding of these concepts. We may think of coercion and force as ways of getting people to act as they might not act if not so compelled; they are species of *power*. To *coerce* someone is to induce him or her to act by credibly threatening harm if he or she does not comply with one's wishes. To coerce people to act may be to *force* them to do something. But *force* may often involve additional constraints, for instance, restraining someone or confining their movements. *Violence* paradigmatically is physical force, and it may be understood to "violate" its subject. Coercion and force are to be contrasted with other ways of getting people to act. We often seek to *persuade* others to act in ways they would not have otherwise considered. And, as I shall note later, *authority* is an important means of moving people to action.<sup>18</sup>

These characterizations are not complete, and they are less than adequate for many inquiries. (For instance, debates about the possibly coercive nature of certain wage offers or of plea bargains will require a better analysis.) More detailed characterizations of these concepts are quite controversial. The concept of power is itself notoriously difficult to characterize precisely.<sup>19</sup> Much of the recent literature on coercion focuses on the question whether the notion can be understood empirically and non-normatively.<sup>20</sup> If the concept of coercion is necessarily normative or moralized – if, for instance, coercive proposals are necessarily wrong – then it may appear that to think of the state as *coercive* is already to consider it presumptively illegitimate or at least problematic.<sup>21</sup> We do not need to resolve these difficult questions and may assume an imprecise, non-moralized characterization of coercion and force without affecting my argument.

To return to the conceptual question: can one conceive of a state that does not seek to induce people to act as they are required to by credibly threatening harm if they do not comply? Can one coherently think of a state which does not use force to secure compliance or conformity? I should have thought so. Suppose that a state is legitimate, its basic structure and its laws are just, and that those subject to its laws are obligated to obey them. Suppose that the latter are always motivated to comply with just laws; they do not, for instance, suffer from any weakness of the will or any other problem which might lead them to fail to do what they ought to do. Then,

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<sup>18</sup> We may also trick, manipulate, deceive others into doing as we wish.

<sup>19</sup> See, for instance, Keith Dowding, *Power* (Minneapolis: University of Minnesota Press, 1996).

<sup>20</sup> Alan Wertheimer, "Coercion", in Lawrence and Charlotte Becker, eds., *Encyclopedia of Ethics*, 2<sup>nd</sup> ed (New York and London: Routledge, 2001), pp. 172-175.

<sup>21</sup> [Refs to Edmundson, *Three Anarchical Fallacies*; but see Wertheimer, *Coercion* (Princeton: Princeton University Press, 1987), p. 243.]

coercion and force would not be needed to enforce the law. This possibility – admittedly fantastic and utopian – seems perfectly *coherent*. There is nothing in the nature of a law which requires that compliance be assured coercively. It does not seem to be, then, a conceptual truth that states are coercive.<sup>22</sup>

I do not want to make too much of this claim, however. For one, I should need to defend the assumed conceivability test of conceptual truths, and I do not, in any case, want to rest too much on my understanding of conceptual truths. (Was sovereignty once part of the concept of a state but no longer is? Does it remain part of a European concept but not an American one?) In any case, we might well be able “to imagine” a state without force or violence, but it may still seem to us that states are typically coercive and that one which did not use force would be something quite different from the states we know. The principal claim that I wish to examine and to challenge is that of the centrality of coercion. Contemporary political theorists seem to agree with Rawls that “political power is always coercive power backed up by the government’s use of sanctions”. I do not think that this is correct. Whatever we think about definitions and conceptual truths, this claim needs to be examined more closely.

The thinkers I have quoted also emphasize the state’s claimed *monopoly* on the legitimate use of force, and it clear that this sort of normative power is special and does require special attention. G.E.M. Anscombe rightly notes that “civil society is the bearer of rights of coercion not possibly existent among men without government.”<sup>23</sup> I do not, however, wish here to discuss the state’s alleged monopolization of force.<sup>24</sup> Rather, I wish to argue that the state’s use of coercion or force is not, in a certain sense, primary. I shall also argue that its use of force is not as prevalent or as important as it is believed to be.

