

Phil 290-1: Recent Work on Political Coercion
September 18, 2012
Ripstein, *Force and Freedom*, Ch. 1–2

Independence:

Basic normative idea: “being one’s own master” = being “independent”

S is independent iff no one other than S decides which purposes S will pursue

S is independent iff S’s means are neither used nor taken from S, by another person, for purposes that are neither (i) chosen by S and compatible with S’s “rightful honor” nor (ii) “public” and (if this is something different) pursued by an “omnilateral” will.

An act is *wrong* iff it is not *rightful* iff it is incompatible with *equal independence for all*.

Ripstein suggests that independence is threatened not only by *force*, but also by *authority*: e.g., the authority over others that one exercises when one appropriates unowned property. This doesn’t obviously fit (at least) the second definition. How do I *use or destroy your means* when I place you under an obligation to keep away from something previously unowned?

In any event, is such authority troubling in the way that force is? We can put others under duties to rescue, and so on. Is that like bodily invasion?

“*means*”

Innate right: No act required to establish

1. One’s own person: Mental and physical abilities

Private right: An act required to establish.

2. Property: Things
3. Contract: Performances by other persons
4. Status: Other persons.

“*by another person*”

Independence is *relational*: it is just a matter of how *other persons* relate to you. Contrast other conceptions of freedom, or of goods to which freedom is supposed to be instrumental: success in achieving one’s goals; fulfilling one’s desires; gains in welfare; avoidance of suffering, disability, death; autonomy “as a feature of a single agent” (e.g., leading a life informed by reflective choices).

- These can be *furthered* or *hindered* by one’s own actions or natural causes, whereas independence is unaffected by one’s own actions or natural causes.
- These can be *furthered* even when the choice of what purposes you are to pursue is up to someone else—e.g., benevolent masters, flouridators—whereas independence is necessarily violated.

A plausible idea, put in other terms: we have an interest in control over others’ use of force against us *as such*, independently of its effects.

“*chosen by S*”

The reason why consent makes force permissible is not:

- that one’s consent is a good *indicator* that force is in one’s interests (e.g., because people are the best judges of their own good).
- that by consenting, one volunteers for a burden, and so *waives* one’s objection to it

But instead:

- that if you consent, force does not violate your independence. You are still the one deciding which purposes you will pursue. (There is no “burden of dependence” to volunteer for.)

“*public purposes*”

Those of “creating, sustaining, and improving” a condition of equal independence.

- Presence of an adequate justification sufficient? Intention not necessary?
- *Impartial* purposes not concerned with *independence* (e.g. altruistic fluoridation) are still “private.”

The role of the state:

Whatever the state does must be compatible with equal independence. Before we consider questions of the distribution of (other) benefits and burdens,¹ we must ensure that equal independence is secured.

Why should we grant that independence, or an interest in controlling others’ uses of force against one, takes *priority over all other interests*?

It might seem to provide the best explanation of the intuition that I may not compromise your independence just to provide *you* with some other benefit: e.g. vaccinate you against your will.

- But can this be explained in other ways? E.g. a distinct wrong of paternalism?
- Not as obvious that I may not compromise *your* independence in order to protect *other* kinds of interests of *others*: e.g. vaccinate you against your will in order to protect not only you, but also others. Why should this one interest take absolute priority?

The state is not only compatible with, but also necessary for, independence. We will see more about this. But key ideas seem to be:

- being subject to *another private person* is what really threatens independence
- being subject to the state is not only not like being subject to another private person
- but also the only way to avoid being subject to another private person.

Why? What makes states different from other persons? Merely that they pursue “public purposes”? Or something more? That they are “omnilateral” wills? What does that mean?

On this view, Ripstein argues, it will emerge that:

¹ Ripstein tends to overstate contrasts with received views. For example, he suggests that, for Kant, the fair distribution of benefits and burdens isn’t the first problem of political philosophy, as it is for Rawls, but instead the securing of equal freedom. Only once that is established can we turn to the distribution of benefits and burdens. But what is the difference, exactly? For Rawls, the first benefit to be distributed, before considering any other, is freedom, and this benefit is to be distributed equally. Of course, the conceptions of freedom may differ, but that’s a different issue.

