

**Comments on Justin Weinberg's "Is Government Supererogation Possible?"**  
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*Government Supererogation: Weinberg's Dilemma*

Many of us think that governments sometimes perform acts that, although not required by justice, are nonetheless morally good. The U.S. government funds pyrotechnic displays on the Fourth of July, for instance, that, while not plausibly required by justice in any of its distributive, criminal or compensatory aspects, make the patriot's heart soar and delight many small children. In his paper, Justin Weinberg places pressure on those of us who think that governmental action is, or can be, supererogatory in this way. The argument (in outline, and sticking with my example) goes like this:

1. Supererogatory actions are neither required by justice nor morally wrong.
2. Government action is coercive. (Government-supplied Fourth of July fireworks, for instance, are funded by your taxes).
3. The only legitimate justification for government coercion is that it is required by justice.
4. Government-supplied Fourth of July fireworks are either required by justice or they are not.
5. Dilemma:
  - 5.a. Government-supplied Fourth of July fireworks are not plausibly required by justice. Instead they seem supererogatory (*i.e.* in the "optional extra credit" compartment of the government's moral report card).
  - 5.b. But if government-supplied fireworks are not required by justice, they cannot be supererogatory. Because government coercion to supply the fireworks will in this case be illegitimate (3), government provision of them must be morally wrong, and hence non-supererogatory (1).
6. Government-supplied Fourth of July fireworks are not supererogatory (1,5)
7. This conclusion generalizes: Government supererogation is impossible.<sup>1</sup>

The goal of Weinberg's paper is to spell out the argument summarized here more precisely, and to consider whether or not there is an acceptable way to escape its

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<sup>1</sup> Weinberg's own, much more precise and general, presentation of the argument can be found at his p.5, and, in a revised version, p.9.

conclusion. He concludes that there isn't, and that our impression that governments can perform supererogatory actions is therefore mistaken.

This is a well argued and exceptionally clear paper on an original and interesting problem. I very much enjoyed reading it. That said, I am not persuaded by Weinberg's conclusion.

### *Justice and Coercion*

Weinberg is interested not in the more traditional general question of whether supererogation is ever possible (he assumes that it is), but rather whether it is possible for governments in particular to perform supererogatory acts. The reason that Weinberg assumes that governments have a special problem here derives from his twin assumptions that governmental action is (if not necessarily, at least actually) coercive, and that coercion can only ever be justified on grounds of justice (premises 2 and 3 above). It follows from the conjunction of these two assumptions that governments are never "off the justice hook", so to speak. Everything they do must have a legitimate justice-based rationale, or else the coercion involved in the action at issue will be illegitimate. As a result, the "optional extra credit" portion of a government's moral report card has the unfortunate feature that, as soon as anything gets placed in it, that thing is automatically transferred either to the "requirements fulfilled" or "infractions" portion instead.

One obvious way to solve this problem is to reject the second of Weinberg's twin assumptions (I take it that the first is unexceptionable). Why, that is, might not government coercion be legitimately justified on grounds other than justice? Take the following justifications as potential candidates:

#### 1. *Humanitarianism*. Consider the following combination of views:

- We have duties to relieve the suffering of the global poor (at the very least, that of those who are poor through no fault of their own).
- These duties are not duties of justice – they are neither a matter of respecting the negative "pre-political" rights of the poor, nor a matter of global distributive fairness.
- It is morally appropriate for the governments of rich countries to (coercively) tax their citizens to provide resources for humanitarian purposes overseas.

Although these claims can be denied (libertarians reject the third, cosmopolitan egalitarians such as Charles Beitz (1979) and Thomas Pogge (1989) the second), I take it that considerable numbers of us actually accept all three. If this is so, we are committed to a form of legitimate government coercion that is not based on justice.

#### 2. *Cultural / aesthetic / intellectual / environmental goods*. Most of us feel that our lives are made richer by access to such goods as beauty, knowledge, or participation in local traditions. There are often collective action problems involved in supplying such goods. Due to their impressive powers of coordination and, yes, coercion, governments are in some cases able to supply these goods more

effectively than private actors. If we value these goods, we may well think that government action to supply them is justified, even though not required by justice.

3. *Solidarity*. There are arguably certain goods that, although they may not be uniquely or most efficiently supplied by the government, gain value from the very fact that they are so supplied. Take Fourth of July fireworks, for instance. There may be private fireworks displays that are a great deal more spectacular and better put together than the public versions. But the fact that the public fireworks are public - that they are an expression of the body politic, coming together to celebrate itself and its achievements - provides an extra special good (call it solidarity, or a sense of national unity) that is lacking in the private version.<sup>2</sup> Because this special kind of good can *only* be provided by government coercion, if we value it we might again think that the accompanying coercion is justified, even though not by justice.

I find myself sympathetic to each of these suggestions. Of course, coercion is never a morally light matter, and not just any old justification of it will do. Perhaps beyond a certain degree of expense, and in the presence of widespread disinterest in or hostility to the action at issue, governmental actions aimed at the above goals will be illegitimate. But, in the absence of such worries, and if the gains to be had are significant, why not consider coercive actions with the above sorts of justifications legitimate? If we do take this line, a government might sometimes permissibly act in ways not required by justice, thereby leaving room for supererogation.