Rawls says that “political power is always coercive power backed up by the government’s use of sanctions.” Why might we think this? Perhaps because of the conjunction of law and sanction. Recall John Austin’s conception of laws as coercive commands of a sovereign. Austin argued that laws are commands, and that these are distinguished from other “significations of desire... by the power and the purpose of the party commanding to inflict an evil or pain

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<sup>22</sup> My formulation, in terms of legitimate states, just laws, and the like is intended to side-step a number of debates about obligations and reasons to obey.

<sup>23</sup> G.E.M. Anscombe, “On the Source of the Authority of the State”, in *Ethics, Religion and Politics, Collected Philosophical Papers*, volume III (Minneapolis: University of Minnesota Press, 1981), p. 147.

<sup>24</sup> See *An Essay on the Modern State*, pp. 203-4. As I shall argue later, the state’s claimed monopolization of coercion is merely an instance of its claimed authority, specifically, its “comprehensive” authority.



in case the desire be disregarded.” Commands yields duties: “Being liable to an evil from you if I comply not with a wish which you signify, I am *bound* or *obliged* by your command, or I lie under a *duty* to obey it.”<sup>25</sup> H.L.A. Hart’s well-known criticisms of this account in *The Concept of Law* are conclusive. Many laws do not “order people to do or not to do things.” Some laws do not impose duties or obligations but confer *powers* to individuals or to officials or institutions (e.g., courts, legislatures). Some laws originate in custom and do not owe their legal status to an act of a sovereign.<sup>26</sup>

The central failure of the Austinian account – and of similar reductive stories – is in the attempt to explain the normativity of law in terms of notions like commands and threats. While we may speak of “being obliged” to do something when compelled or forced to do so, *obligation* is normative. While it would not be true that one had been obliged to do something if one had not, in fact, done it, the claim that one has an obligation is not falsified by one’s failure to comply.<sup>27</sup> Hart emphasizes the importance of the idea of a *rule* to an understanding of law:

The root cause of failure is that the elements out of which the theory was constructed, viz. the ideas of orders, obedience, habits, and threats, do not include, and cannot by their combination yield, the idea of a rule, without which we cannot hope to elucidate even the most elementary forms of law.<sup>28</sup>

Theories like Austin’s, recognizing that not all threats to impose sanctions will be effective, usually formulate their accounts of law in terms of the *likely* application of sanctions. Hart’s two-point criticism is definitive:

... where rules exist, deviations from them are not merely grounds for a prediction that hostile reactions will follow or that a court will apply sanctions to those who break them, but are also a reason or justification for such reaction and for applying the sanctions.

If it were true that the statement that a person had an obligation meant that *he* was likely to suffer in the even of disobedience, it would be a contradiction to say that he had an obligation [to do something and]... there was not the slightest chance of

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<sup>25</sup> John Austin, *The Province of Jurisprudence Determined* (Cambridge: Cambridge University Press, 1995 [1<sup>st</sup> ed 1832, 5<sup>th</sup> ed 1885]), Lecture II, pp. 21-2.

<sup>26</sup> H.L.A. Hart, *The Concept of Law*, 2<sup>nd</sup> ed (Oxford: Oxford University Press, 1994 [1961]), ch. III.

<sup>27</sup> Hart, *Concept of Law*, pp. 82-3.

