Rights, Uncertainty, and State Capacity

A Theory of Legitimacy[1]

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> *But in general they do wrong in the highest degree by willing to be and to remain in a condition that is not rightful, that is, in which no one is assured of what is his against violence*. (Kant, 1797, sec. 6.307-8)

> *If I lived in a place that was rather smoothly run by the Mafia… I, together with many others, might feel as safe and unimpeded and unthreatened as people do under many governments*. (Anscombe, 1981, p. 132)

Abstract

Functionalist and natural duty theories of legitimacy ground the state's right to monopolise coercion in its unique ability to overcome the uncertainties of a stateless society. However, they lack a compelling account of how uncertainty affects our rights and why a monopoly on coercion in particular is uniquely placed to overcome this problem. This paper borrows and augments resources in the Kantian and Nozickian theories of the state, as well as the empirical literature on state capacity, to adequately diagnose the moral problem that would likely afflict statelessness, and how Weberian states are well-placed to neutralise it. Thus, it highlights a central place of uncertainty in theorising political legitimacy.

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0. Introduction

Two influential theories of state legitimacy make implicit but important use of the moral threat of uncertainty that they purport afflicts statelessness. Both Kantian *Natural Duty Theory* and Nozickian *Invisible Hand Theory* argue that individuals can respectively present innocent threats to one another without engaging in any overt act of aggression, in virtue of mutual uncertainty over their behaviour, and over second-order enforcement or dispute resolution. This makes them mutually liable to one another's defensive force, despite engaging in no overt act of aggression. Such a state of affairs is one in which rights fail to have their full value realised. Both theories say that a state, as such, extinguishes this uncertainty, and is thereby functionally justified by giving rights their full force.

This paper seeks to shed light on the nature of this kind of uncertainty, how it affects our rights, and how it makes us morally liable to subjection to a monopoliser of coercion. I offer examples of when uncertainty can, contingently, arise through no positive act of wrongdoing on the part of any party that nonetheless renders them liable to coercion. And I offer reasons for thinking that, contingently, Weberian states are distinguished by their institutional capacity to neutralise such uncertainty, given the reasonable alternatives available under statelessness. The result is to shed light on the conceptual nature of what Kant calls the *wrongful condition* of the state of nature, and to offer plausible empirical reasons why Weberian states in particular have the self-legitimating capacity to neutralise such symmetrical threats.

Both the Kantian and the Nozickian theory of political legitimacy centre on what might be called an *assurance problem*. That is, that without a monopoliser of coercion, we are left without assurance, guarantee, or reasonable expectation that others will not violate our rights in some way, say by assaulting us, stealing from us, or attempting to enslave us (or some combination thereof). Making agreements is no solution, because if we could trust one another to keep agreements, then we could trust one another not to violate our rights. This basic Hobbesian prediction about a stateless society is coupled with a moral commitment to (at least) individual, negative claim-rights. That is, rights that others do not invade one another's respective spheres or domains of rightful liberty, control, autonomy, typically understood as rights of bodily integrity and of private property – referred to in the neo-Kantian literature as *external freedom*.

Unlike Hobbesians who generally take the provision of a determinate and predictable legal system of private rights to simply be a good for human societies to enjoy, Kantians believe that private rights are deontic constraints on our conduct that are morally imperative upon each individual. If we, as a society, choose to remain in a social situation in which we cannot be assured of our rights, we "do wrong in the highest degree." (Kant, 1797, sec. 6.307-8) Our duty is to abstain from stepping into anyone else's boundary, except to defend ourselves if and when they themselves step into ours. If the social situation is such that we are all entitled to act as if everyone else is inside our boundaries, then our duty is no longer properly normative for us; that is, the context in which it applies is failing to materialise. Nozick similarly believes that without a monopoliser of coercion, uncertainty over one another's behaviour gives rise to the legitimacy of monopolising coercion so as to neutralise that uncertainty and provide some regularity of conduct so that we can begin to be assured of our rights vis-à-vis one another (Nozick, 1974, pp. 108–119).

Whilst Nozick is a libertarian, and libertarianism is often bundled with Lockeanism and therefore juxtaposed to Kantianism, Nozick's argument for state legitimacy is *not* consent based and is concerned with the threat posed to rights by uncertainty in a state of nature. Both, therefore, can be regarded as theories that ground political legitimacy in the state's monopoly on force functioning to neutralise uncertainty over rights. Given that they both contain resources helpful to what the other lacks, I believe combining them makes a strong theory of political legitimacy that grounds the state's moral power to coerce us in its unique capacity to overcome uncertainty over rights, for the sake of rights being given protection.

Kantian theories lack an adequate account of why a stateless society is one in which we are likely to mutually threaten one another through no overt aggressive act. The Nozickian theory lacks an adequate account of why a de jure monopoliser of coercion can neutralise this symmetrical threat. First, I will argue that it is in principle possible for persons to threaten one another's negative rights without taking any particular positive action. Second, I will argue that, contra market anarchists, it is likely that stateless societies will have significant uncertainty over whether or not people pose threats to one another, and that such threats generate a symmetrical proliferation of liability. Finally, I will argue that an agent or organisation with the capacity to credibly monopolise coercion, as such, has the unique capacity to neutralise uncertainty and thereby give adequate protection to rights. The result is that the state, through its unique capacity to issue credible threats, is able to provide legal finality, and thereby disseminate social information regarding regularities of behaviour, allowing us to enjoy our rights, rather than have them crowded out by liability.

Such arguments are often, labelled *natural duty theories* of legitimacy (see Dagger & Lefkowitz, 2021, sec. 4.4; Stilz, 2009, pp. 53–56; Waldron, 1993). I choose not to deploy this label for the theory I attempt to improve and defend because the "natural" is usually taken to imply our duty to obey the state is not contingent in any way and therefore involves a commitment to *a priorism* about the relationship between rights and the state which I do not presuppose. Rather, our rights' need for the state is determined by a contingent (if high likelihood) state of affairs wherein uncertainty prevails under statelessness. I do not argue such uncertainty is a conceptual characteristic of statelessness, but rather point to why its institutional features are likely to lead to uncertainty. I therefore suggest that it is a *functionalist theory* of legitimacy grounded in rights, because the state is legitimised in virtue of its functioning to adequately protect rights (see Buchanan, 2004, Chapter 5; Quong, 2019; Taylor, Forthcoming; Waldron, 2010).

In section 1, I outline the basic structure of rights-based theories of legitimacy that hinge on the assurance problem, and why it is crucial to identify the problem of *innocent* threats under statelessness. In section 2 I argue that the threat generated by uncertainty can increase our mutual liability to defensive force even when we are not engaged in objectively threatening actions. Objectively grounded uncertainty generates reasonable beliefs that others are presumptive threats (distrust), and therefore, in lieu of any positive action that signals otherwise, are liable to defensive force. In the extreme this can generate a "mass forfeiture of rights."[2] This is a short-hand for a situation in which our liabilities are so significant that our rights offer almost no protective content. In Section 3 I use the idea of "state capacity"[3] to argue that monopolisers of coercion are more likely to be able to provide the trust necessary to escape the wrongful condition of mass rights forfeiture, and explain how they can have moral permission to this broadly within a Kantian-Nozickian framework.

