AUTHORITY REVISITED

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DOES MIGHT MAKE RIGHT?

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It is a commonplace that, as Thomas Jefferson says, "force cannot change right." Nevertheless, we often suppose that what is right for little reason other than that it is. We may be reinforced in this spurious deduction by the fact that its conclusion is very often correct: what is is right. Moreover, it is often true that it is right largely because it is what happens to be the case. At first blush this sounds like the quintessentially conservative claim that the status quo is good, even that it is the best state of affairs. Indeed, conservatism may gain much of its appeal from the fact that the status quo can justifiably be claimed prima facie to have a privileged moral position over various alternatives. It is the sometime merit of the moral priority of the status quo that I wish to discuss. In particular, I wish to show why might sometimes makes right. More accurately, I argue that might can contribute to the rightness of a state of affairs, that, for example, it can contribute to the moral authority of the law.

Thomas Hobbes is often supposed to hold that might makes right. Gregory Kavka argues that, for Hobbes, might does not create right, it merely creates propitious circumstances in which to abide by the right of nature. There is another way to make sense of Hobbes's views. We may establish that an extant state of affairs is only contingently right, and that a substantially different state of affairs would be right if it were the state of affairs. This fits Hobbes's evident view that, although monarchy was the best form of government in his time, still, once the
revolution deposed the monarchy and brought in a different
government, citizens owed that government obedience and they
would have been wrong to try to fight to reinstall monarchy.\textsuperscript{3}

It is relatively easy to establish that might can make right
simply by giving an example. Once this premise is established,
we may then explore the fuller implications of the larger claim.
It will help us to understand many otherwise opaque notions,
such as the greater force of minatory over hortatory moral
norms, the perversity of the conflict between welfare and equality
in any theory whose point is to commend meliorative action,
and the obligation to obey the law.

\textbf{The Prima Facie Plausibility of the Claim}

In many contexts we are relatively indifferent between doing
things one way and doing them some other way. In social con-
texts we are sometimes similarly indifferent between having
everyone do something one way and having everyone do it an-
other way. The typical example is that we do not really care in
principle whether everyone drives on the left or on the right.
But we do very much care in principle whether everyone drives
according to the \textit{same} convention. That we have established a
convention of driving on the right, say, therefore makes driv-
ing on the right the morally right thing to do. It is morally
right because it would only bring harm to do otherwise. This is
an essentially utilitarian conclusion that any moral theorist, utili-
tarian or otherwise, must find compelling.

If we have reached our convention of driving on the right
through the authoritarian imposition of a despotic tyrant, it
may nevertheless be the right thing to do—now that we have
the established convention. Hence, might may make right. It
makes right in this case because there is no compelling moral
reason to do other than follow the convention even if it was
established by tyrannical imposition.

This is not to say that it was right for our tyrant to impose
the driving-on-the-right convention. It may have been an out-
rageous and immoral imposition. For example, it may have been
done by whim to counter a prior, well-established convention
of driving on the left. The change may have been very costly,
even deadly. But if to change back would itself be costly, per-
haps deadly, with no offsetting benefits in the longer run, then
we cannot readily justify upsetting the tyrannically imposed
convention. We could give no compelling reason, no purpose
for the reversal. The most frivolous, even destructive applica-
tion of might has made right.

There are several ways in which one might argue that might
makes right that I do not wish to address here. The boldest of
these is that might simply makes right: the strong are entitled
to what they can take. At one level this would seem to mean
that a stronger individual not merely could but also should pre-
vail over a weaker. When Jean-Jacques Rousseau declares flatly,
"Let us agree . . . that might does not make right,"\textsuperscript{4} it is
presumably this position that he is rejecting, although his mean-
ings cannot always be clearly read. It is also this position that
Socrates seems to want to pin on Thrasydamus when in fact
Thrasydamus argues that since it is the powerful who establish
the law, the rules of what is just, they establish laws that serve
their interest. Hence, "the just is nothing else than the advan-
tage of the stronger." As though it were merely a definition or
an equation rather than a causal relation, Socrates deviously
inverts this claim: "You say that the advantage of the strongest
is just."\textsuperscript{5}

