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Philosophical Anarchism*

Anarchist political philosophers normally include in their theories (or implicitly rely upon) a vision of a social life very different than the life experienced by most persons today. There is a vision of autonomous, noncoercive, productive interaction among equals, liberated from and without need for distinctively political institutions, such as formal legal systems or governments or the state. This "positive" part of anarchist theories, this vision of the good social life, will be discussed only indirectly in this essay. Rather, I want to focus here on the "negative" side of anarchism, on its general critique of the state or its more limited critique of the specific kinds of political arrangements within which most residents of modern political societies live. Even more specifically, I will center my discussion on one particular version of this anarchist critique -- the version that is part of the theory now commonly referred to as "philosophical anarchism". Philosophical anarchism has been much discussed by political philosophers in recent years.¹ But it has not, I think, been very carefully defined or adequately understood. My

¹ See, for example, R. P. Wolff, In Defense of Anarchism (New York: Harper & Row, 1970); Chaim Gans, Philosophical Anarchism and Political Disobedience (Cambridge: Cambridge University Press, 1992), esp. chs. 1 and 2; and John Horton, Political Obligation (Atlantic Highlands: Humanities Press, 1992), ch. 5. I discuss the sort of philosophical anarchism that I wish to defend in Moral Principles and Political Obligations (Princeton: Princeton University Press, 1979), esp. ch. 8; "The Anarchist Position", Philosophy & Public Affairs 16 (Spring 1987); and On the Edge of Anarchy (Princeton: Princeton University Press, 1993), esp. section 8.4. Others, besides Wolff and myself, who are frequently identified as defenders of some form of philosophical anarchism (though almost none of them describe their positions in that language) include M. B. E. Smith, "Is there a Prima Facie Obligation to Obey the Law?", Yale Law Journal 82 (1973); Joseph Raz, (e.g.) "The Obligation to Obey the Law", in The Authority of Law (New York: Oxford University Press, 1979); Leslie Green, (e.g.) The Authority of the State (Oxford: Oxford University Press, 1988); Donald Regan, (e.g.) "Law's Halo", Social Philosophy & Policy (Autumn 1986); A. D. Woozley, Law and Disobedience (London: Duckworth, 1979); David Lyons, (e.g.) "Need, Necessity, and Political Obligation", Virginia Law Review (February 1981); and Joel Feinberg, "Civil Disobedience in the Modern World", Humanities in Society 2 (1979). Other general discussions and/or defenses of philosophical anarchism can be found in, e.g., Jeffrey Reiman, In Defense of Political Philosophy (New York: Harper & Row, 1972); M. B. E. Smith, "The Obligation to Obey the Law: Revision or Explanation?", Criminal Justice Ethics (Summer/Fall 1989), 60-70; Vicente Medina, Social

object here will be to clear the ground for a fair evaluation of philosophical anarchism, by offering a more systematic account of the nature of the theory and of possible variants of the theory, and by responding to the most frequent objections to the theory. I hope by this effort to present philosophical anarchism as a more attractive, or at least a less obviously flawed, political philosophy.

I. Commitment to one central claim unites all forms of anarchist political philosophy: All existing states are illegitimate. I take this thesis to be an essential, if not the defining, element of anarchism.² Anarchist commitments to this thesis are usually motivated by prior commitments to voluntarism (to the great moral importance of autonomy, or free choice, or self-determination, etc.) -- with existing states then characterized as fundamentally nonvoluntary or coercive³; or to egalitarianism (to equal rights, or equal opportunities, or equal access to basic

Contract Theories (Savage: Rowman & Littlefield, 1990), 150-52; and Michael Menlowe, "Political Obligation", in R. Bellamy (ed.), Theories and Concepts of Politics (Manchester: Manchester University Press, 1993), 174-96.

² Four qualifications need to be added here: (i) As we will shortly see, anarchists agree on the truth of this thesis but differ about whether the thesis is necessarily or only contingently true. (ii) Some theories that probably should be called "anarchist" (by association) hold only that virtually all states are illegitimate. (iii) How one defines "state" here is obviously a matter of great controversy, especially within anarchist theory. Some prefer to substitute "governments" or "political societies" in their versions of this thesis. Others think that governments or political authorities of certain sorts may be acceptable where "the state" is not. The vagueness on these scores of the thesis, as I've presented it here, should not affect the force of the discussion that follows; and a certain amount of vagueness is necessary, in any event, to give any very general account of the range of theories usually called "anarchist". (iv) Some prefer to describe anarchism as a view about political obligation. Horton, for instance, characterizes anarchism as "a theory or doctrine which rejects the possibility of any morally persuasive general theory of political obligation" (Political Obligation, 109). Gans does the same (Philosophical Anarchism, 2). I suspect Horton, at least, intends this account not so much as a generally adequate account of anarchism, but rather only as one adequate for the limited aims of his discussion. I will suggest below that while anarchism's denial of state legitimacy entails the denial of political obligation, this former denial is taken by many anarchists to have more far-reaching moral consequences than the mere denial of political obligation.