1. The state is *not* simply an especially efficient *means* to achieve a result that, in principle, could be achieved without institutions. Equal independence is not “conceivable” without a state.
2. The need for the state is not *contingent* on human motivations. Even perfectly peaceful and cooperative people would still need to the state to avoid (albeit pacific, benevolent) dependence on one another.

Contrast with utilitarian, Rawlsian, egalitarian (e.g., Dworkin, G. Cohen), and Lockean views.

Motivating independence

Why care about independence? When Ripstein seeks to excite anxiety about dependence, he often likens it to “slavery” “having a master” “servitude” “subjection” “despotism” “subordination” “domination” etc. That is, he leans on terms that we use, less metaphorically, to characterize forms of *social and political inequality and hierarchy*. “Freedom as independence carries this same idea of [political non-domination] further, to relations among citizens. It insists that everything that is wrong with being subject to the choice of a powerful ruler is also wrong with being subject to the choice of another private person.”

But is dependence like social/political inequality/subordination, etc. (or like domination, as Pettit understands it)? Offhand, they seem to differ in several ways.

First, social inequality, subordination, etc. isn’t obviously limited to others using force against one, or using or destroying one’s “means.” Also, perhaps, a matter of: (i) others’ authority over one, (ii) the greater consideration they enjoy in comparison to one, and (iii) other forms of power that they have over one’s life. If I lack means that others have, or find myself in an inferior context to use my means as a result of others’ use of their means, this may make me “beneath” them in a familiar way. But (ignoring the possible bulwark thrown up by “rightful honor”) it does not infringe my independence, since it does not use or destroy *my* means.

Second, social inequality might seem to be more a matter of ongoing relationships. By contrast, any exposure to nonconsensual, nonpublic force, no matter how *fleeting or episodic*, is an infringement of independence.

Third, social inequality is a matter of *asymmetry*. By contrast, independence is violated by *symmetric* destruction or use of others’ means by *equals*, or the destruction or use of a *superior’s* means by an *inferior* (e.g., mousy servant scurries off with the lord’s surplus dinner roll).

Finally, social equality seems, and Pettit’s domination is expressly, a matter of *capacity* rather than of *actual exercise*. For Pettit, one is dominated even if one not *actually* affected by an alien will, so long as one is *liable* to being affected by it: whether one is *exposed* to an alien will’s power, *whether or not exercised*, of affecting one. Thus, the effects of domination might be otherwise fair and beneficent—and deliberately so. Hence, the objection to domination is dramatized by examples of good-willed “domination”: the “good” slave-master.

Now, at times, Ripstein also seems to suggest that independence is a matter of capacity rather than exercise. For example, he suggests that the slave might enjoy autonomy, but not independence, presumably because the benevolent master *could* intervene. The emphasis on

unexercised capacities may also be important for explaining why even angels need the state. The mere fact that they *could* intervene is enough to make us dependent on them.

Can independence be a matter of mere capacity, rather than actual exercise? First, suppose I have the physical capacity to invade your body without your consent. In that case, your independence would *already* be violated. Would you have any further objection to my *actual* invasion of your body? Might I fairly reason: “I do no further wrong by actually invading”?

Second, as things are, we typically have the capacity to use force against others, but don’t. For example, every morning, on the way to work, I physically can trespass on my neighbor’s property, by hoisting myself over her garden fence. But it seems implausible that, merely in virtue of this, I wrong my neighbor, or undermine any important interest of hers.

To this second point, it might be replied that, as things are, I do *not* have the capacity to use force against my neighbor, since the state deprives me of that capacity. But in what sense do I, living under a state, lack the capacity to trespass on my neighbor’s property? Assume that it is certain that the state would respond, in some way, to my trespass: I would be repulsed from her property, compelled to pay restitution, punished, etc. Wouldn’t I still have used force against my neighbor? If so, doesn’t that show that I had the capacity to?

Finally, can Ripstein ally himself with the traditional, republican worry about benevolent despotism of the genuine political variety? That worry is that, no matter how well the ruler might rule, how good the results he brings about, there is an objection to being under his power. But does Ripstein have any objection to a benevolent despot, when the “good results” he brings about consist in equal independence among all citizens? Such a despot would use force only for “public purposes.”

Force as a response to wrongdoing:

Ripstein claims that when A violates the independence of B, then using force against A need not violate the independence of A (or at least need not be similarly objectionable). This is because:

- it is “the hindering of a hindrance to freedom.”
- it “upholds” the freedom of B
- it is “an incident of [B’s] antecedent right to be free.”