<sup>28</sup> Hart, *Concept of Law*, p. 80.

his being caught or made to suffer. In fact, there is no contradiction in saying this, and such statements are often made and understood.<sup>29</sup>

It is implausible to understand laws as commands backed by threats, even if many or most (duty-imposing) laws are in fact backed by sanctions. This means that it is also unlikely to be the case that “political power is *always* coercive power backed up by the government’s use of sanctions” (emphasis added). Political power may often be coercive, but it cannot always be. Some laws are not backed by sanctions – for instance, some laws obligating officials.<sup>30</sup> It is also true that enforcement is usually imperfect in the best of cases. When a sanction is not attached to a law or a law is not certain to be enforced, we do not say that it ceases to be a law.<sup>31</sup>

Even if sanctions are not always in place or necessary, we should ask why many laws are in fact backed by sanctions and why coercion sometimes is necessary. Why must compliance sometimes be assured by coercion? Obviously, sometimes people – most of us included – will not do as we are required to do unless prodded. Presumably virtually all of us will always refrain from intentional homicide. But we might not put coins in parking meters or adhere to speeding limits or pay all of our taxes in the absence of the threat of sanctions. Legal systems provide for sanctions to offer people special incentives when they are not otherwise motivated to comply.

Why exactly might people fail to comply? There are a number of circumstances which may contribute to disobedience. Sometimes we violate laws because of ignorance or stupidity. Othertimes we may fail to obey out of weakness of the will or some other form of irrationality. We may, in our youth, simply wish to defy authority. Or we may be fanatics, in the grips of a picture recommending disobedience. More interestingly – and controversially – there may exist “motivational gaps”; that is, it may be that even reasonable, just people will not always have sufficient reason to obey every law, even every just and good law. Sometimes it may be rational, sanctions aside, not to comply with just laws. This will often be due to the complexity of institutions and the differences between the situations of different persons.<sup>32</sup> Of course, if the state is illegitimate and the laws unjust, there will be additional reasons for non-compliance, but

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<sup>29</sup> Hart, *Concept of Law*, p. 84.

<sup>30</sup> [Refs to Hart; Raz, *Practical Reason*, p. 158.]

<sup>31</sup> To be certain, in common law systems there are principles for treating laws that have not been applied for a long time as no longer being in force.

<sup>32</sup> [Refs to *Essay*; Raz; also to Simmons.]

I am focusing on the case of legitimate states with just laws.<sup>33</sup>

If there are circumstances in which some people will not, in the absence of sanctions, be adequately motivated to comply with laws, then an important additional reason for sanctions is *assurance*. To threaten to impose sanctions for disobedience will assure those who are otherwise disposed to comply that they will not be taken advantage of by the violators. In situations where compliance with certain laws is thought to be conditional on the like compliance of others, enforcement may have as its main purpose the provision of assurance.<sup>34</sup>

What is crucial to note about these rationales is that they implicitly understand sanctions to be *secondary*. Force is thus rationalized but only as a *supplementary* measure. And this is as it should be: the law's primary appeal is to its *authority*. Hart notes this early in his discussion of command theories of law: "To command is characteristically to exercise authority over men, not power to inflict harm, and though it may be combined with threats of harm a command is primarily an appeal not to fear but to respect for authority."<sup>35</sup> The citation from Hobbes with which I opened this essay may encourage an Austinian (mis)reading of his theory. But his account of law is, as I said, more subtle. For Hobbes law is command, but his particular analysis is interesting: "Law in generall, is not Counsell, but Command... addressed to one formerly obliged to obey him [who commands]", where command is "where a man saith, *Doe this*, or *Doe not this*, without expecting other reason than the Will of him that sayeth it."<sup>36</sup> Hart interprets Hobbes' account of a command to mean that "the commander characteristically intends his hearer to take the commander's will instead of his own as a guide to action and so to take it in place of any deliberation or reasoning of his own: the expression of a commander's will that an act be done is intended to preclude or cut off any independent deliberation by the hearer of the merits pro and con of doing the act."<sup>37</sup> Authorities guide behavior by providing reasons for action to their subjects. Something is an authority in this sense only if its directives are meant to

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<sup>33</sup> I formulate this claim in terms of *just* laws but could weaken it to refer only to valid laws of a legitimate state. The point is that *even if* the laws in question are valid, just, *and* reasonable, there may still not be reasons for action for everyone. Note that if one denies this (true but) controversial thesis, one will have fewer reasons to want states to attach sanctions to laws.