There is a level at which Thrasydamus's view seems more
nearly honorable, less cynical than he means it. Many individu-
als may combine resources and energies to gain collective
strength, and they may then prevail over others. We may often
suppose that there is something right in joint efforts to estab-
lish political control either because we think the means of estab-
lishing control are right or because we think the results of es-
tablishing it are right. In these instances, it is not the use of
might per se that makes right but either the prior rightness of
the might or the particular rightness of the results of its exer-
cise. I may use force to force you to do something you do not
wish to do and I may be justified in doing so because I hold a
particular role in a justifiable institution that requires my use
of force. Or I may use force, perhaps in a strictly ad hoc way
that is not grounded in any institutional role, to compel you to
do what benefits someone else or to keep you from harming
someone.

The last possibility here, that power may be justified when it
is used to produce a good state of affairs, is at some remove similar to the capricious imposition of a new driving rule. The chief difference is that the imposed driving convention becomes right only later, not immediately in its establishment. If I force you to stop harming someone, I do good. If, as dictator, I capriciously change our driving convention, I do not do good. Yet the eventual good that results from our having the driving convention in force after my imposition is clearly the result of my use of power. Might has brought about what is now a good state of affairs.

CONVENTION AND RIGHT

The problem of collectively settling on a driving rule is an instance of a coordination game. A coordination game is defined by the following condition: there are generally two or more choices that, if made uniformly by everyone, yield more or less equally good outcomes, whereas other choices made by everyone or the failure of everyone to make the same choice would yield worse outcomes. The way to resolve this game successfully is to get everyone to coordinate on one of the two or more best joint outcomes. As David K. Lewis argues, we may sensibly understand the standard notion of convention as simply successful coordination on some one of the two or more best outcomes in a repeated coordination game.

You and I face a two-person coordination game in Game 1. If we both choose strategy A or we both choose B, we each receive a benefit of 10; if one of us chooses A while the other chooses B, we each suffer a loss of -10. There is no conflict in this interaction—merely the opportunity for each of us to do better by coordinating with the other. If we face this game repeatedly, we may eventually settle on both always choosing A. In that case, we will have established a convention of choosing A. We may do this even without discussion or agreement—hence we speak of a convention rather than of a contract or agreement. The convention of driving on the right in many nations may have arisen in this spontaneous fashion, without need of legal coercion. On the other hand, as the recent experience of Sweden suggests, it may also have been organized by the power of the state: Sweden once followed the convention of driving on the left but in 1967 reconstituted on the convention of driving on the right. Although one might resent intrusion by the state in such a matter, as some Swedes did in 1967, one would be foolish and wrong to defy a driving convention it has successfully established.

What are the conditions under which a convention is right even if it has been established by force, even wrongful force? The minimal conditions are essentially utilitarian: that it not be beneficial to change the convention once it is established. Often this condition can be met under the least-demanding value theory: that in which interpersonal comparisons are not made and aggregate welfare is merely an ordinal function of individual welfare according to the Pareto criterion. If no one would be made better off by changing the convention but some would be made worse off, then the change is not justified. The American convention of driving on the right can plausibly be thought to meet this condition. There may be conventions that require compromising the interests of some to the benefit of others, so that changing these conventions would benefit some while harming others. To defend these against change would require interpersonal comparisons of at least a weak kind. The conventions of a system of law may commonly be compromises of this kind.

