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STATE COERCION AND FORCE*

By Christopher W. Morris

"Covenants, without the Sword, are but Words, and of no strength to secure a man at all," Thomas Hobbes famously proclaimed.[1] He exaggerated. As I shall point out later, his position is more subtle than that suggested by this famous citation. There is no doubt, however, that he thought the sword to be of central importance to the state. This is one of the very few points about which there is little disagreement today 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."[2] He is not alone in thinking this, as we shall see. This belief in the centrality of coercion and force plays an important but not well-appreciated role in contemporary political thought. However, it is an idea which is to some extent mistaken and quite misleading.

I. State Power is Coercive

Rawls's 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 other feature is that "[p]olitical society is closed: we come to be within it and we do not, and indeed cannot, enter or leave it voluntarily."[3] Indeed, it is these two features that he believes give rise to "the

* The predecessor of this essay, entitled "Is the State Necessarily Coercive?" was discussed at Bowling Green State University, George Mason University, Georgetown University, the University of Maryland, the University of Virginia, and the 20th World Congress of the International Association for Philosophy of Law and Social Philosophy (Amsterdam). I am grateful to these audiences for comments, as well as to Marvin Belzer, Alon Harel, and Arthur Ripstein for helpful written remarks. Drafts of this version of the essay were presented at Chapman University and the University of Arizona, and I am grateful to these audiences as well as to the other contributors to this volume for comments. Lastly, Ellen Paul and James Taggart have provided me with valuable comments on the penultimate draft of the essay.

[1] Thomas Hobbes, *Leviathan*, ed. Richard Tuck (Cambridge: Cambridge University Press, 1991 [1649]), chap. XVII, 117.

[2] John Rawls, *Political Liberalism* (New York: Columbia University Press, 1996 [1993]), 136.

[3] Ibid., 136.

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question of the legitimacy of the general structure of authority." Rawls thinks that

> 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" 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."[4] The political is marked by the prevalence of coercive power, and this fact is thought to have special significance.

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."[5] While some anarchists hope that a stateless world would be one without coercion, most object to the manner in which states accumulate, centralize, and seek to monopolize coercion and force.[6]

The apparent consensus 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's particular conception of political legitimacy. It seems to be especially important to the thinking of many contemporary left-liberal theorists as well. 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

[4] Ibid., 137.

[5] Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), xi.

[6] See Crispin Sartwell, *Against the State: An Introduction to Anarchist Political Theory* (Albany, NY: State University of New York Press, 2008) and virtually all of the authors in Roderick T. Long and Tibor R. Machan eds., *Anarchism/Minarchism: Is Government Part of a Free Country?* (Ashgate, 2008). Michael Taylor's useful characterization of anarchy is in terms of the dispersal of coercion and 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." Michael Taylor, *Community, Anarchy, and Liberty* (Cambridge: Cambridge University Press, 1982), 5–6.

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> humanity never merely as a means, but always as an end] becomes a condition of political legitimacy.[7]

Revealingly, Nagel notes elsewhere that we think 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.[8]

A coercive conception of states seems to play an equally important role in the thinking of Ronald Dworkin. A consideration that 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 argues 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.[9]

I wish to examine critically this thesis about the central importance of coercion and force to states. It is, as I said, widely shared and largely accepted uncritically, but I do not think that its significance has been well appreciated. It is an imprecise thesis, but I think it is of some importance in contemporary political thought. The coercive nature of states is thought to have two important implications for political theory, both of which are

[7] Thomas Nagel, *Equality and Partiality* (New York: Oxford University Press, 1991), 159.
[8] Thomas Nagel, "Moral Conflict and Political Legitimacy," *Philosophy and Public Affairs* 16, no. 3 (1987): 215–16, 218.
[9] Ronald Dworkin, *Law's Empire* (London: Fontana Press, 1986), 188, 190–1.

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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 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.[10] And consent will not help either if it is not available (because, repeating Rawls for example, "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.[11]

Left-liberals like Rawls and Nagel may differentiate between the concern owed to members of a particular society and that owed to outsiders for different reasons. In a particularly illuminating essay, Michael Blake argues "Coercion, not cooperation, is the sine qua non of distributive justice. . . ."[12] The "political and legal institutions [members of a particular society] share at the national level create a need for distinct forms of justification. A concern with relative shares, I argue, is a plausible interpretation of liberal principles only when those principles are applied to individuals who share liability to the coercive network of state governance."[13] The "tremendous coercive powers of the state"[14] are what mandates this approach to political theory.