Ripstein suggests that this contrasts with the received view,

1. where coercion takes the form of a *threat*
2. and where coercion is *extrinsic* to the wrong to which it responds.

How deep is this contrast, though? Let us distinguish two kinds of uses of force as “responses” to wrongful force: prevention and punishment.

- Note that *prevention* includes *repulsion* or *restitution* “after the fact.” Suppose Colette has succeeded in sitting on Eddie, without Eddie’s consent. If Colette refuses to get off, then, going forward, there will be a *future* use of force, a continuation of Colette’s on-Eddie-sitting, against Eddie. So when Jessica pulls Colette off Eddie, she prevents Colette from using force, in the immediate future, against Eddie.

- Prevention needn't involve threats, and it seems to aim at upholding, restoring, etc. the freedom of the victim.
- Punishment does involve threats, and it doesn't seem to uphold, etc. the freedom of the victim.

Perhaps the only difference, then, is that the received view has *focused first* on punishment, whereas Ripstein focuses first on prevention. One each view turns its attention to the *other* topic, one wonders how different the resulting positions will be.

In evaluating proposed justifications of force in response to force, we should ask how they answer:

- May force be used only as a response to *force*?
- Must force be *necessary* for this response?
- Must force be somehow *proportional* to the force responded to?
- May force be used only against someone who is *responsible* for the force (or, in cases of deterrent punishment, *force of the kind*) responded to?²
- Is force *in response to permissible force in response to force* impermissible?

A “no” answer to A seems at odds with the Kantian view. “No” answers to B–E seem independently implausible.

Why is a “hindrance to a hindrance” to freedom “consistent with freedom”? The natural analogies to double negation, or to the composition of vectors lead one to expect “yes” answers to questions A, C, and E.

- Re A, force may *only* be used *against force*, because other wrongs are not hindrances to freedom.
- Re C, response must be *proportional*: the same in “magnitude,” but opposed in “direction” to the aggression.
- Re E, responsive force by the original aggressor is the hindrance of the hindrance of the hindrance of freedom. That is itself a hindrance of freedom, just as the negation of a double negation of P is a negation of P.

However, one is led to expect “no” answers to B and D, which seem implausible.

- Re B, if force *actually* hinders a hindrance, then it is a hindrance to a hindrance and so compatible with freedom. Whether it is *necessary* to hinder that hindrance doesn't arise.
- Re D, it would seem that an “aggressor” can hinder freedom even without being responsible for that hindrance of freedom. Ripstein accepts that I can inadvertently violate your independence, as seems to follow from the definition: I can inadvertently use or destroy your means without consent.

In any event, why accept the basic idea? Surely, the analogies to negation, vectors, etc. carry no moral weight.

Set aside punishment for the moment, and consider only the justification of prevention. Perhaps the crux is one or both of the following:

² Regarding a “no” answer to D, one might object that it is not implausible that I may use force to remove an *unwitting* trespasser from my property. But may I use force *before* informing him that he is trespassing and giving him an opportunity to leave? That I can use force if he *then refuses* is compatible with a “yes” answer to D. In that case, he is responsible for the continuing trespass.

- I. Force used in prevention is permissible, because it upholds what the victim has a right to.
- II. Force used in prevention is permissible, because it does not deprive the aggressor of anything he has a right to, since, by hypothesis, he does not have right to the object of his aggression.

First, how is “right” to be interpreted?

- “the victim has a right to X” = “if others use force to prevent the aggressor from using or destroying the victim’s X, they do not thereby act impermissibly”—unhelpful tautology.
- “the victim has a right to X” = “others have corresponding duties”—implies “no” to question A, licensing uses of force to prevent, say, the keeping of promises.

Second, do I and II give plausible “yes” answers to B, C, and D? According to II, for instance, it would seem to *suffice* to make your preventive use of force permissible that I have no right to the force that you are preventing. The *necessity* of your preventive use of force, its *proportionality*, and my *responsibility* don’t seem to enter into it. Whatever may be the case, it would seem, you are not depriving me of something I have a right to.