Note that the minimal, utilitarian condition above has two elements. First, there is the comparison of benefits under a convention and under an alternative. Second, there is the consideration of costs of making a change from the present convention to any alternative. The monetary costs of making the change from driving on the left to driving on the right in Sweden in 1967 were estimated at $120 million. It was also feared that the change would result in traffic accidents causing deaths and injuries beyond the numbers to be expected by the continuation of the old convention during the first months of transition. The latter fear seems not to have been justified, perhaps
because of the extra attention devoted to traffic control by authorities, the effect of mass advertising on drivers' attentiveness and care during the transition, and lower speed limits after the switch.9

Driving conventions are not the central matter of political theory. Their value here is their clarity in formulating the structure of a class of problems. The more urgent issues for authority and political theory concern the rightness of adhering to conventions that are not so neutral as the driving convention. John Austin attributes to Hobbes the view that the choice between monarchy, aristocracy, and democracy is itself just a matter of convention in the strategic sense above. That is to say, "which is the best of these three kinds of government, is not to be disputed there where any of them is already established."10 Many have disputed this claim of Hobbes or its analogue in many contexts. In disputing it we would want to consider the costs of making a change and who bears them, the relative benefits of the new convention and who enjoys them, and the relative losses under the new convention and who suffers them. Austin, as would many others, thinks Hobbes exaggerated "the evils of rebellion and strife."11

WELFARE AND DISTRIBUTIVE JUSTICE

In contemporary political theory probably no issue is more pervasively discussed than the apparent division of theories into those concerned with welfare overall and those concerned with distributions. Utilitarianism and distributive justice are commonly thought to be incompatible in principle. While I think the incompatibility has been overstated and miscomprehended, I will not discuss the miscomprehension here. Rather, I wish to address the way in which might affect our assessments of the rightness of seeking redistributions. The most influential modern contribution to political theory is John Rawls's *A Theory of Justice*,12 which is posed in part as a counter to utilitarian theories of political order. Rawls presents us with an ideal theory of distributive justice, a theory that addresses the basic structure of society. According to this theory that structure is just that maximizes the wellbeing of the worst-off class in the society.

Much of moral and political theory seems to be directed, as Rawls's theory is, at the appraisal of particular states of affairs. It becomes action-guiding only when coupled with relevant causal theories, especially social scientific theories of the governance, design, and change of institutions. It is generally hard not to read it as nevertheless implicitly action-guiding without serious attention to causal theories. For example, one might read Rawls's theory of justice as straightforwardly critical of some particular form of government or ordering of society if one could imagine workable alternative arrangements that would produce a better state of affairs by the criterion of the difference principle. Yet it need not follow that it would be unjust to continue with the defective arrangements because there might be no way simply to move from the status quo to the superior alternative.

Suppose it were true, as seems plausible, that a revolution to change from an unjust to a more just structure of society will make the worst-off class even worse off during the generation of the change. Then Rawls's theory of justice, with its difference principle, cannot justify making the change, indeed, must weigh against it. Any change would be rather a move from the status quo to that state of affairs that includes the process of change and its result. But that state of affairs might, by the criterion of the difference principle, clearly be inferior to the status quo. Given a sufficiently strong value theory for the comparison of welfare across individuals, a utilitarian may well argue for revolutionary change even though the difference principle, considered over the dynamic period of change, would recommend against it.

We may recast this problem as one of justice between generations. Suppose we can move our society from an inferior set of institutions to a superior set but only at the expense of the general generation of that class whose welfare is to be increased by the change. Dogged continuation of the status quo may mean that the worst-off class for all future generations will be increasingly worse off than it would be if we changed our form of government now. But if we consider the actual state of affairs we achieve in making the change, it is one in which the worst-off class is even worse off for the generation of the transition than the worst-off class in the status quo. In a sense, these people must be exploited now in order to benefit their succes-
sors later. This is, of course, a variant of a traditional argument against revolution: ideally, the changes to be brought by revolution would be good but practically they are not worth the cost. This traditional argument is commonly put in vaguely utilitarian terms. The twist in the traditional (and traditionalists') argument is that on Rawls's theory we may object to revolutionary change because we are concerned with losses suffered by the worst-off class and not with losses suffered more generally. Yet even this highly restricted concern may block the argument for redistributive revolution. Interestingly, however, the Rawlsian concern may also block redistributive revolutions that a utilitarian would favor, because on the utilitarian account losses to a present generation of the worst off might be more than balanced by gains to future generations of the worst off and everyone else.