On the view of many important liberal political thinkers, the coercive nature of states calls for special kinds of justifications. The state's coer-

[10] 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." Nozick, *Anarchy, State, and Utopia,* ix.

[11] 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 Larmore, *The Morals of Modernity* (Cambridge: Cambridge University Press, 1996), 123.

[12] Michael Blake, "Distributive Justice, State Coercion, and Autonomy," *Philosophy and Public Affairs* 30, no. 3 (2002): 257–96.

[13] Ibid., 258.

[14] Ibid., 263.

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civeness plays an important role in contemporary liberal political theory. I shall explore why we might think that states, especially just ones, are as coercive as contemporary thinkers believe. These thinkers' reliance on the claim that the state is fundamentally coercive, however, threatens instability. They assume that states are very coercive and propose ways of justifying them. There are a number of ways the story could go. On one possibility, the states that are justified will be much less coercive (because they will be just and widely supported). That result would threaten the assumption that states are by nature deeply coercive, since from an alternative baseline perhaps a different type of state would be justified. Another way the story could go is this: the states justified would remain quite coercive. This second possibility would seem puzzling and might suggest that the justification is defective. There is much more to be said here, but I shall move on to an examination of the hypothesis of the state's coerciveness.

II. By Definition States are Coercive

This assumption about the state's coercive nature is mistaken and misleading, I shall argue. How does it come to be so widely shared? Andrew Levine, a Marxist thinker, believes 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."[15] Now, why might we think this to be true *by definition*? 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 at the outset what we mean. In his introductory text, 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 monopoly of legitimate violence. . . . All legitimate violence or coercion is undertaken or supervised by the state.[16]

The search for a "definition" of the state in contemporary political theory invariably refers us to Max Weber's famous claim that "a state is a human community that (successfully) claims the *monopoly of the legitimate use of physical force* [*physischer Gewaltsamkeit*] within a given territory." Weber

[15] Andrew Levine, *The End of the State* (London: Verso, 1987), 176.
[16] Jonathan Wolff, *An Introduction to Political Philosophy* (Oxford: Oxford University Press, 1996), 39.

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 [*Gewaltsamkeit*]."[17] 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. My main objective is 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 or coercion in a territory. 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 either permitted by the state or prescribed by it.[18]

This is a much better characterization than the oft quoted passage from Weber's "Politics as a Vocation," which was a public address. 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 its characterization must allude to a large 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

[17] Max Weber, "Politics as a Vocation," in *From Max Weber: Essays in Sociology,* Hans H. Gerth and C. Wright Mills, trans. and eds. (New York: Oxford University Press, 1946 [1919]), 78.

[18] Weber, *The Theory of Social and Economic Organization* (Part I of *Wirtschaft und Gesellschaft*), A. M. Henderson and Talcott Parsons trans. (New York: Oxford University Press, 1947), 156.

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cluster of attributes.[19]) A more serious problem, which I shall not address, is how one can define complex terms with histories: "only that which has no history is definable."[20] It is not clear how an argument from definition for the centrality of coercion can be persuasive.

The incompleteness of Weberian definitions is only part of my objection to them. The second major concern is about understanding coercion or force to be part of the *concept* of the state; they do not seem to be conceptually tied. States without coercion or force are *conceivable.* If that is the case, then coercion and force are not conceptually connected to the concept of the state. I will say more about the antecedent presently. First another thought experiment. Consider a "state" without law or one for which 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 the argument is certainly too swift. I need, in any case, to say more at this point about how we should think about coercion and force. Part of the attempt to understand the relation 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 coercion leaves its victims some choice. *Force* usually involves additional constraints, for instance, restraining someone or confining his or her movements, leaving victims little or no choice.[21] *Violence* paradigmatically is a species of physical force, and it may be understood to "violate" its subjects, damaging their bodies. 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, or we make them an offer (which they can refuse).[22] And, as I shall note later, *authority* is an important means of moving people to action.[23]

[19] See my *Essay on the Modern State* (Cambridge: Cambridge University Press, 1998), 45–46, where I characterize a state in terms of a number of interrelated features. See also my "How (not) to Define the State" (unpublished manuscript).