<sup>34</sup> [Ref. to Hart, possibly Rawls. Cf. Sen's Assurance Game.]

<sup>35</sup> *Concept of Law*, p. 20.

<sup>36</sup> Hobbes, *Leviathan*, ch. xxvi, p. 183, and ch. xxv, p. 176..

<sup>37</sup> Hart, "Commands and Authoritative Legal Reasons", in *Essays on Bentham* (Oxford: Clarendon Press, 1982), pp. 253, 244. [Add note about action vs deliberation.]

be reasons for action.<sup>38</sup>

One does not understand law and, more generally, states if one does not see coercion and force as supplementary to authority. I suppose this is my principal claim in this essay. Coercion and force are needed when the state's authority is unappreciated, defective, or absent. Unjust states, recognized widely as such, will need to rely heavily on force; just states presumably need less force.<sup>39</sup> The latter will have recourse to coercion only when applying the law against the ignorant, the irrational, and those who may lack a sufficient reason to comply. If a state – in Rawls' terms, a constitutional regime – is just (and legitimate) and widely recognized as such, then its need for coercive power should be considerably less than Rawls suggests ("political power is always coercive power"). It is odd, then, that the state's coerciveness is one of the two features invoked in defense of a particular account of justification.

We are especially concerned about the justification of states given their potential for harm, that is, given the wrong that unjust states have been capable of. But why should our account of justification or legitimacy be tailored to the particular evils of unjust states? If just states have much less need to rely on coercion and force than evil ones, why the special emphasis on coercion in contemporary liberal theory? The coercive nature of political power ("political power is always coercive power backed up by the government's use of sanctions") is for Rawls one of two features that give rise to "the question of the legitimacy of the general structure of authority..." It is unclear that left-liberal theorists are entitled to make coercion and force as central as they do.

Notice that the use of coercion and force that is considered especially problematic by left-liberal thinkers and in need of special justification is that used against members of one's political society. The use of force against external adversaries, presumably, is not equally problematic to the contemporary liberal thinkers whose theories I am considering. If it were, they would want to require that the concerns of non-citizens or foreigners be addressed by the justificatory account they favor. If it is the problematic use of coercion and force that calls for special consideration, then perhaps the state's powers are not to be understood as justified all together, but rather piecemeal. That is, as I have argued elsewhere, some of the powers of states are justified for some people some of the time. The 'some' here may in certain circumstances

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<sup>38</sup> [Raz, *The Authority of Law*, chs. 1-2, and *The Morality of Freedom*, chs. 2-3. See also Raz, *Practical Reason and Norms* and Green, *The Authority of the State*.]

<sup>39</sup> The position I have defended elsewhere is that legitimacy is conferred by justice and efficiency. See *An Essay on the Modern State*, chs. 4-6. Justice may, of course, require consent, or consent may be an independent requirement. I am side-stepping these issues by talking simply of "just states".

include most of us much of the time. But the state's claims are much more ambitious: all of its claimed powers are justified all of the time, except when it specifies differently.<sup>40</sup>

I think that contemporary liberal thinkers exaggerate the coercive power of states. Coercion and force are not as important in most liberal, democratic societies as they are often said to be. In the same way that many people often confuse laws with commands, discussions of state coercion often confuse a number of different things. To now I have talked somewhat casually about (coercive) sanctions and force, but they should not be confused. States affix sanctions to laws, but these rarely involve force directly. Sanctions imposed by liberal states in criminal cases typically consist in the withdrawal of rights or the imposition of duties – for instance, the loss of the right to move about freely (imprisonment or probation), the prescription of certain ownership rights (confiscation of property), the duty to pay a sum of money (a fine). Some sanctions do involve force, even violence (e.g., capital punishment). But, for the most part, force is merely an enforcement measure to ensure compliance with sanction-imposing orders and with ordinary law.<sup>41</sup> We should expect the resort to force to be less common than that to sanctions, especially in just states. (In addition, power-conferring laws lack sanctions; if one fails to comply with the legal conditions for valid contracts or wills, one's acts will lack the desired legal effect, but one will incur no sanction.<sup>42</sup>)