It is not merely some notion of overall welfare that conflicts with equality but the egalitarian concern with the welfare of the worst-off class in the long run that conflicts with equality within that class across generations. When it seems valid, this must be a far more distressing conclusion for egalitarians than is the usual concern of traditionalists. For example, suppose it were true, as is widely asserted, that blacks of the present and perhaps even near future generations in South Africa are better off under the current white supremacist regime than they would be under a black majority regime. The transition might entail loss of welfare and even a reduction in freedom for almost everyone in South Africa in the present and perhaps next generation. One could then morally support revolutionary change in South Africa only if one morally approved trading the welfare of some for that of others in a way that certain utilitarians might readily assent to but that many anti-utilitarians would object to.

**MINATORY AND HORTATORY MORAL NORMS**

A long tradition holds that minatory norms are more urgent and forceful than hortatory norms. Between these lies, John Findlay says, "one of the deepest gulls in morals." Minatory norms typically include a "not," as in "Thou shalt not kill." Hortatory norms generally exhort positive actions, as in "Thou

shall love they neighbor as thyself." Of these two exemplars there can be little doubt that the former is more urgent than the latter in the sense that its violation would be of greater consequence. In another sense it may be that the latter is the more urgent: it takes little effort to impress most of us with the first norm, which we fully inculcate, but it seems almost impossible to impress many of us with the second norm, which we honor only weakly. Much of the reason for this second difference is that conventionally organized force can readily be brought to bear to back the former norm but not so easily to back the latter. Norms that are actively enforced are apt to become norms that are actively held.

Moral and political philosophers have often been concerned to explain the difference in the force of these kinds of norms. Gilbert Harman explains the difference with a functionalist argument. He argues that everyone wants minatory norms to protect themselves against attack from others, while it is chiefly the poor who want hortatory norms to help those in need because it is the poor who want to induce the well off to help them. It is by conventional resolution of our coordination problem in securing the protection against harm that we establish the minatory norm. But since it is the well off who have most to lose if that norm is violated, there is an artificial connection between their interest and the interest of the poor in getting help on occasion. This artificial connection creates a second coordination problem that is then resolved by the convention that all follow the minatory norm if the well off also follow the hortatory norm. Because of their greater power, Harman argues, the well off get the greater benefit under this latter contract by convention.

Bishop Berkeley argues that minatory norms are to be taken in an absolute sense whereas hortatory norms cannot be. Why? Because it is impossible that one can do all of the positive good things that one might do, either because they are mutually inconsistent or because one simply cannot do all of them simultaneously. On the other hand, it is clearly "consistent and possible that any man should, at the same time, abstain from all manner of positive actions whatsoever." One may propose an alternative crudely functionalist explanation that turns on considerations not unlike those of Berke-
ley. It is commonly true that individuals are in sufficient position to cause great harm but relatively seldom that they are in a position to bring about comparably great good. For example, almost anyone could commit murder any day. It is almost never going to be the case that I can do a similarly great good. Similarly, it is much harder to build than it is to destroy. This is true of property and also of good relations that depend on trust, as in marriage or international relations. For an extreme example, the minatory norms against indiscretion in marital relations can be instantly overridden, while the effort to restore a faith that is broken can take years. Similarly, ten minutes with a Molotov cocktail can destroy what it would take thousands of hours to build.

It is surely because of the scale of damage that can be done in violations of many minatory norms that we enforce these norms with the power of states, communal shaming, and even ad hoc retributive violence. Yet, behind these protections often lies a justification for specific norms that is little more than the might of tradition or convention. I own a house and gain extraordinary benefits from it. Why? Because there is a powerful state to enforce certain behaviors on the part of others with respect to that particular house. We may justify the exercise of state power for such purposes as protecting my property in various ways. In political philosophy of the not distant past, the justification was often based on so-called natural right or rights. This kind of justification cannot withstand the ridicule of those who point out that what is supposed to be a natural right in one community should have no claim in some other. Even in the best of hands, claims for natural rights seem little more than rhetorical: they are an act of politics, not a justification for it. That is perhaps why they have been most eloquently stated by revolutionary leaders, such as Thomas Paine, Thomas Jefferson, and the French revolutionaries.