[20] Friedrich Nietzsche, *Beyond Good and Evil,* trans. R. J. Hollingdale and Walter Kaufman ([1887] New York: Random House, 1967) II, 13.

[21] Force can also be used to seize assets or close routes of escape. We are focusing on the uses of force directly against persons.

[22] Persuasion normally presupposes that the persuader may not resort to coercion or force, lest his or her offers be those that cannot be refused. This point is important for the discussion at the end of this essay about the possibility that resorting to coercion or force is always available to states, even if rarely resorted to. I owe this point to James Taggart.

[23] We may also trick, manipulate, or deceive others into doing as we wish.

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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.[24]) More detailed characterizations of these concepts are quite controversial. The concept of power is itself notoriously difficult to characterize precisely.[25] Much of the recent literature on coercion focuses on the question whether the notion can be understood empirically and nonnormatively.[26] If the concept of coercion is necessarily *moralized*—if, for instance, coercive proposals are necessarily wrong—then to think of the state as *coercive* is already to consider it presumptively illegitimate, or at least problematic.[27] I shall not address these difficult questions and shall assume an imprecise, nonmoralized characterization of coercion and force, which I think will not beg any important questions.

To return to the conceptual question: can one conceive of a state that does not coerce, that is, does not seek to induce people to act as they are required to act 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. Here is the thought experiment: Suppose that a particular state is legitimate, its basic structure and its laws are just, and 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, 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.[28]

I do not want to make too much of this claim. For one, in order to do so I would need to defend the conceivability test of conceptual truths employed above, and there are difficult questions here about the nature of concepts and conceptual truths. (Was sovereignty once part of the concept of a state but no longer is? Does it remain part of a

[24] A specialized physician offers to save a dying infant if its mother agrees to marry him. Is this a coercive proposal?

[25] See, for instance, Keith Dowding, *Power* (Minneapolis: University of Minnesota Press, 1996).

[26] See Joel Feinberg, "Coercion," in *Routledge Encyclopedia of Philosophy,* Edward Craig, ed. (New York and London: Routledge, 1998), vol. 1, 387–90; Alan Wertheimer, "Coercion," in Lawrence and Charlotte Becker, eds., *Encyclopedia of Ethics,* 2d ed. (New York and London: Routledge, 2001), 172–75; and Scott Anderson, "Coercion," *Stanford Encylopedia of Philosophy,* http://plato.stanford.edu/entries/coercion/.

[27] See William A. Edmundson, *Three Anarchical Fallacies* (Cambridge: Cambridge University Press, 1998), chap. 6, and Alan Wertheimer, *Coercion* (Princeton: Princeton University Press, 1987), chap. 14.

[28] My formulation, in terms of legitimate states, just laws, and the like is intended to sidestep a number of debates about obligations and reasons to obey.

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European concept, but not an American one?) Now 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. It is also the case that being necessary does not entail being important and vice versa.[29] Coercion may be an important attribute of states without being part of the concept or otherwise linked to it necessarily. The fact that state and coercion are not conceptually connected does not seem to settle any important questions.

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; at the least it is very misleading. Whatever we think about definitions and conceptual truths, this claim needs to be examined more closely.

III. Laws and Sanctions

The thinkers I have quoted also emphasize the state's claimed *monopoly* on the legitimate use of force, and it is clear that this sort of normative power is special and does require special attention. G. E. M. Anscombe notes that "civil society is the bearer of rights of coercion not possibly existent among men without government."[30] I do not, however, wish here to discuss the state's alleged monopolization of force (see my remarks at the end of the essay).[31] Rather, I wish now to argue that the state's use of coercion or force is not, in a certain sense, primary. I will also argue that its use of force is not as prevalent or as important as it is believed to be by contemporary political thinkers.

Rawls says that "political power is always coercive power backed up by the government's use of sanctions." Why then might we think this? Perhaps because of the conjunction of law and sanction. It is not uncommon to associate laws with sanctions. Recall John Austin's well-known account 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 in case the desire be disregarded." Commands yield 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,

[29] I owe this point to Leslie Green.

[30] G. E. M. Anscombe, "On the Source of the Authority of the State," in *Ethics, Religion and Politics: Collected Philosophical Papers,* vol. 3 (Minneapolis: University of Minnesota Press, 1981), 147.

[31] See Morris, *An Essay on the Modern State,* 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.