The reliance of liberal states on force or coercion is often exaggerated. It is worth remembering the resources legitimate states have other than force or sanctions. The most important may be *authority*. Leaving that aside for the moment, consider what governments may do to motivate individuals without the threat of sanctions or force. States may prod by levying taxes or by imposing fees for different activities.<sup>43</sup> They may as well impose various restrictions or requirements on anyone wishing to carry out certain activities – for instance, licenses for those wishing to teach, to practice medicine, or to be a plumber, or insurance for anyone wishing to operate a motor vehicle or run a business. These may modify behavior and motivate without

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<sup>40</sup> How *could* states claim something less than this? [Ref. to *Essay*. Also to Raz.]

<sup>41</sup> Raz, *Practical Reason and Norms*, p. 157.

<sup>42</sup> [Ref. to Hart's classic refutation of the contention that "nullity" is a sanction.]

<sup>43</sup> These we may count as coercive in certain respects depending on how we understand people's prior property rights. On some views taxation is always coercive. But note that this would only be the case when taxation was unjust and thus a form of theft. If a state is justified or legitimate and consequently has the right to tax, then imposing taxes would not itself be coercive, even if threatening non-compliers would be.

force.

States may also influence behavior without force or sanctions by providing incentives – for instance, tax exemptions for charitable deductions or business expenses, awards and honors for public service. Most governments influence a large number of people more directly: they employ and pay them (e.g., civil servants or soldiers or contracted employees). As John Stuart Mill points out, they may also simply seek to persuade, educate, and advise:

Government may interdict all persons from doing certain things; or from doing them without its authorization; or may prescribe to them certain things to be done, or a certain manner of doing things which is left optional with them to do or to abstain from. This is the *authoritative* interference of government. There is another kind of intervention which is not authoritative: when a government, instead of issuing a command and enforcing it by penalties, adopts the course so seldom resorted to by governments, and of which such important use might be made, that of giving advice and promulgating information; or when, leaving individuals free to use their own means of pursuing any object of general interest, the government, not meddling with them, but not trusting the object solely to their care, establishes, side by side with their arrangements, an agency of its own for a like purpose...<sup>44</sup>

Our governments often succeed in changing behavior by “giving advice and promulgating information” – for instance, recent campaigns against tobacco. States also influence behavior by the simple act of recognizing or establishing standards for action.<sup>45</sup> Without resorting to sanctions or to force, states may influence behavior by informing, persuading, educating, advising, or bribing people, or by influencing them in a number of other ways. Admittedly, government activity requires resources, typically revenues derived by taxation, and these may be extracted coercively (but see note 43). The point here is that the activity funded by coercive taxation need not itself be coercive.

Insofar as subjects acknowledge state authority or accept principles recommending conformity with the law, states may influence behavior largely by determining and publicizing the law. Sanctions and force need not, under these circumstances, be a significant motivator of compliance with law. One needs also to recall that force may not be very effective against a

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<sup>44</sup> John Stuart Mill, *Principles of Political Economy*, J. Riley ed. (Oxford & New York: Oxford University Press, 1994 [1848/1871]), Bk. V, ch. 11, p. 325.