Finally, it does not seem to follow—here, regarding II—from the fact that *what I am defending* is not something to which you have a right that *nothing I do in defense of it* can deprive you of something to which you have right. If I build a high wall, with my own means, to keep you off my land without my permission, then, *in keeping you off my land*, I am not depriving you of anything you are entitled to. But if do this *by locking you in a cage, demolishing your house, and using its timber to build my wall*, then I certainly *am* depriving you of much to which you are entitled. If you leave inadvertently stolen property in a public place, then in returning it to the victim, I am not depriving you of anything to which you have a right. But is it so obvious if I tear down your house and send you to the hospital in my efforts to find it? Similarly—regarding I—from the fact that *what I am defending* is something to which the victim *has* a right it simply does not follow that *nothing I do in defense of it* can deprive you of something to which *you* have right.

To be sure, one could just *build into* the definition of “independence” that necessary, proportionate, etc. nonconsensual force used in prevention or punishment does not count as a violation of independence. But, first, this wouldn’t be very explanatory. And, second, it isn’t, as far as I can tell, quite how Ripstein defines independence. What he does say is that uses of force *for public purposes* do not infringe independence, where public purposes are those that secure of a scheme of *equal independence*.

So perhaps what justifies force as a response to force is it achieves *equality of independence*. The aggressor has taken “too much,” so to speak, and we are evening things out by “giving some back” to the victim. The more general view would be:

Distributive Permission: Nonconsensual force in response to force is permissible insofar as it plays the right sort of role in achieving (e.g., is necessary and sufficient for achieving, or necessary for and contributes to achieving, etc.) the right sort of distribution (e.g., equality, “leximin” satisfaction, etc.) of freedom from force overall.

Ripstein would deny that force used to achieve an equal distribution violates independence at all. But one might say, instead, that while such force does indeed infringe the *aggressor's* interest in controlling others' uses of force against him, this is justified on distributive grounds: it furthers the *victim's* like interest, and the victim would otherwise be "worse off" in the relevant respect.

When is "independence" equal? When people are free from the same number of *actual uses* of nonconsensual force? But that's crazy. Take punishment. Suppose I have hit you. If I am hit back, then the distribution of batteries is equalized. But this is not just "leveling down," but leveling down that doesn't obviously deliver a more equal result. Moreover, taken to its logical conclusion, it would require, insanely, that not just I, but everyone else, should suffer a battery.

It doesn't help to appeal to a different distributive principle, such as "leximin." How then do we explain punishment at all? If I am hit in response, then the distribution would seem to be worse; two people suffer a battery each, rather than only one person. It might be said that my being hit prevents batteries in the future, by deterring others. But my being hit might, in certain cases, reduce batteries even if I never hit anyone at all. *This* justification of punishment would seem to justify using force against one innocent to save the five from force in the classic "paradox of rights."

Things are not much better with respect to prevention. I am the aggressor, and I am responsible for putting you in a situation in which either you get hit by me, or I get hit by you. It is true that the "distribution of batteries suffered" if I get hit by you is no worse in terms of equality or leximin than the distribution if you get hit by me. So, perhaps, you are permitted to hit me. But, by the same token, it is no *more* equal. So I am permitted to hit you. So this gives a highly implausible "no" answer to E: aggressors may fight back.

I suspect that if the general approach of the Distributive Permission is to be made to work, we need to view what is to be distributed not as *actual freedom* from nonconsensual force, but instead *opportunity to avoid nonconsensual force through one's choices*. We aren't distributing *unconditional* control over others' uses of force against one, so to speak, but instead *control over whether* one will or will not enjoy such control.

Opportunity-Based Distributive Permission: Nonconsensual force is permissible insofar as it plays the right sort of role in achieving the right sort of distribution of *opportunity* to be free from nonconsensual force through one's choices and—the *Opportunity Constraint*—the target of this force had a reasonable opportunity to avoid it through his choices.

We need the "Opportunity Constraint" to avoid licensing using force against one innocent to save several others from force.

Compare two schemes of opportunity to be free from force. In the "punishment scheme," if one refrains from using force, then one will be free from state force and very likely free from criminal force. However, if one uses force, then one will suffer more severe state force. In the "no-punishment scheme," whether or not one uses force, one will be free from any state force, but will very likely suffer criminal force. Arguably, the punishment scheme offers better opportunities than the no-punishment scheme.³ Suppose that there are no alternatives that the

³ Not at all obvious, but not implausible either, at least if we assume that the punishment won't be too much more severe than what is suffered by victims of crime. While the punishment scheme exposes one to a somewhat worse

state is capable of bringing about. So the opportunities under the punishment scheme are better for everyone, and they are equally distributed. The “prevention scheme” would be exactly parallel and justified in the same way, except that state force would reduce criminal force directly, rather than via deterrence.