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or I lie under a *duty* to obey it."[32] This important view is no longer influential in jurisprudence. 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).[33] But the central failure of Austin's account—and of similar reductive stories—is in the attempt to explain the normativity of law in terms of nonnormative 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.[34] 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.[35]

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 event 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 his being caught or made to suffer. In fact, there is no contradiction in saying this, and such statements are often made and understood.[36]

It is implausible to understand laws as commands backed by threats, even if many or most (duty-imposing) laws are in fact backed by sanc-

[32] John Austin, *The Province of Jurisprudence Determined* (Cambridge: Cambridge University Press, 1995 [1st ed. 1832, 5th ed. 1885]), Lecture II, 21–22.
[33] H. L. A. Hart, *The Concept of Law*, 2d ed. (Oxford: Clarendon Press, 1994 [1961]), chap. 3.
[34] Ibid., 82–83.
[35] Ibid., 80.
[36] Ibid., 84.

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tions.[37] 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. Not only are some laws not duty-imposing, but some duty-imposing laws are not backed by sanctions—for instance, many laws obligating officials. It is also true that enforcement is usually imperfect in the best of cases. When a sanction is not attached to a law or when a law is not certain to be enforced, we do not say that it ceases to be a law.[38]

IV. The Authority of Law

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, people—most of us included—will not always do as they 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 many 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. And, of course, some laws are unjust and many others are pointless or stupid.

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. That is, 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. The ailing chemist may imbibe some illegal drugs, and the skilled racing driver may drive his Porsche above the speed limit on

[37] In addition to Hart, see Hans Oberdiek, "The Role of Sanctions and Coercion in Understanding Law and Legal Systems," *American Journal of Jurisprudence* 71 (1976): 71–94. I regret not being able to discuss Frederick Schauer, "Was Austin Right After All? On the Role of Sanctions in a Theory of Law," *Ratio Juris* vol. 23, no. 1 (2010): 1–21, which I came across too late to include here.

[38] Of course, 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. It should be noted that sanctions can function to signal that a rule is a genuine law. And they sometimes can also express the compulsory nature of the state and the status of the state, a point I owe to Alon Harel.

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deserted highways.[39] Of course, if the state is illegitimate and the laws unjust, there will be additional reasons for noncompliance, but I am focusing on the case of legitimate states with just laws.[40]

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.[41]

What is crucial to note about these rationales is that they implicitly understand sanctions to be *secondary.* Coercion 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."[42] 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."[43] Hart interprets Hobbes's 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

[39] See my "The Trouble with Justice," in *Morality and Self-Interest,* ed. Paul Bloomfield (New York: Oxford University Press, 2008), 15–30.

[40] 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. If one does not accept this controversial thesis and one thinks that valid, just, and reasonable laws always are reasons of the right sort for everyone, one will have one less reason to want states to attach sanctions to laws.

[41] Hart, *Concept of Law,* 198. (The following is a note for those familiar with elementary game theory.) Suppose that everyone in a political society has Assurance Game preferences (i.e., they prefer mutual cooperation to unilateral defection); then information about people's preferences will increase cooperation. Suppose that some people have Assurance Game preferences, but many others have Prisoners' Dilemma preferences (i.e., they prefer unilateral defection to mutual cooperation). Then coercion may be necessary to secure the cooperation of all.

[42] Ibid., 20.

[43] Hobbes, *Leviathan,* chap. xxvi, 183, and chap. xxv, 176.

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doing the act."[44] 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 be reasons for action.[45]

One does not understand law and, more generally, states if one does not see coercion and force as *supplementary* to authority. Coercion and force are needed when the state's claimed authority is unappreciated, defective, or absent. Unjust states, recognized widely as such, will need to rely heavily on force; just states presumably need much less force.[46] The latter will have recourse to coercion or force 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's 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 when he states that "[p]olitical power is always coercive power." It is puzzling, then, that the state's coerciveness is one of the two features Rawls invokes in defense of a particular account of justification.

We are and should be 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 and massively coercive states (e.g., Nazi Germany, the Soviet Union)? 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 is for Rawls one of two features that give rise to "the question of the legitimacy of the general structure of authority. . . ." Why? If a state is just, especially if justice itself makes allowances for "the strains of commitment,"[47] the coercion needed should be relatively little, restricted mainly to the unreasonable and teenagers. 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

[44] Hart, "Commands and Authoritative Legal Reasons," in *Essays on Bentham* (Oxford: Clarendon Press, 1982), 244, 253.