<sup>45</sup> Raz, *The Concept of a Legal System* (Oxford: Clarendon Press, 1980 [1970]), pp. 232-234.

large population generally inclined to disregard or to disobey the law. Even popular regimes usually cannot legislate or effectively control certain domains, whatever they wish. (Consider the difficulties most states have with many “victimless crimes”, or the American experiment with “prohibition” of alcohol.<sup>46</sup>) Many regimes dependent on the massive use of force are unstable and subject to swift disintegration, as they can govern only if most subjects do not resist at once and collapse when many refuse to go along at the same time.<sup>47</sup>

We should, of course, expect that laws will typically be backed by the threat of sanctions and that force may be needed. One of the reasons, after all, for wanting to have a legal system is to ensure compliance on the part of those otherwise inclined or tempted to behave in the ways required by social order (assurance). But recourse to sanctions and force, it must be stressed, does not mean that laws cannot provide reasons or motivate without such sanctions or that they must presuppose them. The law claims authority, and that claim may often be valid.<sup>48</sup> Unless one assumes that norms *per se* cannot be reasons, then there should be no reason to insist that legal rules must necessarily be backed up with sanctions.<sup>49</sup> But we should expect them to be an important part of virtually all legal and political orders, at least given the way humans seem to be. The way Raz summarizes his discussion of this question seems right:

Is it possible for there to be a legal system in force which does not provide for sanctions or which does not authorize their enforcement by force? The answer seems to be that it is humanly impossible but logically possible. It is humanly impossible because for human beings as they are the support of sanctions, to be enforced by force if necessary, is required to assure a reasonable degree of conformity to law and prevent its complete breakdown.<sup>50</sup>

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<sup>46</sup> Europeans are often surprised when they realize that the US federal government could not, even if it wished to, disarm the American public.

<sup>47</sup> [Ref. to Greg Kavka’s “rule by fear”.]

<sup>48</sup> [Note controversy.]

<sup>49</sup> It is, of course, an implication of the received theory of practical reason that all reasons for following a norm must be forward-looking. Even this need not, however, entail that sanctions are needed for reasons for obedience, as other forward-looking considerations could provide these. (I believe the received theory to be mistaken in this regard.)

<sup>50</sup> “And yet we can imagine other rational beings who may be subject to law, who have, and who would acknowledge that they have, more than enough reasons to obey the law regardless of sanctions. Perhaps even human beings may be transformed to become such creatures.” Raz, *Practical Reason and Norms*, pp. 158-159.

Most governmental activities of liberal states do not require the deployment of force, many that involve the threatening of sanctions do not customarily involve force, and much compliance with law is secured by other means. It may be claimed, however, that the state's influence is "ultimately based on" force. Recall Rawls' words: "political power is always coercive power backed up by the government's use of sanctions, for government alone has the authority to use force in upholding its laws." The fact – if it is one<sup>51</sup> – that the state monopolizes the use of legitimate force is not itself a reason to think that "political power is always coercive power backed up by the government's use of sanctions". Something may monopolize a power but rarely use it. We have also seen why this claim is, at best, too sweeping. But the state's authority is, as Rawls says, *backed up* by the threat of sanctions. So it may be that the state's power is *ultimately* coercive. In the end, "in the final instance", we may say, its power is based on force. This is not an uncommon view.

What does it mean to say that law is *ultimately* backed by sanctions or a matter of force? It is a different claim than that asserted by those who say that the state's power just *is* force. Consider the aim of *provocateurs*. They seek to provoke the agents of the state to retaliate with force so as to show state power as it is, without any disguise, as "naked force". They think that the state's appeal to its authority and to justice is a subterfuge; provoking the establishment will force it to reveal its true colors. This view, of course, is false. Such incitements establish no such thing; they merely show that governments sometimes need to use force to re-establish order. Even tyrannical regimes require something more than force to remain in place. It can't be only (or even mainly) force. (See my concluding remarks about "force all the way down".) The claim that the state is ultimately coercive seems something else. It is not to say that state power is always coercive, albeit in disguise. It is to say something different, that "ultimately" state power is based on force.<sup>52</sup> What might this mean? How might we determine if this is true?