1. The Assurance Problem

[2] I owe this phrase to Ralf Bader.

[3] This concept come from recent empirical literature (Besley & Persson, 2009, 2010, 2011; Cox et al., 2019; Johnson & Koyama, 2019; Koyama, 2022; Koyama & Johnson, 2017; North et al., 2009; North & Weingast, 1989).

Massimo Renzo (2011) argues that the legitimacy of a state is grounded in a right of self-defence. That is, without a state, we all somehow pose threats to one another, and the state neutralises this general and symmetrical threat such that our subjection to the state's use of force against is morally on a par with our subjection to other person's use of pre-emptive, defensive force against us when we threaten them.

In order to demonstrate this argument, Renzo takes a heuristic starting point of a stateless society. In this society, there is some specialisation of labour with regard to protecting rights, namely, an organisation to whom many (but not all) members of society have voluntarily contracted with to enforce rights on their behalf. The members have an agreement with the organisation in which members pay money in exchange for physical protection by the organisation against those who might threaten them or violate their rights. This involves the provision of dispute resolution procedures as well as physical enforcement. This organisation is what Nozick called the *dominant protective association* (1974, pp. 15–17) (henceforth *DPA*). It is dominant in the sense that there are no other associations available to join if one wishes to contract out the enforcement of one's rights. The "market" for rights protection, so to speak, simply has not provided more than one option.[4] We can imagine any number of contingent reasons for there being only one dominant one. Perhaps there were a number of different associations peacefully competing for customers, but network effects lead to gradual monopolisation. [5] Perhaps no one else bothered to attempt to set up another such association; or there are pervasive beliefs about the DPA being uniquely privileged in having a divine permission to enforce rights on behalf of others.[6] These are possible ways in which the DPA gets to its position without violating anyone's rights.[7]

In this society the DPA has a de facto (though not a de jure) monopoly. It has (and claims) no unique right to enforce the rights of others; it is just the only agency currently in a position to do so. Renzo argues that in such a situation, the holdouts to the DPE, including *honest holdouts*,[8] are a threat to everyone else. The DPA therefore is justified in forcing them

[4] This is not a market as ordinarily understood, however. A market typically *presupposes* the contractual exchange of property rights. The agreements made in this society are ones the *create* legal property rights which can then be contractually exchanged. They are therefore political exchanges rather than market exchanges.

[5] It is likely that the value of membership of a protective association increases with the volume of its membership, since a higher volume of valuable transactions will be made less risky (Nozick, 1974, p. 17; Gaus, 2011).

[6] Such as was roughly the case in Western Europe between the fall of Rome in the West and the rise of the nation state (Johnson & Koyama, 2019; Koyama, 2020).

[7] We will discuss how it affects the status of the DPA if it becomes the DPA through unjust means.

[8] This is the term used by David Schmidtz to refer to those individuals in a stateless society that respect everyone's rights, but refuse to voluntarily join any third-party protection agency (1991, p. 87).

to defer to its enforcement procedures and give up their own right to enforce their rights, in order to extinguish the threat. In other words, the threat the holdouts automatically impose on others renders them liable to conscription into the DPA. Showing that a natural right of self-enforcement is legitimately revokable by a third-party is to show that third party to have legitimacy.

On this view we have a natural liability to defensive action by those we threaten, and this empirically turns out to amount to a liability to be subjected to a DPA, where there is one. Given that a *dominant* protective association is going to be, by definition, the only agent in society with the capacity to neutralise all threats, it is the one that can legitimately do so. Empirically speaking, this liability then becomes a duty to defer to the DPA in all matters of rights enforcement. The DPA becomes a de jure monopoly (a Weberian state) if and when any challenger to its de facto monopoly counts as a threat.

This argument hinges on the justification of coercively subjecting *honest* holdouts into the DPA. It is more obvious how holdouts who repeatedly and predictably engage in positive actions that violate the rights of others could be subjected to the DPA, at least to some extent. If *A* threatens *B*, then *B* can legitimately use force against *A* to defend herself. Likewise, if *B* has transferred her rights of enforcement to a third-party agent, that agent can use force upon *A* in light his threats. Indeed, anarchists acknowledge this much (Chartier, 2013, pp. 257–259). However, since there is no third-party agency other than the DPA to whom *A* can defer, he can only defer to his own judgement in the face of being brought before the DPA and its procedures for establishing wrongdoing and innocence, he will *in fact* be subject to the DPA's own procedures. This does not mean she will always be judged to be in the wrong because the DPA will take the side of its client. Rather, it means whether who not she is pronounced as being in the wrong will be the outcome of the DPA's procedures rather than any other. The DPA prohibits its members from invoking procedures outside of those it lays down; it does so with their consent. The DPA will also invoke its own procedures when the rights of its members are threatened by independents. Whether or not the independent will have her voice heard will depend upon whether or not her methods of establishing wrongdoing are deemed by the DPA to impose a risk of wrongful conviction upon its members. The only way for the DPA and the independent to establish a single set of procedures deemed by both to be sufficiently non-risky is for them to enter an agreement. Given the negotiating position of the DPA, the independent will have the choice of accepting or rejecting the DPA's terms. The independent either joins the DPA and her right of self-enforcement finds its life through the DPA's procedures, or she remains independent and has the DPA's procedures imposed upon her de facto.[9]

Renzo is not, however, referring to this set of holdouts. He argues that even honest holdouts present a threat to others. This may seem like a curious claim, and yet it is a necessary step for the DPA to become a de jure monopoly, and hence a legitimate Weberian state. These individuals are identified by their willingness and ability to know justice and act justly toward all who they encounter, and yet are stipulated to be threats because they insist on executing their own rights-enforcement themselves rather than agreeing to defer to the same third-party arbitration as other members of their society. They are *honest* holdouts of the DPA because they are honest when they defend their decision to remain independent on the basis that they are perfectly capable of enforcing their rights justly themselves. They do not, qua holdouts, act unjustly; engaging in any positive acts of aggression against others. Renzo argues that honest holdouts' mere physical proximity to members of the DPA, and their non-subjection to the DPA's procedures, means that they constitute a threat in virtue of generating and imposing risk (2011, p. 586). The former's sustained proximity to the latter, given the risk exposure it putatively involves, constitutes a rights violation (see generally Kumar, 2015; Thomson, 1986).

The general right against being exposed to certain risks by the actions or omissions of others consists in the fact that when *A* acts in a way that risks her violating a right, R_1, of *B*'s, she makes certain actions, actions that *B* has a right to do, ineligible. When *A* imposes certain risks on *B*, she renders certain options ineligible for *B* that *B* has a right to choose (Oberdiek, 2009).[10] For example, imagine *A* points a missile at *B*'s home and hovers her hand over the launch button, lightly but carelessly tapping it, even if the button is never sufficiently depressed for the missiles to be launched and destroy *B*'s home. *B* remaining in her home, whilst it is not physically prevented, is rendered an ineligible option for her given the high probability of her remaining in her home resulting in her being killed by *A* (the most unreasonable of unreasonable options, and a rights violation).

[9] My understanding of the moral status of this state of affairs is indebted to Ralf Bader's patient and insistent explanation of it to me in person – and in print (Bader, 2021).