A compelling justification for certain political norms, such as property rules, that is not inherently inconsistent has been given by utilitarians. This justification turns on the fact that any such norm may be selected from a larger set of many that would do about as well for us. But, as in our driving convention, once we have settled on one norm we may not be able to improve on our state of affairs by radically altering it. This is, again, the view of Hobbes cited above, that once we have either a monarchy, an aristocracy, or a democracy, we can do best by sticking with it. Once we have an institution for handling property or governance that works we may be able slowly to alter it marginally to achieve better results. As in most governments and in the Anglo-Saxon property regimes of the last few centuries such marginal changes over time may add up to radical changes. But the cost of making radical changes directly might typically be too great to be justified.

Because the claims for and against revolutionary change are fraught with difficult issues of assessing benefits and costs, one may doubt the validity of Hobbes’s view on forms of governance and still recognize its force in other contexts. For a relatively trivial example, it has been claimed of many of the European cities destroyed in World War II that efforts to redesign them in better—more functional and more pleasing—ways ran aground on the difficulties of reassigning property rights to fit radically redesigned cities. Hence, cities such as Cologne still have awkward street placements that are inefficient in moving traffic and wasteful in the use of land. The destruction of virtually all buildings was not a sufficient first step toward more sensible city designs. If we suppose that there were mutual gains to be made from redesigning Cologne, we must also suppose that there would have been reallocations of property rights that would have left everyone better off. The obstacle, of course, was that the transition would have involved massive administrative and legal efforts that would have hampered the change and that might well have soaked up all the supposed benefits from it for the next generation. The prior convention on the allocation of property rights plausibly dominated any superior convention once the latter had the costs of transition added into it to define it as a final state of affairs.

**The Obligation to Obey the Law**

If we put the two accounts above—of the claims of welfare and distributive justice and of the claims of minatory and hortatory norms—together, we get an implicit account of the obligation to obey the law in certain societies. In brief, on this account the authority of the law must rest on its service to us. An
inherent difficulty in asserting that it serves us well is that it may serve us differentially well, so that the authority of law may itself be an issue in the conflict between welfare and distributive justice. A further, and in some ways more fundamental, difficulty is that we may wonder with respect to what alternative it serves us well, which is to say, better. Let us consider this more fundamental issue first. Through it we may then turn to the conflict between welfare and distributive justice.

A, perhaps the, chief value of a system of law is that, as Lon L. Fuller says, it is facilitative. Legal protections enable us to see our own well being, both on our own and in interaction with others. Law is not used extensively to get us to do specific things so much as to prohibit us from doing certain things. Law facilitates in three very general ways. First, it governs conflict. For example, it does not force you to create wealth; rather, it prohibits mē from interfering with your enjoyment of what wealth you create. Second, it enables us to coordinate our actions to smooth the way for us to get past one another without too great mayhem. For example, law may be used to control traffic and to establish various standards. Finally, in a third general class of problems it enables us, through mutual coercion, to act in our joint interest. For example, law may be actively used to provide certain services. More than in the other classes of law one might contend that the use of law to provide services is rather more pro-active than facilitative. To some extent, this issue turns on whether one supposes that the provided services are what we the people want. If they are, then legal intervention seems to do little more than facilitate our desired collective action.

In all these classes of legal interventions, except possibly the third, the law seems chiefly minatory rather than hortatory. Even in the third class it will be minatory if it facilitates collective action by extracting resources or cooperation from the citizenry in order to provide them services. At last resort it is through sanctions that it operates, although if it works well its sanctions should seldom be brought to bear. That is to say, it works by force—by might. To say further than I am morally obligated under the law, rather than merely obliged, requires that the force of the law be right. Generally we wish to assert that a moral obligation to obey is a concomitant of a good system of law. It will be possible to do so if we can establish that a minatory law is sufficiently good at enhancing our lives.