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Some think that were humans such that they could do well with sanctionless political systems, then they would most likely not need much, if any, government in the first place. In such a world, "State interference in social relations becomes, in one domain after another, superfluous, and then dies out of itself; the government of persons is replaced by the administration of things... The state is not 'abolished.' *It dies out.*" Friedrich Engels, "Socialism: Utopian and Scientific" [1880], in *The Marx-Engels Reader*, R. Tucker ed., 2<sup>nd</sup> ed. (New York: W.W. Norton, 1978), p. 713. This is mistaken as we presumably would need states – e.g., legislative, judicial, and administrative agencies – in order to make general principles determinate and specific and to apply them to new cases.

<sup>51</sup> [Ref. to *An Essay on the Modern State*.]

<sup>52</sup> "State-power is in the last analysis coercive power... 'the political' refers to a domain in which the use of force *as a final resort* is always present as a real possibility." Raymond Geus, *History and Illusion in*



Recall Carl Schmitt's famous attribution of sovereignty to whomever decides in exceptional circumstances: "*Souverän ist, wer über den Ausnahmezustand entscheidet.*"<sup>53</sup> Schmitt's thought seems to be that whomever decides in certain circumstances – when the political or constitutional order breaks down – is the sovereign. The idea that the person or body that decides when things break down is uniquely important has a certain appeal, whether or not one wants to connect it with a conception of sovereignty. But it does not fare well under examination. It is unclear why the person or body that has the greatest say in a particular circumstance has sovereignty or ultimate authority. For it need not be that the body that determines what happens in the event that social order breaks down is the same one that decides matters in other circumstances. In addition, a political or social order may collapse in a number of ways; if it collapses in one way, then some persons may dominate, in another, then others may dominate. It cannot be expected that the same persons or bodies will be decisive in the event of any breakdown in the political or social order. The supposition is that when order breaks down, someone will be in a position to "dictate" what happens. Some constitutional orders may specify a procedure for naming (and limiting the power of) such a dictator, as in the case of the Roman Republic. But political orders can break down in many ways, at different times, and the persons who are well situated to be in this position at one time may not be at another.<sup>54</sup>

The term 'ultimate' is one of the most opaque in philosophy and social theory and should be used with care. In one context, that of an ultimate authority, however, it can be made clear. An authority may be ultimate if it is the *highest* authority. This idea presupposes that authorities constitute an ordering (often a strict ordering), and that the highest authority is the last one in a certain chain or continuum of authorities. Most legal systems are thought to have such a hierarchical structure, so that we can talk of the highest or ultimate authority for any such legal order. The reality may not always conform to this picture, but that point need not detain us.<sup>55</sup> Even if we can find in all legal systems a hierarchical ordering of *authority*, it is very unlikely that *power* generally will be so ordered. That is, it is very unlikely that we can order power relations in this way, so that for any pair of powers one is greater than the other and the set of all

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*Politics* (Cambridge: Cambridge University Press, 2001), pp. 14, 17.

<sup>53</sup> [Schmitt, *Political Theology*, p. ?? (*état d'exception, état d'urgence*)]

<sup>54</sup> [Refs to Austin on US sovereignty; Amar on US sovereignty. Also, Winston Bush and Jim Buchanan's notion of a natural equilibrium, *Limits of Liberty*. Natural equilibria may be numerous and unpredictable.]

<sup>55</sup> [Refs. to *Essay*, Raz, *Concept of a Legal System*.]

powers is an ordering (i.e., transitive). If this is right, it means that the concept of an ultimate power will be ill-defined. This means that it is unclear and likely misleading to talk of “ultimate” powers. For there may never be one power that is so placed that *it* is “ultimate” (or “final”).<sup>56</sup>