[10] On Oberdiek's analysis the rendering ineligible of options reduces autonomy and is therefore a prima facie rights violation. On my analysis it is the rendering ineligible of options that the patient has a claim-right to and is therefore a violation of that particular claim-right.

We have a right against certain kinds of risk in a similar way that we have a right against certain kinds of threats; others have duties to abstain from not merely preventing us from taking certain actions, but from rendering certain actions we have a claim-right to take ineligible (Bader, n.d.; Christmas, 2022, pp. 151–153).

The question, then, is how honest independents might be said to pose a threat despite doing *nothing in particular*. Part of the reason is that the holdouts, not being a member of any protective association means there are no set procedures to which they have subjected themselves ahead of time. No agency can credibly compel them to abide by any procedures laid down in advance that others can depend upon. This means that there is uncertainty over their behaviour. Namely, how they will respond if accused of committing a rights violation, or if they present themselves has having been victim of a rights violation. Uncertainty over what happens after they commit a rights violation raises further uncertainty, since part of our assurance over whether or not someone is a threat to us is informed by the assurance of what will or will not happen to them after the fact, were they to threaten us. This uncertainty makes them a presumptive threat against others and generates their liability to be subjected to the procedures of the DPA that will remove the uncertainty and extinguish the threat.

Why could they not do this before they were dominant? Why did they have to find ways to accommodate the different procedures of other protective associations, when there were others in existence? Where those outside a given protective association are members of another one, the given protective association need only know the procedures of the other one and count on them compelling their client to stick to their agreement. This would allow them to know how to proceed when dealing with any particular member of another protective association in advance. Uncertainty would be mitigated by the availability of information about their procedures, by past experience of dealing with them, by their incentive to maintain a cooperative relationship, and by their credible capacity and incentive to keep their own client in line.[11] Where there is no procedure that can be known ahead of time that this

[11] Behaviourally speaking, protective associations face two options for increasing revenue: (1) increase market share by increasing the quality of protection and or/lowering fees, or (2) use coercion to take over their competitors. Advocates of market anarchism believe that the uncertainty of violent conflict means that a likely equilibrium would be for protective associations to opt for (1), and seek peaceful modes of cooperation with other protective associations. The predictable discipline of repeated dealings is a more dependable pathway to profit than violence. (Friedman, 1989, pt. 2; also see Barnett, 1986; de Molinari, 1849; Hoppe, 2009; Huemer, 2013, Chapters 10–12; Murphy, 2010; Rothbard, 2006, Chapter 12; Skoble, 2008; Tannehill & Tannehill, 2007, pt. 2) This model breaks down for one of two reasons. If the operative roles within protective associations select for personnel with a comparative advantage in deploying violence and have a comparatively higher tolerance for risk when it comes to violence. Or, if there is insufficient social capital for protective associations to initially make credible commitments to one another (Cox et al., 2019; North et al., 2009, Chapter 2). To assume that

hold-out will credibly be compelled to comply with, there is little basis upon which the DPA can model their behaviour and mitigate against the risk they might pose (Pavel, 2021, p. 84). So, in the face of this uncertainty, the DPA is justified in imposing its procedures upon the hold-out without her consent.

Renzo does not, however, explain exactly how it is that, through engaging in no particular threatening act, a person can nonetheless present a threat and take on liability. He does make clear that he does not think the liability arises due to a failure to rescue third parties from one another, but rather from engaging themselves in an act that directly endangers third parties (2011, p. 592). However, he does not explicitly explain either what this threat is, nor how it can be possible that persons can be threats to the negative rights of others without taking any particular positive action.

At times, Renzo argues that the dangers of statelessness – that honest independents expose members of the DPA to – are empirical. For example:

> Where conflicts cannot be avoided, the state at least ensures a univocal way to solve them. However, the state will be able to perform these functions efficiently only if everyone living in the same territory is subject to its authority. (2011, p. 587)

Renzo also importantly notes that the "peril" Christopher Heath Wellman (2005) believes we rescue one another from in submitting to the state is not a natural evil but a human one. The danger posed by the state of nature is the danger of being exposed not to the elements or such, but to the threat of other person's invading our rights – their positive actions. So, the duty, while requiring positive action rather than particular omissions to fulfil it in this context, is not a Good Samaritan duty of rescue – what we are rescuing one another from is the threat we ourselves pose when we refrain from submitting to the state (2011, p. 592).

Now, this may well be true in many, or even all, real cases, but only contingently so. But Renzo slips into arguing that the threat is *conceptual* in nature, rather than merely contingent.

> It is important to make clear that my claim here is not that individuals living in the state of nature would necessarily be aggressive or inclined to threaten others out of strategic considerations. I happily concede (if only for the sake of argument) that most of them would be peaceful and would not try to attack those living next to them.

parties with a comparative advantage in violence are able to make credible commitments to one another is to assume away the very problem of predictable social order. Where (2) becomes the dominant strategy, you have warfare until a DPA distinguishes itself.

> However, the importance of the coordinative function performed by the state is such that even individuals who possess flawless systems of moral beliefs, and always act conscientiously on these moral beliefs would need it in order to stop being a threat to each other. (2011, p. 587)

He then proceeds to endorse strong indeterminacy about rights and the subsequent conceptual argument that follows from it (2011, pp. 588–589). He quotes Thomas Christiano approvingly that "[t]o act justly it is essential for us to be on the same page with others" (Christiano, 2008, p. 54) He echoes Jeremy Waldron's insistence on the importance that all sing from the same sheet, so to speak, and that whether or not justice is in fact univocal does not affect the matter (1993, p. 22, 1996, 1999, Chapter 3, 2002, pp. 139–140). Whatever it is that justice requires, it is crucial that we each be subject to the same set of rules and be aware that we are all subject to that same set of rules. Being on the same page is more important than being on the right page (if there even is such a thing as the right page).

I believe there is good reason for this ambiguity in Renzo's argument. In certain empirical scenarios, it is possible for an omission to constitute a violation of a negative right. This may sound logically impossible, but when we consider issues regarding uncertainty, we can see how it is possible, and empirically likely, that without a state, even good faith, morally informed actors can violate one another's negative rights by failing to positively overcome this uncertainty.

Of course, there are familiar contexts in which particular omissions violate negative rights in a derivative way: cases in which *A* engages in an ongoing rights violation against *B* and subsequently acquires positive obligations toward *B* that are parasitical on the original negative right that *A* violates. Where *A* omits to take the actions required of these derivative positive obligations, in a sense, she (continues to) violate *B*'s negative right. For example, if *A* trespasses onto *B*'s property, she acquires a derivative positive duty to leave his property in a way that imposes the least cost to *B* – this is an act she is obligated to, not an omission. If she fails to do this, her omission (continually) violates *B*'s negative right that she abstain from using his property without his consent. Of if *A* inflicts life threatening injuries upon *B*, and abstains from providing life-saving care (where possible), this omission violates *B*'s negative right to not be murdered. But this is not the kind of case we are interested in.

There are possible cases, I argue, in which no particular positive actions need be taken in order for a person to count as having violated a negative duty toward others. Renzo seems to indicate he believes something like this is doing explanatory work.