[45] Joseph Raz, *The Authority of Law,* 2d ed. (Oxford: Oxford University Press, 2009 [1979]), chaps. 1–2, and *The Morality of Freedom* (Oxford: Clarendon Press, 1986), chaps. 2–3. See also Raz, *Practical Reason and Norms* (Oxford: Clarendon, 1999 [1975]) and Leslie Green, *The Authority of the State* (Oxford: Clarendon Press, 1988).

[46] The position I have defended elsewhere is that legitimacy is conferred by justice and efficiency. See Morris, *An Essay on the Modern State,* chaps. 4–6. Justice may, of course, require consent, or consent may be an independent requirement. I am sidestepping these controversial questions by talking simply of "just states." See my "State Legitimacy and Social Order," in *Political Legitimization without Morality,* ed. Jörg Kühnelt (Heidelberg: Springer, 2008), 15–32. The starting point for contemporary discussions of these questions should be John Simmons, "Justification and Legitimacy," reprinted in his *Justification and Legitimacy* (Cambridge: Cambridge University Press, 2001), 122–57.

[47] As Rawls's account of justice does; see *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), 145, 176ff.

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that used against members of one's political society. The use of force (and violence) against external adversaries, presumably, is not equally problematic to the contemporary liberal thinkers whose theories I am considering. If it were, these thinkers would want to require that the concerns of noncitizens or foreigners be addressed by the justificatory account they favor.[48] 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 include most of us much of the time. The state's claims are much more ambitious: all of its claimed powers are justified all of the time, except when they are self-limiting. But these claims may be false, or at the least exaggerated.

V. Alternatives to Coercion

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. 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). The application of some sanctions can involve force, and some are violent (e.g., flogging, capital punishment). But, for the most part, force when conjoined with sanctions is merely an enforcement measure to ensure compliance with prior sanction-imposing orders and with ordinary law.[49] We should expect the resort to force to be less common than that to sanctions, especially in just states.[50]

[48] Famously, Rawls and Nagel do not think outsiders have a right to be consulted. See Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999), and Nagel, "The Problem of Global Justice," *Philosophy and Public Affairs* 33, no. 2 (2005): 113–47.

[49] Handcuffs may be put on the criminal when apprehended and after sentencing. Force, of course, is also used by state officials in matters unrelated to the enforcement of the law and the application of sanctions, e.g., in restraining someone who is mentally ill or at risk of spreading contagious disease. See Grant Lamond, "The Coerciveness of Law," *Oxford Journal of Legal Studies* 20 (2000): 39–62, and "Coercion and the Nature of Law," *Legal Theory* 7 (2001): 35–57.

[50] It is worth remembering that power-conferring laws lack sanctions and do not involve force; 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.

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The reliance of states on force or coercion is often exaggerated. It is consequently worth remembering what resources legitimate states have other than force or sanctions. The most important one 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.[51] They may also 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 coercion or force (though they may violate rights to freedom).

States may also influence behavior without sanctions or force by providing incentives—for instance, tax exemptions for charitable deductions or business investments, and awards or 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, governments 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. . . .[52]

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.[53] Without resorting to sanctions or to

[51] We may count these 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* has a (limited) right to tax, then imposing taxes would not itself be coercive, even if threatening noncompliers would be.

[52] John Stuart Mill, *Principles of Political Economy,* J. Riley ed. (Oxford and New York: Oxford University Press, 1994 [1848; 1871]), Bk. V, chap. 11, p. 325.

[53] Raz, *The Concept of a Legal System* (Oxford: Clarendon Press, 1980 [1970]), 232–34.

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 51). The point here, often missed, 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 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.[54]) Many regimes that are 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 at the same time to go along.[55]

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 not otherwise inclined or tempted to behave in the ways required by social order, thereby providing assurance to the remainder of the population. But recourse to coercion and force, it must be stressed, does not mean that laws cannot provide reasons or motivate without such sanctions or that laws must presuppose them. The law claims authority, and that claim may often be valid. Unless one assumes that norms *per se* cannot be reasons, then there should be no ground to insist that legal rules must necessarily or always be backed up with sanctions.[56] But we should expect sanctions to be an important part of virtually all legal and political orders, given the way humans seem to be. The way Joseph 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

[54] Europeans are often surprised when they come to understand that the United States federal government could not, even if it wished to, disarm the American public.