Weinberg gives two reasons in support of the assumption I am here rejecting, i.e. the claim that:

3. The only legitimate justification for government coercion is that it is required by justice.

The first appeals to philosophical tradition. We are told, for instance, that “[p]olitical philosophers, such as Rawls, have considered the point of theories of justice to delimit the proper scope of government coercion”.<sup>3</sup> The second reason appeals to a conceptual claim about the nature of (the domain) of justice. Citing Mill and Kant, Weinberg notes that “‘Justice’ has often been used to distinguish that part of morality which may coercively be enforced”.<sup>4</sup>

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<sup>2</sup> I suggest this as someone who is both queasy about patriotism and indifferent to fireworks, but the underlying idea seems to me to be right.

<sup>3</sup> See also the claim that “Traditionally, government coercion is justified only on the basis that it is necessary for justice” (7), and the reference to “the widely held view that the formal content of political justice is the grounds for legitimate government coercion” (19).

<sup>4</sup> See footnotes 6 and 15. I take it the relevant quote from Mill is this one:

“When we think that a person is bound in justice to do a thing, it is an ordinary form of language to say, that he ought to be compelled to do it. We should be gratified to see the obligation enforced by anybody who had the power” (1863)

I find neither of these reasons persuasive. As for the first, while it may be true, as Weinberg notes, that Rawls sees his theory as answering the question “in light of...what kind of conception of justice...can citizens legitimately exercise...coercive power over one another?”<sup>5</sup>, it is a distinct claim that only reasons of justice can provide the relevant justification. I’m not persuaded that Rawls is committed to the latter, in my view much more controversial, claim. As for the second reason, the Millian/Kantian claim that:

8. Duties of justice are all and only those that are permissibly enforceable<sup>6</sup>

is not very plausible. Not only is it a standard tenet of ordinary moral thought that not all putative duties of justice are appropriately coercively enforced, including many of those that arise in the course of personal relations. But it is at least not obvious that non-justice duties do not themselves constitute appropriate grounds for coercion. To refer to the earlier example once again, Brian Barry has claimed, for instance, that our humanitarian duty to relieve the distress of the global poor is “an obligation that it would be wrong not to carry out and that could quite properly be enforced upon rich countries if the world political system made this feasible” (1993). Adam Smith similarly argued for the legitimacy of using state power to “impose duties of beneficence” within domestic societies (Fleischacker 2005, 26-7).<sup>7</sup>

Weinberg is right that if we reject 3. and 8. “we would need a new way to conceive of the subject matter of justice. And more importantly, we would need an account of what, if not justice, sets limits to the exercise of government coercion”. But, given the unsuitability of the current candidates, I don’t find this implication too worrying.

### *Consequentialism and Supererogation*

Although there is much else in Weinberg’s paper that is interesting and worthy of comment, I will halt with the above, which gives my reasons for rejecting his conclusion that government supererogation is impossible. As an addendum, however, I can’t resist correcting what I take to be a misrepresentation of consequentialist theories of justice near the end of Weinberg’s paper. He writes:

Note that if our theory of justice is consequentialist, government supererogation faces a different dilemma. If the apparently supererogatory acts maximize the good, then they are not supererogatory; rather, they are required. Yet earlier we noted the implausibility of

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<sup>5</sup> Rawls, *Justice as Fairness* (Cambridge, MA: Harvard University Press, 2001), p.41.

<sup>6</sup> I interpret this claim in Arneson’s sense that it is “generally morally permissible, and may be morally required, to use physical force and violence and the threat of these evils to coerce people into compliance with the duty”.

<sup>7</sup> Mill himself dismissed the “permissibility of enforcement” criterion shortly after proposing it, on the rather different ground that “it is a part of the notion of Duty in every one of its forms” (i.e. not only in the form of duties of justice) “that a person may rightfully be compelled to fulfill it. Duty is a thing which may be exacted from a person, as one exacts a debt” (1863). This is a rather hard line to take, and, on the face of it, implausible. Mill is able to endorse it only by opting for a very generous notion of what it is to enforce a duty (he includes within that notion punishment of a man “by the opinion of his fellow-creatures; if not by opinion, by the reproaches of his own conscience”).

thinking that, say, celebrations are required by justice. If, on the other hand, the acts don't maximize the good, they are wrong. But of course that doesn't fit with the general attitude of approval towards these acts. (20)

The problem pointed to here only arises if we have a simple one-level version of act consequentialism in mind. If we adopt a more sophisticated two-level theory, it disappears. This is because there is ample room for an indirect consequentialist to build into her set of secondary principles a distinction between stringently required acts and good-but-merely-optional ones. There are good consequentialist reasons, for instance, for our moral code to reflect the idea that governments should focus their efforts primarily on (e.g.) poverty programs rather than fireworks, even if the best outcome would be poverty programs *and* fireworks. Given that consequentialists can also be expected to have more sympathy than non-consequentialists with my earlier arguments about non-justice based justifications for government coercion, Weinberg might have here identified a hitherto unrecognized area where consequentialists have the upper hand.

## References

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