> The dangers to which we are exposed in the state of nature mainly depend on various kinds of coordination problems, which are created precisely by the fact that other individuals live next to us and are not subject to the authority of the state. (2011, p. 592)

I will now begin to lay the groundwork for the argument that is possible (indeed probable) but not necessary that, without a state, the uncertain social environment could be such that we violate one another's negative rights through taking no particular positive action whatsoever. Meaning that we are duty-bound to engage in positive actions for the sake of other's negative rights, meaning that we can legitimately be forced into those positive actions, and that a state that does this would be legitimate. Essential to this idea is that a lack of trust among persons in proximity – uncertainty over violence – can generate a "mass forfeiture of rights."

2. How Trust Affects Rights[12]

Compare my liability to defensive force with regard to police treatment if I commit a violent crime in Chicago, Illinois compared to if I commit the identical crime in rural Oxfordshire, England. I smash the window of a corner shop and take the cash from the till, pushing over bystanders in my way. In both cases I am not visibly armed (though neither am I visibly unarmed). I commit an identical act in terms of the physical events that take place as well as the deontic content of my actions. That is, I engage in the exact same rights-violations, it is just that it is in a different location, and the victims have a different numerical identity. There is no variance in my choices, intentions, or actions between the two cases. Yet, there is variance in the content of my liability in each case as a result of the action taken. In Chicago, the police would be at liberty (perhaps duty-bound) to use greater severity of force against me than the Thames Valley Police would in Oxfordshire. Indeed, we could fine tune the details of the example – holding the case constant in both locations – to the point where the Chicago Police could shoot me, but the Thames Valley Police could not (if they were even armed). I do not mean "could" in the sense of *could within the local positive law* but rather *could within the bounds of moral proportionality*.

[12] I use "rights" in the broad sense W. N. Hohfeld does (1913, 1917). Also following Hohfeld I am taking liabilities and immunities to be juridical correlates.

In Chicago, there is a drastically greater statistical likelihood that I would be carrying a concealed firearm and be prepared to use it against members of the public as well as the police, than there is when I commit the crime in rural Oxfordshire.[13] The fact of the matter is that in both cases I am unarmed. Nonetheless, the bounds of the legitimate use of defensive force is, in part, set by the reasonable beliefs of others regarding the threat I pose in my initiatory act of aggression. The degree of force that may justly be used against me is not set by the quality of my private intention (which is identical in both cases), but rather the information about my conduct that I contribute to with my actions. What beliefs about my actions are reasonable for the defensive party to hold, is not something that is determined purely by my actions, but rather as a function of my action and the social environment in which they happen (including, inter alia, statistical facts about criminal carriage of firearms and their use of them in commissioning other crimes). In Oxfordshire, by flagrantly and violently breaking the law I place myself into a reference group with relatively low likelihood of committing a lethal rights violation, compared to in Chicago. In Chicago, people with good information are justified in using more force against me than the well-informed in Oxfordshire are.

The alternative view would be that persons are not at liberty to act on good information, the limits of which they are not responsible for. This is implausible, in amounting to saying that we must act on reasons there is no reason for us to hold. Liability has to be evidence-sensitive (van der Vossen, 2016, pp. 137–144; Ross, 2021).

My actions and intentions are identical in both cases, and the consequences of my actions are as well, yet in one I am liable to be killed and in the other I am not. I do not commit any additional wrongful action in Chicago than I do in Oxfordshire, but there is a different effect on my liability. Therefore, one can incur greater liability simply due to the empirical social environment in which one is located, and not through any additional positive action, in virtue of the uncertainty which surrounds the prospects of one's further, future actions.

One might object at this point that a full description of my actions in either case must contain a description of the risk I impose on others, and that risk must be partially informed by facts about the social environment. Although I stipulated that the rights-violation I commit is identical, in that I injure the bystanders to the exact same degree, I break the glass in

[13] I do not intend to be taking it for granted that this statistical divergence in gun crime is the sole cause of these two places have very different policing regimes.

exactly the same way, I taken an equal value of cash from the till (adjusted to local prices or the owner's net wealth, or however you prefer). My intentions are the same.

One might say that nonetheless the rights-violation is different, because the imposition of risk is itself a rights violation (or at least something that means I lose immunity to being knee-capped). So, my action is not the same. Perhaps this objection does present the correct way to look at these cases. If that is true, then the takeaway point is that the non-risk content of my action can remain constant whilst the risk content of it can change, depending on factors wholly outside of my control, such as the local rate of gun possession and/or murder. Factors outside of my control can make my actions more wrongful such that I suffer such a loss of immunity.

What has this got to do with a putative right of the state to monopolise coercion? The facts about the social environment can cause persons to lose immunities they would normally have through no particular positive action their part. We have information about patterns of action in Oxfordshire and Chicago that indicate the higher levels of risk that someone who just committed a property crime may also commit a murder in order to evade justice. In other words, in Oxfordshire we have relatively greater certainty that although a property criminal is likely a greater threat to the public that someone who is not a property criminal, we can have high confidence they are not willing to become a murderer. In Chicago, we have significantly less confidence that that is the case.

The different risks can (both in terms of possibility and permissibility) be mitigated with calculated, defensive force. The extent of the risk determines the extent of the liability. However, the situation is more severe when there is little or no such information about patterns of action. It is not just that we have reason to distrust another *to some particular extent*, but rather that there is radical uncertainty about how much risk we might impose on one another.[14] This sort of symmetrical threat, arising from uncertainty, leads to an even more significant liability.

Our reasonable beliefs and expectations about one another's likelihood of engaging in rights violations are the bases of the coordination problem that I believe Renzo to be alluding to. So, if we are mutual threats to one another in virtue of uncertainty in a stateless society,

[14] The basic distinction between uncertainty and risk I invoke here is drawn from (Knight, 1921, Chapters 1–2; Bradley & Drechsler, 1975). Broadly speaking risk involves known unknowns and uncertainty involves unknown unknowns.

then we have a basis for liability to state coercion, and the first step to justifying monopolised coercion.

In the case of the robbery in Chicago, the criminal suffers a comparatively greater forfeiture of immunity than in Oxfordshire purely due to the variance in social environment that is out of his control. There is less trust in Chicago than in Oxfordshire that someone willing to rob a shop is not also willing to commit murder in order to evade the legal consequences of his crime. [15] Left out of this case is the level of trust over the police. However, where trust is *mutually* diminished, the problem's symmetry leads to its proliferation. If we both know we cannot trust one another to overreact, we both become liable to one another's overreaction.

When I cannot reasonably trust that your doing some action ϕ is not the initiation of a rights-violating action ψ due to the social context in which the action occurs, I can take defensive action χ (an action that is a proportional and necessary defence against ψ). However, if the social environment is such that you cannot reasonably also trust that my χ-ing is not the initiation of ω (an action that goes beyond what is proportional and necessary defence against ψ) then I am entitled to take counter defensive action of greater significance that you cannot trust is not going to be excessive, and so on and so forth. At its worst, this situation descends into total mutual liability among all in proximity to one another; our rights are forfeited *in toto* and *en masse*.