[55] See Gregory S. Kavka's discussion of "rule by fear" in *Hobbesian Moral and Political Theory* (Princeton: Princeton University Press, 1986), chap. 6.2.

[56] 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.

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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.[57]

VI. "Ultimately Coercive"

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's 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—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.[58]

What does it mean to say that law is *ultimately* backed by sanctions or a matter of force? This claim is different from 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 secure or

[57] He continues: "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,* 158–59.

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, "[s]tate 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., 2d ed. (New York: W.W. Norton, 1978), 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. This is an important point that I cannot pursue here.

[58] "The state rests ultimately on force, of course. . . ." Sartwell, *Against the State,* 18.

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to re-establish order. Even tyrannical regimes require something more than force to remain in place. It cannot be only (or even mainly) force. The claim that the state is ultimately coercive seems to be 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. "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."[59] What might this mean? How might we determine if this is true?

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, 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.[60] Even if we can find in all legal systems a hierarchical ordering of *authority,* it is very unlikely that nonnormative *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 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").[61]

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 and persuasive 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.[62] The metaphor here is that of weights and measures. The rationality of an act is determined by the rel-

[59] Raymond Geuss, *History and Illusion in Politics* (Cambridge: Cambridge University Press, 2001), 14, 17.

[60] See my *Essay on the Modern State,* chap. 7 and Raz, *The Concept of a Legal System,* 138–40.

[61] As argued in my *Essay on the Modern State,* chap. 7.

[62] Rational choice theory is a special case of the more general balance-of-reasons account.

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ative "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 (U.S.) Social Security taxes and that I would not have done so 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 a 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; anything that "tips the balance" will, on this account, be decisive. For instance, if one becomes a principled anarchist or just less risk-averse, one may defy the parking authorities and the tax agencies in spite of the threat of sanctions.[63]

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, or if they act together. Our societies are held together by many things. Some may be more important than others, and some of these may be indispensable. But it is not clear that coercion or force are in any interesting sense "ultimate."

VII. Some Brief Remarks about Authority and Coercion

Many political and legal thinkers have thought that laws constrain liberty. Hobbes and Bentham and many others believed this. We are now aware that only duty-imposing laws seem to do this—power-conferring laws do not. If one thinks of restrictions of liberty as forms of coercion, then this thesis would have us understand many laws as coercive. I want to resist this understanding of coercion, and I do not want to endorse Bentham's thesis or any particular account of human liberty.

When law restricts liberty, it is usually not law *per se* but (genuine) authority that restricts liberty. That is, when an agency with (genuine) authority lays down or endorses a duty-creating rule, making it a law, it restricts liberty. (It may also expand liberty, but I am leaving these matters aside here.) To deny this is to deny that the "authority" in question is a genuine authority, that is, has the power to create genuine duties that are reasons for action.

[63] It is not easy establishing that a consideration is decisive. Suppose one is deliberating buying a multi-attributive object, such as a car. One hesitates, and the salesperson throws in a great stereo. That is not evidence that the stereo is decisive. If something "tips the balance," then removing many other things will tip it back. Are they also decisive?

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Arthur Ripstein, in an important essay, argues that "the state's claim to authority is inseparable from the rationale for coercion."[64] He is arguing against philosophers like myself who view authority as prior to coercion. Ripstein understands coercion differently than I do. For him, following Kant, it is an interference with external freedom. This is not the place to examine and challenge his Kantian account of the nature of authority.[65] Still, one does not need to accept his Kantian account to agree that authority and coercion are connected, at least in several ways.

Authority and coercion are connected in important ways. Coercion and force are authorized by law (as well as by justice). So coercion and force are permissible in circumstances when they are allowed by the law (of a legitimate state).[66] Authority here is prior to coercion.