If the value of law depends on how well it facilitates our achieving or maintaining valued outcomes, we cannot make serious claims about how good a particular system of law is except by comparison to alternatives. Our first tendency in making comparison may be to compare life under a given or ideal system to life without law in some supposed state of nature. Unfortunately, as in Hobbes’s view above, almost any orderly system may seem better than no system at all, so that this minimal comparison commends almost any legal system. Suppose our system seems to pass this minimal test but that we can imagine a substantially different system that would be superior. As argued above, we cannot guide our actions by this comparison alone. Rather, we must further consider the costs of getting from our present system to the superior system.

Now suppose that the chief difference between our present system and a plausibly superior one is that ours works to the distinct disadvantage of some members of the polity and to the greater interest of others. If this is true, it is likely to be in part the result of deliberate action on the part of the more powerful. Recall the argument of Thrasymachus that it is the powerful who determine what in practice we consider to be just, which is likely to include the exploitation of the weak by the strong.

Bernard Williams chastises Thrasymachus for failing to see that power is no less a matter of convention than is justice: "Thrasymachus speaks as if political or social power were not itself a matter of convention, and that is a view barely adequate to the school playground." It may be that Thrasymachus misses this point, but then this point misses its mark. Power can arise by convention and it can be maintained by convention in the strategic sense of David Hume and Lewis. For example, it is maintained when those of us subject to it continue to coordinate on the strategy of submission rather than jointly coordinate in moving to the strategy of rebellion. We are all generally better off if we all choose the one or the other of these two strategies than if only so few of us rebel that we and perhaps many bystanders are harshly put down. The power that is thus created by convention can then be used to create exploitative laws to extract resources from the weak or to keep them better.
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running the system. And, with Williams, we may conclude that power derives from convention, but in the strategic sense that it derives from a coordination game that is played out repeatedly. The exploited class II cannot readily force recoordination on its preferred outcome. Indeed, its members may not even be able to coordinate among themselves on attempting to force class I to yield sway.

If this is so, then what finally is the authority of the law? If we who are relatively exploited understand the inequality of results under our laws, we may, as Williams suggests and as Ullmann-Margalit's norm would have us do, come to think the laws are just and that we should do less well than our supposed betters. Or we may nevertheless honor the laws, not quite as just, but as better than actionable alternatives. If indeed we have no better alternative than obedience within our realm of possibility, we may simply reckon that obedience is right because it is the best we can achieve. And this is the correct way to put the issue: obedience is right. This is not to say that our state of affairs is right on some abstract assessment but that for us the right action is to obey the law even though it is an unequal law. This is not substantially different from Hobbes's conclusion that we should stick with and be obedient to our present form of government rather than engage in the turmoil of civil war to change to a theoretically better form.21

CONCLUSION

Does might make right? The answer is: to some extent, yes. It is not the only consideration, but it is a consideration. This answer turns on utilitarian concerns when there seems not to be a reachable alternative to the situation that might has made or put us in. Contrary to Jefferson's claim, force can change right. It can produce a state of affairs that is then right in part just because it is the state of affairs. And it can change our assessment of what it is right to do simply because what it is right for us to do is partly a function of what we must do to overcome force.

It is conceivable on this understanding that both sides in certain conflicts are morally wrong. Part of the reason that each is morally wrong is that, given the expected actions of the other,
it cannot expect to bring about improvements of the kind it claims to fight for. The might of each side may make the actions of the other wrong. We may think better of the supposed aims of either the revolutionaries or the government in, say, El Salvador and still judge the actions of both to be morally reprehensible because their available means cannot fit their ends. Here we may not wish to say that might is right but only that opposition to it is wrong. Suppose that the better state of affairs would be that in which those in power behaved better. Alas, if they cannot be expected to before helping to wreak grievous carnage, revolutionary efforts to bring about a supposedly better final state of affairs may be wrong. Hence, might can change right. It can make right and it can make wrong.

Notes

5. Plato, The Republic, trans. G.M.A. Grube (Indianapolis: Hackett, 1974), Book 1, §338c, p. 12. Although Thrasymachus has used the term "just" in an utterly cynical way, Socrates goes on to treat his claim as though he were using it in the honored way Socrates does.