The social environmental that creates the moral problem is empirically contingent – a stateless society may or may not engender it. However, if it turns out that that environment *is* present, then the problem it raises is a conceptual one. Where we are each symmetrically free to take pre-emptive action against one another, our rights no longer require us to abstain from stepping into one another's respective domains, as we would want them to. A posteriori, it turns out there is an a priori problem. It is not that rights are merely at risk; it is that their content has evaporated.

Facts about the particular social environment determine the level of trust among persons, and the level of trust determines what our reasonable expectations about the actions of others are. Therefore, these facts can deprive us of some of the protection rights would otherwise give us, and at worst generate mass forfeiture. Institutions are parts of the social environment that can both transmit information, incentivise behaviour, and construct

[15] I take trust to be merely epistemically justified reliance.

perceptions in such a way that we can come to have knowledge of what others might and might not do. Such knowledge gives us reasons to trust them (or not).

Where, in lieu of institutions that would generate trust, there is a lack of trust, we are liable to the use of restraining force. Now, where such restraining force credibly generates greater trust, our submission to it reduces our liability.

The idea that the social environment can be so configured that good faith, morally informed persons have no reason to trust one another (trust that they will not violate one another's rights) enables us to understand how negative duties can require us to take positive action. Because a lack of action does not necessarily generate a lack of reasonably perceived danger.

3. Monopolising Coercion

How could an institution such as a state remedy a social environment in which we cannot help but constitute threats to one another by our mere our physical coexistence? Why should we think a stateless society would engender such a social environment? First, we must clarify what it is that the state qua state does, and thereby understand what is, as such, lacking in a stateless society.

A state is a geographically delimited monopoliser of coercion (Weber, 1948; Tilly, 1992).[16] As such, it denies all in its territory any respective right to unilateral self-enforcement.[17] There are two notions of what it means to monopolise coercion that it is important to differentiate. De facto monopoly and de jure monopoly. A de facto monopoly is the only agent that happens to use coercion, perhaps, because it is sufficiently powerful that no one attempts to challenge it. Being a de facto monopoly does not imply acting *as if* it has the exclusive right to that which it monopolises, it simply happens to be the only one engaged in this activity, for whatever reason. A de jure monopoly on the other hand acts is if it does have the exclusive right to monopolise coercion. That is to say that *if* anyone were to challenge it, the state would use coercion to bring an end to the challenge. It may also use

[16] This does not mean the state is the only *supplier* of coercion, but that it is the only *authoriser* of coercion, at least de facto.

[17] Under Common Law defensive force is lawful when justifiable due to a lack of feasible alternatives (also see §3 of Criminal Law Act (1967) and §117 of PACE 1984), however this is not a full-blown enforcement of one's right since Common Law does not permit one to unilaterally extract restitution ex post. Moreover, whilst one can use proportional force to repel an attacker or robber, it is no longer lawful to pre-meditate such self-defence, by keeping something that could be used as a weapon by the door in case of an intruder, for example. (See §76 of Criminal Justice and Immigration Act)

coercion to reduce the chance of any such challenge. The key for a theory of legitimacy is to tell us whether or not a de jure state legitimately or illegitimately engages in the actions that sustain its monopoly, not whether or not it legitimately coerces per se. Any given person or agency as such can use coercion to protect rights, and whether or not they happen to be the only one doing so or not does not affect their right.

Characterising a state's monopoly as de facto does not tell us anything juridical about the state's power – it only describes its action in one particular possible world – one in which no one challenges it. In order to understand the state as an entity with legal power, we need some counterfactual information about what it does and does not do, which we then need to ask if it can have a right to do. The de jure state is a state that will use its power to maintain its de facto monopoly status. It claims and enforces – rather than merely happens to enjoy – an exclusive right to coerce. A state, therefore, necessarily revokes from its citizens each of their natural executive rights; that is, their rights to use force protect themselves and others from rights-violations. One's natural executive right is not a right to enforce one's rights however one happens to understand them, but only to enforce them as they really are. Therefore, in revoking the natural executive right the state does not merely estop people from using excessive force in self-defence or from excessively extracting compensation from those who wrong them, etc. It stops them from doing things that would ordinarily be perfectly just for them to do, and forces them to depend only upon the state for their rightful protection.

For the state to be justified in exercising such a right is for it to indeed have such a right, which would mean it has some right to enforce justice incorrectly – that is to use force in a way not demanded or permitted by justice, and therefore to act unjustly. If it did not, then its citizens would not be duty bound to abstain from challenging it when it maladministers justice, meaning that the state's monopoly power would disappear every time it did something wrong. Each person would have no prima facie right to self-enforcement, but in any given case where the state maladministered justice, their right would return to them. This would mean not only the right to self-defence in urgent situations, but also the right to extract compensation or to punish those who violate your rights where the state fails to prosecute them. It also means a right to use force against agents of the state if they violate your rights, etc. To countenance this idea would be to defend philosophical anarchism: that we only have a duty to obey the state if and when what it orders happens to also be just, giving it no *special* right to administer justice per se.[18]

Anarchists who defend the possibility of the rule of law under statelessness argue that the endlessly open-ended possibility of external challenge to injustice is the defining feature of both statelessness and true rule of law. Whilst most modern states have systems of appeal, these are *internal* to the state's legal ecology – challenging a court's ruling by appealing to court of appeal does not challenge the state's authority, because this mode of appeal is pre-authorised by the state itself. Without a state, each person having a natural executive right, *A* may challenge a court's ruling by appealing to, well, whomever she chooses, and she may impose the result *so long as the appealing judgement is right*. A defining feature of stateless legal order is that it permits external challenge, at least in cases where unjust rulings have been made. This is the basis upon which anarchists argue that it is only under statelessness that true rule of law is *possible* (Long, 2008).[19]

If appeal is always permitted where an unjust ruling was made, then we have already countenanced statelessness, because this necessarily involves individuals having legal permission to unilaterally enact justice (as long as it really is justice, and they are not mistaken). For that external, direct challenge to the state to be a legitimised part of the legal ecology of that geographical area would be for there to be no criteria for what falls within the criteria of lawfulness and what falls without, since no challenge can be ruled out *a priori* based on the procedures it has or has not gone through.[20]

It is, therefore, an essential but often overlooked component of the idea that the state is a legitimised geographical monopoliser of coercion is that it involves *legitimate injustice*. For legal force to be monopolised geographically is for the legal ecology to be enclosed. That enclosure means there is a limit to appeal, and that limit is where we must countenance the possibility that an injustice is legitimate. To truly be a legitimised monopoliser of coercion, it must be the case that it sometimes coerces unjustly, and yet does not face any externally legitimised challenge (though it can face internal challenges that are already internally legitimised, and those internal challenges could result in the wrong outcome). As Daniel

[18] This is precisely what Jason Brennan (2016, 2019, 2021) and Michael Huemer (2013, 2021) argue.
[19] More accurately, it is that discretionary judgements are *always* subject to challenge. I doubt that this is a defining feature of the rule of law, since it permits infinite regress of appeal. Such infinite regressions entail uncertainty and indeterminacy which are surely core elements of the rule of law.
[20] Therefore, although justice is in principle possible under anarchy, rule of law is not (Pavel, 2021).

Viehoff puts it, legitimacy most centrally involves a “right to err” on the part of the state (2019).