One may argue that coercion and force are fundamental to maintaining social order. That is, it may be thought to be more important than any other factor in maintaining the state. The proof is that no state can do without it. (Raz: “for human beings as they are the support of sanctions, to be enforced by force if necessary, is required to assure a reasonable degree of conformity to law and prevent its complete breakdown.”) Remove force (and sanctions), and the legal order collapses. But this argument, common as it is, is too swift. Why do we obey the law or, for that matter, do almost anything? Usually our reasons are multiple. And very often our actions are overdetermined. Consider first the case of overdetermined actions. Removing one consideration favoring the action in question may not change the balance of reasons. I am supposing that we act, and should act, in most circumstances on the balance of reasons.<sup>57</sup> The metaphor here is that of weights and measures. The rationality of an act is determined by the relative “weight” of reasons favoring it over other alternatives. If an act is overdetermined by reasons, then removing one reason (e.g., the threat of sanctions) may not affect our rational choice. Consider next acts that are not overdetermined. Suppose, for instance, that I decide to put money in a parking meter or to pay my employee’s (US) Social Security taxes and that I would not have had there been no credible threat of sanctions. Does this show that coercion is *decisive* in determining my action? We might say that it does, but this would be true only in the sense that any number of things are equally decisive. After all, if the act is not overdetermined and is favored by the balance of reasons, virtually any change will alter the balance; that is, anything that “tips the balance” will, on this account, be decisive. (Imagine weighing some vegetables on an old-fashioned scale. They weigh two pounds but you assert that they weigh one pound, for were one to remove the one-pound weight from the other side of the balance, the two sides would not be level, and this shows that the one-pound weight is decisive.)

Coercion and force may be important and even indispensable, but that does not mean they are more important than anything else. A political order which may not hold together without force may also collapse if numerous other factors are not present – for instance, if subjects cease to be patriotic, if they become less imprudent, if they sober up, if they become literate, if they act together. Our societies are held together by many things. Some may be more

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<sup>56</sup> [Refs. to *Essay*, ch. on sovereignty.]

<sup>57</sup> Rational choice theory is a special case of the more general balance-of-reasons account.

important than others, and some of these may be indispensable. But it's not clear that coercion or force are in any interesting sense "ultimate".

I have argued that influential conceptions of state power as essentially coercive are mistaken. They are mistaken in thinking that states and force are conceptually connected. And more importantly, they err in attributing too much importance to coercive power. It is not that just states can eliminate the threat of sanctions. It is that sanctions and force do not play as central a role as it widely thought. The widespread belief that "political power is always coercive power" has misled political thinkers in a number of ways. First of all, they suggest "bad man" theories of law or "realist" views of states (and international affairs). Defenders of these theories tend to assume that coercion and force are necessary to order. There may be considerable truth to their assumption, but their theoretical conclusions will typically not be warranted if the importance of coercion and force is understood as I have argued here.

These misconceptions also lead us to neglect other means of getting people to act as we should want them to act. Nagel's conception of politics as a domain "where we are all competing to get the coercive power of the state behind the institutions we favor" is misleading, as well as dangerous.<sup>58</sup>

They also contribute to the neglect in contemporary political theory – but not in legal theory – of the importance and centrality of the state's *authority*. Libertarians and left-liberals put the state's coercive powers at center stage, but these powers are less puzzling or problematic than their claims to authority. Indeed, what's puzzling about the state's coercive powers is not its justification for its use of sanctions or force; rather it is the justification for its claim to *monopolize legitimate* force. It is *these* powers that Anscombe singles out when she remarks that "civil society is the bearer of rights of coercion not possibly existent among men without government." In a certain respect, states are both easier and harder to justify.<sup>59</sup> In my view their use of force may be much less problematic than is usually assumed. It's not hard to justify the use of force against killers and bullies. What is hard to justify are the extraordinarily sweeping powers claimed by states. I tend to be sceptical that these claims can be justified.<sup>60</sup>

These misconceptions also contribute to the neglect of the large amount of consensus and

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<sup>58</sup> [Say more: subjects are a passive audience (Simmons), false dilemmas ("either state coercion or voluntary agreement").]

<sup>59</sup> [I bypass questions about the distinction between justification and legitimacy here.]

<sup>60</sup> [Ref. to *Essay*. See also Simmons, Green, Raz.]

coordination necessary for states or for any political order.

Lastly, these misconceptions contribute to the neglect of considerations of alternatives to states.