More importantly, the state's (normative) power includes the right to enforce the law. The (legitimate) state's right to rule includes the right to enforce. Must it? Presumably not in all possible worlds. But return to the hypothetical example I gave earlier of a just state that needed to deploy no coercion or force. I think it would still have the right to use coercion or force if necessary.[67] I am not sure that this is a conceptual connection, but that does not matter. The (normative) powers of a legitimate state seem to include the right to coerce.[68]

When many political theorists highlight the state's coercive nature, they often emphasize its apparent claim to a monopoly of (legitimate) coercion or force. I have said little about this monopolistic power. The state's apparent coerciveness may have three elements. A legitimate state (1) may coerce justly, (2) has the (limited) right to determine when coercion is justified, and (3) has the right to prevent others from coercing. I mentioned earlier that elsewhere I argue that (3) in effect follows from the state's claim to comprehensive authority, the power to regulate any type of activity.[69] As I do not think this claim to comprehensive authority is justified, I think that the state's right to prevent others from coercing may be quite limited. However, I do think that when a legitimate state does justly forbid others from coercing, the source of this power is its authority. So I partially agree with Ripstein that authority and the power to enforce

[64] Arthur Ripstein, "Authority and Coercion," *Philosophy and Public Affairs* 32 (2004): 2.

[65] See Arthur Ripstein, *Force and Freedom: Kant's Legal and Political Philosophy* (Cambridge: Harvard University Press, 2009).

[66] Here our understanding of legitimacy and the ways it is different from justification matter. Only the laws of states that meet certain standards will have the normative power relevant here, and I think the standards are those of legitimacy.

[67] I did not see the significance of this point when Mahesh Ananth, Marvin Belzer, Wade Maki, and Sangeeta Sangha pressed it against the predecessor of this essay. Michael Pace more recently also suggested to me that the mere retention of this right could threaten (and, perhaps, could thus be coercive).

[68] Grant Lamond argues in the essays cited earlier that the law's claim to authority includes the right to authorize coercion. I regret not having read these essays until recently.

[69] See my *Essay on the Modern State*, 205–6, and the references in note 80 (on p. 205).

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are connected. Much more needs to be said here, but an extended discussion of these issues is beyond the aims of this essay.

VIII. Concluding Remarks

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, but much more importantly, they err in attributing too much importance or significance to coercive power. It is not that just states can entirely eliminate the threat of sanctions. It is that coercion and force do not play as central a role as is widely thought, and this fact should affect the role the state's coerciveness ought to play in our accounts of legitimate or just states.

The widespread belief that "political power is always coercive power" has misled political thinkers in a number of ways which I shall mention briefly. First of all, it suggests "bad man" accounts of law or "realist" views of states (and international affairs), and these accounts are one-sided, as has often been argued.

The belief that state power is essentially coercive leads us, second, to neglect other means of getting people to act as we should want them to act. Nagel's depressing 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 not only misleading; it is dangerous if it discourages us from using noncoercive means to get people to act justly.

Third, this mistaken belief also contributes to the neglect of the large amount of consensus and coordination necessary for states or for any political order, a theme I have barely touched on here.[70] Fourth, it contributes to the neglect of consideration of alternatives to states.[71]

Lastly, the belief that political power is fundamentally coercive also contributes 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 is puzzling about the state's coercive powers is not the justification for its use of sanctions or force; rather it is the justification for its claim to *monopolize* legitimate force. It may be this power that Anscombe singles out when she remarks that "civil society is the bearer of rights of coercion not possibly existent among men without

[70] Hart's "rule of recognition," central to his account of the constituting of a legal system, depends on agreement; see Hart, *The Concept of Law.* See also Russell Hardin, "Why a Constitution?" in Bernard Grofman and Donald Wittman, eds., *The Federalist Papers and the New Institutionalism* (New York: Agathon Press, 1989), and *Liberalism, Constitutionalism, and Democracy* (Oxford: Oxford University Press, 1999), chap. 3; and Barry Weingast, "The Political Foundations of Democracy and the Rule of Law," *American Political Science Review* 91, no. 2 (1997): 245–63.

[71] See my *Essay on the Modern State,* especially chap. 2.

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government." In a certain respect, states are both easier and harder to justify.[72] In my view their use of force may be much less problematic than is usually assumed. Quite often it is not hard to justify the use of force, for instance, against killers and bullies. What is hard to justify are the extraordinarily sweeping powers claimed by states. I tend to be skeptical that these claims can be justified.[73] But the path to justifying them lies through the state's authority.

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[72] I bypass questions about the distinction between justification and legitimacy here. See my essay on legitimacy referred to above, as well as Simmons, "Justification and Legitimacy."

[73] See my *Essay on the Modern State,* as well as the works of Leslie Green, Joseph Raz, and John Simmons cited.

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