Can the criminal (or would-be) criminal object to our punishing (or preventing) him? Granted, the outcomes for the criminal—in terms of freedom from nonconsensual force—are worse than the outcomes—in terms of freedom from nonconsensual force—that anyone else suffers. But we are assuming that the “currency” of this distribution is not actual freedom from force, but instead *opportunity* to be free from force. And, even if we punish (or prevent) him, he still enjoyed the same opportunity to be free from force as anyone else, which, we are assuming, was better than in the no-punishment (or no-prevention) scheme. There are difficult questions about whether and why we should be aiming to provide people with opportunities, rather than outcomes. But once we have decided in favor of opportunities, there is nothing, in general, illicit about the form of argument that says: “Yes, this outcome is worse for you than some other outcome that we might bring about, but we may do it, because it is the realization of a scheme of better opportunities, justly distributed.” We can make this argument outside of the context of punishment: for example, to someone who refused to take the opportunity to apply for some publicly provided benefit and now complains about his not receiving it.

The Opportunity-Based Distributive Permission explains D straightforwardly. *Responsibility* for force matters because it means that one had the *opportunity to avoid* the responsive force by choosing differently. It also explains E straightforwardly: why the aggressor can’t fight back. Force against the aggressor is permissible since it is compatible with his having the opportunity to avoid force through his choices. Force against the victim is not permissible, since it is not so compatible. It also goes some way to explaining B. If state force is not necessary to respond to the force in question, then perhaps some alternative system would improve the opportunity to be free from force. And it goes some way to explaining C. If state force is intuitively disproportionate, then perhaps some alternative system, with more moderate, or no, punishment, improve the opportunity to be free from force.

Is Opportunity-Based Distributive Permission in keeping with the spirit of the Kantian approach? Is it independently plausible?

It does not deny that independence, or the interest in controlling others’ uses of force, *takes priority* over all other interests. People are not being punished in order to increase happiness, autonomy, etc.—only to secure freedom from force.

It does not sacrifice the *greater* interests of the few for the *lesser* interests of the many. The distributive principle in question is equality or leximin, not aggregation.

It *does* deny an absolute form of the Doing/Allowing distinction: that we may never use force against one even in order to save others from force. But that absolute form of the

use of force, it also allows one, through one’s choices, to be completely free from force. Moreover, those choices are not particularly burdensome. One simply needs to refrain from deliberately attempting to use unjustifiable force against another, which one is anyway duty-bound to refrain from doing.

Doing/Allowing distinction would seem to be denied by *any* view, like Kant's on any interpretation, that permits force as a response to force.

Given the Opportunity Constraint, it does not license using force against one "innocent" to save many others from force.

Suppose that to *threaten* to use force is *already* to use force or, at any rate, to do something that raises a similar bar of justification. Then it is hard to see how the state satisfies the Opportunity Constraint. For even if the state provides people with the opportunity to avoid the *fulfillment of its threats*, it typically does not provide people with the opportunity to avoid the *threats themselves*. This is a more immediate problem for punishment, since, as we have been understanding it, the purpose of punishment is deterrence, and deterrence requires threats. It is a less immediate problem for prevention, since its purpose is just prevention itself, and prevention can occur without threat. But this would still be somewhat odd: the state could protect citizens against attempts to use force, but not announce that it would do so with the aim of deterring those attempts in the first place. Why should *threats* to use force raise a similar bar of justification?

- Is it a worry about subordination, about a superior ordering you around? It is not clear that this is a concern about independence so much as about social equality.
- Is it a worry about the way the threat limits, worsens, etc. your opportunities? But we are assuming that the threats produce a better distribution of opportunity.
- Is it a worry about announcing that one will do something impermissible? But then, so far as the actions threatened are permissible, the threat is not objectionable.

The Opportunity-Based Distributive Permission makes non-aggressors fair game. Suppose we are speeding to prevent a use of force against several. A pedestrian is standing on the side of the road ahead of us. He has no valid reason to step out into the road. We make the situation perfectly clear to him, and we remind him of public service announcements that warn that in situations like this, the authorities will not stop. Nevertheless, with full responsibility, he steps out into the road. Must we stop?