A defining feature of a state then is that there is a point at which appeal ends whether or not the result is just. A legal ecosystem can be open, and therefore have no pre-defined juridical finality (as in anarchy), or it can be enclosed with pre-defined juridical finality (as in a state). But a legal ecosystem cannot be defined as legal finality being identified with justice. Moral principles are not legal or social mechanisms.

As a geographical monopoliser of coercion, then, the state reserves a right to err – that is a right to engage in injustice without challenge from outside its own legal ecology. Those injustices are in the form of making erroneous rulings on cases in which there was a conflict of right, and using coercion to prevent righteous reprisal by or on behalf of the aggrieved party.

How is it this seeming arrogation of normative powers – to revoke each individual’s natural executive right – could take place?

Let us return to the imaginary stateless society in which natural executive right reigns. A slightly more developed version of Locke’s state of nature in which each individual enforces their own rights themselves is the market anarchist ideal of a sophisticated polycentric[21] legal order in which individuals do not necessarily rely on self-help, but in which all rights-enforcement is consensually outsourced to specialists in the form of for-profit insurance contracted security, directly contracted security, adjudication agencies, or non-profit cooperative mutual schemes, and the spectrum of formal and informal norms that emerge through the frequent and ongoing interaction of all these loci of agency. Respective members of these protection associations voluntarily transfer their natural executive right to the agency, and when their rights are violated, the agency acts on their behalf. When there is a dispute of right between two members of the same agency, the agency makes a judgement as to who violated who’s right and makes a ruling and demands payment of restitution by the one party to the other, or what have you. When a dispute arises between members of different respective agencies, these agencies defer to a third-party arbitrator since neither one of the trusts the other to be truly impartial given their interest in protecting their own respective

[21] Market anarchy is polycentric insofar as law emerges as a function of the procedures agreed to by the various protection agencies that parties choose to contract to (Chartier, 2013, Chapter 4); i. e. it is decentralised and is co-produced in an unintended way. However, legal orders can be polycentric without being stateless (Aligica & Tarko, 2012). Federalism, for example, is polycentric because it has multiple centres of formal decision making that can compete with and/or complement one another (Bednar, 2008).

client whether she is in the right or not. It is a reasonable expectation that different agencies will have ex ante agreements with third party arbitrators because an ability to credibly defer to impartial judgement in its clients have disputes with non-members increases the value of their protection. (Friedman, 1989, pt. 2; also see Barnett, 1986; de Molinari, 1849; Hoppe, 2009; Huemer, 2013, Chapters 10–12; Murphy, 2010; Rothbard, 2006, Chapter 12; Skoble, 2008; Tannehill & Tannehill, 2007, pt. 2) Therefore, whilst we might expect all agencies to have such agreements in place (imputing the consent of their members to the decision-making procedures of the arbitrator), we need not assume that any given pairing of agencies will have such an agreement with the *same* arbitrator. Therefore, there could be many arbitrators who between them cover every possible agency-pairing, without any *one* arbitrator covering them all. (Friedman, 1989, pt. 2; Long, 2008, pp. 136–137)

Thus far, market anarchy looks as though it can, at least in principle, secure rights without a state. Individuals can encounter one another with assurance that their rights will be protected, and their rights will be given impartial consideration when disputes arise, and moreover – this will all be done by parties whom they have chosen. So, assurance has arisen spontaneously with the consent of all affected. Rights can be exercised so as to secure rights. The thought experiment of market anarchism need not be the only way this could occur. Indeed, empirically, where assurance of rights-protection has been generated without a state, it has occurred in slightly alternative ways that could altogether replace or simply complement the market anarchist idea (for examples, see Ellickson, 1994; Friedman et al., 2019; Ostrom, 1990; Stringham, 2015).

Indeed, this regime exists on one of the steps through which a stateless society could proceed toward a state without anyone's rights getting violated, according to Nozick. He was exposed to these ideas through conversations with proponents of market anarchism and dedicated the first part of *Anarchy, State, and Utopia* to debunking market anarchism on its own terms. That is, he countenanced the underlying normative principles of the Lockean state of nature – most importantly, natural executive right – but showed that through an invisible hand mechanism, a de jure state could emerge without anyone's rights being violated.

Locke himself of course believed that the state could be justified in virtue of every person who resides within its territory consenting to being governed by that one and the same state. The problem of course is that we do not so consent, so Locke attempts to read tacit consent in our mundane everyday actions in way that makes it in fact impossible for almost any state to *not* – by that diluted definition – count as a consensual one (Pitkin, 1965; Simmons, 1976). Nozick accepted this problem – as it was pressed by individualist anarchists such as Benjamin Tucker (1888), Lysander Spooner (1870), and Murray Rothbard (2006) – and hence did not argue that in fact we all consent to the state, but attempted to show rather how the state could be just without our consent, notwithstanding our natural executive right.

He offers a thought experiment in which one protective association emerges as the dominant one, meaning that through network effects it draws customers away from all of its competitors.[22] So we end up in a position where everyone who is in a protective association is in the same – now dominant – association.

However, there is in principle the possibility that we never get to this point and the market does not generate a DPA. It might be that are several associations that continue to compete, and between whom strong norms of compliance with third-party judgements obtain, where such norms are themselves also enforced, when needed, by a variety of other third-party actors. So, there is a strong, self-reinforcing legal culture of third-party deference, without there being any *one* third party that is deferred to in every case. This I believe is the ideal of market anarchism and it is one which is in principle possible.[23] Such social environments protect rights to such an extent that people do not stand as threats to one another through inaction because they trust that their rights will not be violated, and if they are they trust that corrective justice will prevail. We would have no duty to establish and obey a state in such scenarios, and any aspirational state-like agent would be acting unjustly in attempting to monopolise coercion, since it would be initiating unjust force against its competitors.

But let us consider a world in which this did not occur; in which market anarchism did not turn out to be a stable equilibrium.[24] What happens when there is, for whatever reason, a DPA?

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[22] As noted above, the value of membership of a protective association increases with the volume of members because it increases the number of people one can be assured of peaceful interaction with – or least of orderly justice ex post if the interaction is less peaceful.

[23] The inevitable question of “what happens when the norms break down?” is one the afflicts all constitutional orders and not just stateless ones.

[24] See footnote 9 above.

The DPA does not have the power to impose rules or extract taxes from those who choose not to sign up for membership. It is a de facto monopoly, yes, but it does not *as such* have any normative power over anyone who has not voluntarily signed up.[25]

If you are a member of the DPA and your rights are violated by a non-member, the DPA may enforce justice against this non-member on your behalf, but not to any greater of an extent than this outsider may also enforce justice against the association on her own behalf, just as a non-dominant association could, without their arrogating any moral powers unto themselves over the natural executive rights of non-members (Chartier, 2013, pp. 257–262). Whoever is objectively in the right is the one privileged with enforcing final pronouncement. Neither has the moral power to force procedures of resolution on the other that are not in fact objectively justified (that is, procedures that are most likely to lead to a just outcome).

The transformation of the DPA into a legitimate state has two stages – these stages are moral more than they are temporal. The first stage is that the DPA *just is* the only enforcer of right as a matter of fact since it has eaten up all the competition – a de facto monopoly. The honest holdouts of course maintain their natural executive right and can resort to their own preferred procedures when a dispute with a member of the DPA arises (Pavel, 2021, p. 84). Indeed, market anarchy contains the institutions to ensure that this right is enjoyed because the individual can invoke a protective association with roughly equal market- and therefore legal-power to demand the DPA make allowances with these procedures. But no such agent any longer exists. Given that the DPA seeks to protect the rights of its members, it will invoke its own procedures in disputes with independents, and these will be the procedures that are used because the independent has not the power to resist them (Bader, 2021; Nozick, 1974, p. 109).

The second stage in the transformation is that this de facto monopoly power becomes de jure. Independents, in their rejection of the DPA's procedures of conflict resolution, and in their lack of capacity to provide any alternative, present a risk to the DPA's members – even if they have not, do not, and will not enter into dispute with them. The fact that there is no agreed nor anticipated means by which any wrongdoing could be remedied means that by omission they stand as a threat.

But there is an anticipated means: that provided by the only agent with the capacity to do so – the DPA. If the DPA did not impose its procedures on independents they would stand

[25] For those who desire protective services but not those offered by the dominant association, there has been a market failure.

as passive threats to its members, and it has a right to use coercion against threats to its members (1974, pp. 110–113). Its use of coercion in this way constitutes a monopoly, and is justified – it is a de jure monopoly, in other words, *a state*.

The reason why this newly minted de jure state is still *ultra-minimal* is because it is not yet justified in taxing the independents. Nozick believes that taxation can be extracted so long the amount charged is worth the protection received by the hitherto independents. This has led many to think that Nozick slips briefly into a quasi-utilitarian standard of justification at this point in his argument. The cost that is coercively imposed upon holdouts is worth it in terms of what is received and is therefore justified – despite the fact they do not in fact accept the trade. However, since Nozick rejects the fair play theory of obligation that says you can force people to pay for benefits they unwillingly receive (1974, p. 95), in addition to rejecting paternalism (that the benefit of a good justifies forcing in on those who reject it) (1974, p. 34) he cannot help himself to this justification. So, appearances aside, this cannot be what Nozick thinks de re.

We can reconstruct Nozick's argument more plausibly to say that the power to tax is acquired by the DPA inclusively with the power to unilaterally revoke natural executive right. In standing as a threat to others one acquires liabilities to have one's claims and liberties modified by a third party – one's claim over a sum of money necessary to support the financing of the coercion one provokes can simply be included in that out of necessity. Any claims about Pareto improvements must be taken to be an internal calculation of *what* sum of tax liability is justified, as opposed to *why any* sum of tax liability is justified. It is about justifying levels of taxation, not about justifying the tax power. The power is justified to the extent that the particular tax level is justified.

We can see that this argument follows through quite easily in the case of obvious "outlaws"; those who routinely and flagrantly violate rights, attempt to, or succeed in, evading justice, and who remain outside of the dominant association because they intend to continue doing so. These sorts of people are ostensibly *ongoing* threats and can be subjected to the dominant associations coercion in order to neutralise their threating behaviour. But, for a state to really be a state, it must have a monopoly of coercion in a geographical region and that means all persons residing within it, whether they are perfectly predictable and trustworthy respecters of rights, or recidivist rights-violators. The state reserves the right to deny to you your natural executive right to enforce your own rights even against the state even when you have justice in your side. To permit individuals to enforce justice as they see it when they see it objectively as it is would be the state's monopoly on coercion to be plucked with holes. So, in order for the dominant agency to justly forcing *all* non-members into subscription, it must be the case that even though those who have never violated anyone's rights, will never violate anyone's rights, and who have perfect moral knowledge and motivations, nonetheless are *in the wrong somehow* by not joining up. Can such innocent anarchists be said to nonetheless impose risks upon the dominant association's members? I think it is at least in principle possible to say that they do.

Now, it is also in principle perfectly possible that they do not. Members of the dominant association may have intimately close bonds of commitment with non-members, and have solid epistemic grounds for believing they will not violate their rights, and that they will self-administer their own rights in a way that is objectively faithful to justice. So, under this (albeit rather odd) scenario, the dominant association is a normatively stable equilibrium. But let us consider a more likely counterfactual.

In refusing to give up their natural executive right, regardless of all their other behaviours and mental states, the honest holdout might thereby generate a situation of uncertainty. Their reservation of their natural executive right might lead to a situation in which no one can be particularly sure as to when any given dispute could end. The legal possibility of the holder-out always being able to appeal to themselves as a source of authoritative legal judgements against the judgements of the dominant association generates the possibility of infinite regress (or recursion) in which final legal judgements are never made (Pavel, 2021, p. 84). When it comes to the production of legal certainty, a final answer is better than a just answer that never comes. Whilst a wrong final answer may constitute a rights violation, a just answer that never comes could lead to a proliferation of rights forfeiture. This uncertainty has a moral impact that is felt by members of the dominant association. They may not be able to interact or collide with the holder-out in knowledge that if a dispute arises between the two, it will – for better or for ill – have a determinant end. This increases the scope of the use of proportional force to repel possible rights-violations of members of the dominant association against non-members.[26]

The fact that holdouts, by not being subjected to the trustworthy procedures of everyone else, may constitutively be a threat to everyone else is indicative that the natural

[26] Which, in turn, increases the scope for the proportional force the non-member can use (if they are in fact in the right, as we are assuming for the sake of argument).

duty of justice is correlative to a natural right that is procedural in nature and often that procedure need involve a monopoliser of coercion.[27]

The reason why an effective monopoliser of coercion may be able to provide this determinant end is because they are, as such, able to make credible commitment to have the final word, for better or for ill. A monopoliser of coercion can credibly claim to be able to put an end to coercion by others and stamp out any question of reprisal or further appeal. Because of its capacity to be the final judge, in situations where there is no other alternative, no other credible rival, this capacity is *self-legitimising*. Powerful loci of agency sometimes have special rights because, and when, they have special capabilities (Bader, 2021, p. 158). If and because an agent has the capability to provide determinate (final) judgements of right, it has the right to do so where the absence of such determination would normatively threaten rights in a way that would lead to mass forfeiture.

In order to overcome the problem of symmetrically proliferating liability, the state would need to be the sort of thing that can generate knowledge of one another's actions so that the extent to which person's do not intend to pose threats to one another can be known and relied upon. No institutions can remove the *risk* of human wrongdoing, but they can remove *uncertainty* through the production of social knowledge. When uncertainty is transformed into risk it can be rationally anticipated.[28]

However, state capacity is not an a priori feature of a mere de facto monopoly. Political philosophers endemically assume states to have the capacity to do things they believe they must do to be legitimised, but this is conceptually and empirically fallacious and misleading (Byas & Christmas, 2021; Kymlicka, 2002, p. 165 n. 42). State capacity is something that is developed over a long time, typically under threat from other aspiring states. The capacity to exercise a de jure monopoly is not something any given de facto monopoliser of coercion will necessarily possess.

The market anarchist may respond that surely a monopoly's arrogation of power itself generates a threat, since the scope for potential injustice of a coercive agent against who there

[27] In similar spirit N.P. Adams argues that natural rights against risks are natural procedural rights (2019).

[28] Some might want to say that the notion of evidence-sensitive liability that is invoked in order to conclude innocent hold-outs have liability is mistaken because this would place innocents at risk, and we have a right against being exposed to such risks (Adams, 2023). It is surely true we have rights against such risks, and hence why we have natural procedural rights (Adams, 2019), however the point about the proliferation of liability under uncertainty is that we do not know the risk others impose upon us, and therefore are not able to know what proportional force would be. The presence of institutions that generate a degree of trust and therefore regularity and predictability give us the information to get out of acting under uncertainty, into risk mitigation.

can be no rival is far greater than even an honest holdout who insists on enforcing their own rights. Since a true state can physically get away with whatever it wants, up to a point, does this not generate the very uncertainty we seek to exit? The answer to this is "Maybe!" It entirely depends upon empirical factors. Namely, the level of social trust that is generated by whatever credible commitments the state in question has made. If the state has proven itself to be unpredictable and discretionary, then its use of force to sustain its monopoly does not serve to end uncertainty and bring about greater justice, and therefore there is no (or, to such an extent, less of a) duty to comply with its directives. Whilst monopolies are not inherently capacious as enforcers of justice, capacious enforcers of justice are likely to be monopolies. It is not enough that a state effectively monopolise coercion for it to be just, it must also exercise those powers in a way that is in line what justice objectively demands better than any reasonably feasible alternative. Having significant coercive capacity is necessary but insufficient to the state generating trust.

The long view of history has shown that there is a positive feedback mechanism between states having high levels of *coercive* capacity and having the disposition to enforce rights impersonally, impartially, predictably, and stably (*administrative* capacity). (Andrews et al., 2017; Cox et al., 2019; Johnson & Koyama, 2019; North et al., 2009) The less a rights-enforcing, tax-collecting agency has to feel threatened by competitors through its own coercive capacity to bring them to heel, the more it can limit itself to using its coercive capacity for administering justice and raising tax revenue, rather than the other more evil and counter-productive activities states have been known to get up to.

Market anarchists are entirely right to say that it is in principle possible for norms of arbitration between associations to emerge that mean there is no dominant association, and that different associations credibly defer to these norms in cases of conflict. However, a crucial point made in the history of violence research is that monopolies on force are consolidated as a *result* of powerful elites finally finding a way to credibly to commit to peaceful cooperation rather than violent rivalry (Cox et al., 2019; North et al., 2009, Chapters 1–2, 5) . The result of that credible commitment is a consolidation of a monopoly with internal channels of non-violent challenge. Empirically, it is often the case that a DPA does not emerge by defeating its opponents, but by finding a way to merge with them.[29] That is to

[29] Where strategy (2) mentioned in footnote 15 above is dominant and fails to yield a DPA, opportunities to merge are typically taken, according to this historical literature. The King cannot defeat the Lords, and no Lord can defeat all the others, but what they can do is bind themselves to the Magna Carta.

say, they find a way to commit to non-violence, and over time end up being two sources of internal non-violent power within a single violent power.

These are empirical reasons for thinking the state might overcome the empirical problems of statelessness that *can* lead to the conceptual problem of mass rights forfeiture. Whatever institutional features a monopoliser on coercion has that make it well suited to administering justice are functionally justified in terms of their contribution to rights being secured. So, the state is minimal in the sense that it only taxes the population and uses coercion in the service of the protection of rights. But rights might not be securable outside of a state that does a lot more than simply provide courts and police officers. Independent judiciaries, civilian lead armed forces, competitive elections, free markets, welfare provision, public goods, and economic regulation, and a variety of other things may all feed into the institutional structure that maintain that monopoly (North et al., 2009, Chapter 4), that and be justified in virtue of it. These institutional features of the state may be bundled into its equilibrium-generating, and therefore trust-generating, features. They are therefore legitimate.

Whatever most assuredly engenders a social environment in which it is *not* the case that we constitute threats to one another's negative rights simply through omission, will, in the face of no better alternative, legitimately monopolise coercion, and we have a natural duty to obey it on the basis that without it, we all lose all our immunities to violence.

The fact that a monopoly has the capacity to provide irresistible force in the backing of its judgements of right means that it has the power to thwart the potential for a proliferation of rights forfeiture through the symmetrical imposition of risk among persons. Of course, persons might find other ways to trust one another, but where they cannot, the state's monopolisation of force is legitimate as it stops our rights from effectively evaporating into the thin air that is our inability to credibly signal our intentions to live peacefully among one another.

G. E. M. Anscombe notes the primary justification for the state monopolisation of violence is that it is the means by which uncontrolled violence becomes *controlled*.

> [O]ne shouldn't deceive oneself by failing to recognize that the civil power essentially 'bears the sword': that what we have here is canonized violence. […] [T]he threat of [violence], the readiness to be violent to the point of killing […] is always there. No political theory can be worth a jot, that does not acknowledge the violence of the state, or face the problem of distinguishing between states and syndicates. […] [H]ow can

> we specify a domain of concern which is special to government, and of no interest to gangsters? […] The picture of the problem that I am drawing may seem to be fantastic. Here in England, for example, a minister if the Crown cannot single me out and tell me what to do. […] That is surely very different from what we imagine of gangsters running a place. […] But now, just what distinction do we have in mind here? That the gangster decisions relate to an individual directly, rather than because he is a member if some class? […] But it would be a bold legal theorist who would say that legislation […] could never refer directly to individuals. […] Or is it the lack of procedure? Well, must a government, to be a government, always be non-arbitrary in its actions? And, may not a gang of bandits be all tied up with rules of procedure? […] If I lived in a place that was rather smoothly run by the Mafia. […] I, together with many others, might feel as safe and unimpeded and unthreatened as people do under many governments. (1981, p. 132)

Violence needs to be controlled not so that there is no risk of violence, but so that there is not sheer uncertainty over violence, such that any and all violence is permissible due to a proliferation of liability. Whatever use of force blows all that liability away is legitimate to the extent that it actually does so.

4. Conclusion

If the presence of particular institutions turns out to be required for us to be able to trust that one another's inaction is *not* presumptively a threat to our rights, then our duty to respect others' rights becomes a duty to establish and be obedient to such institutions. However, there is no a priori reason to think a state nature – a lack of a monopolisation of coercion within a territory – inherently engenders this proliferation of rights forfeiture through reasonable symmetrical suspicion. It is in principle possible for trustworthy norms to arise between competing protective associations that provide the legal finality necessary to avoid the proliferation of rights forfeiture. However, there are some a posteriori reasons to think a monopoliser of coercion would more likely come to be able to provide that finality. Or rather, than if there were trust, a monopoliser would be stable.

Humans do not, therefore, necessarily come into the world with a duty to establish and/obey a state. They only have a duty to respect the rights of others, and sometimes this means taking positive action to ensure others can know they are not a threat to them. It is not a priori the case that right demands the presence of a state (or any particular political or legal institution). Whether or not we have an obligation to the state, whilst it is not a question of whether we consent to it or benefit from it, is nonetheless at one level an empirical question. If the state is that which enables us to know others are not *automatically* threats to our rights, then we are obligated to the state whether we like it or not. But this does not mean all states of nature are wrongful conditions. Where there is trust between bearers of natural rights – that their omissions are not threats – then right is possible. And this does not a priori require that peculiar modern institution we have called a state.

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