³See, e.g., Wolff, In Defense of Anarchism, Ch. 1.

goods, etc.) -- with existing states then characterized as fundamentally hierarchical, sexist, classist, or otherwise inegalitarian⁴; or to the values of community (to the great moral importance of shared ends, or feelings of solidarity, or sympathy, etc.) -- with existing states then characterized as alienating or divisive⁵; or to some combination of these positions. Anarchist theories may also be motivated by the perception of inadequacies in all purported defenses of state legitimacy, without the necessity of their making any prior commitment to particular values (which the state is seen as frustrating). That is, some anarchisms are driven by a general scepticism about the possibility of providing any argument that shows some or all existing states to be legitimate -- a scepticism perhaps taken to be justified simply by the systematic failure of political philosophy (to this point) to produce any good argument of this sort.

Philosophical anarchism, as a form of anarchism, is of course committed to the central anarchist thesis of state illegitimacy. And, like other kinds of anarchism, philosophical anarchism is generally motivated either by the kinds of commitments or by the kind of scepticism I've just summarized. What is distinctive about philosophical anarchism, I will suggest, is its stance with respect to the moral content (or practical force) of judgments about state illegitimacy. Philosophical anarchists do not take the illegitimacy of states to entail a strong moral imperative to oppose or eliminate states. Rather, they typically take state illegitimacy to simply remove any strong moral presumption in favor of obedience to, compliance with, or support for (our own or other) existing states. To try to make plain the structure of this position, I propose to try to provide a reasonably general view of the possible range of anarchist positions, by specifying certain distinctions along which anarchist positions divide. I do not pretend that the divisions I describe are exhaustive; but I do think they are the most salient and important divisions.

⁴See, e.g., Kai Nielsen, "State Authority and Legitimation", in P. Harris (ed.), On Political Obligation (London: Routledge, 1990).

⁵See, e.g., Peter Kropotkin, Mutual Aid (London: Heinemann, 1910) and The Conquest of Bread (New York: Vanguard, 1926).

Perhaps the most basic division between anarchist theories (and also between philosophical anarchist theories) is that between (what I will call) a a priori anarchism and a posteriori anarchism. A priori anarchism maintains that all possible states are morally illegitimate. Some essential feature of the state or some necessary condition for statehood -- say, the state's coercive character or its hierarchical nature -- makes it impossible for there to be something that is both a state and legitimate.⁶ A posteriori anarchism, by contrast, maintains that while all existing states are illegitimate, this is not because it is impossible for there to be a legitimate state. Nothing in the definition of the state precludes its legitimacy.⁷ Rather, existing states are condemned as illegitimate by virtue of their contingent characters. A posteriori anarchists may defend an ideal of legitimacy that existing states simply fail to live up to (or approximate) -- for instance, a voluntarist or egalitarian or communitarian ideal of the state; or they may simply be unconvinced by purported a priori arguments for the impossibility of the legitimate state.⁸

⁶ Wolff's version of philosophical anarchism is a good example of a a priori anarchism. Wolff (sometimes) maintains that the authority which states must exercise (in order to be states) is inconsistent with the autonomy of individuals that any legitimate state would have to respect. "Hence, the concept of a de jure legitimate state would appear to be vacuous" (In Defense of Anarchism, 19). Some authors seem mistakenly to identify philosophical anarchism (or anarchism generally) with a a priori versions of it. Stephen Nathanson, for instance, characterizes anarchism as the view that "governmental authority is always illegitimate" (Should We Consent to be Governed? [Belmont: Wadsworth, 1992], 57). And David Miller's arguments against what he calls philosophical anarchism are really only arguments against those (like Wolff) who find "the very idea of legitimate authority incoherent" (Anarchism [London: J. M. Dent & Sons, 1984], 15-16, 29).

⁷ With the exception of Wolff, all of the defenders of philosophical anarchism listed in Note 1 (myself included) seem to defend its central thesis as an a posteriori judgment.

⁸ Other recent discussions of philosophical anarchism gesture at this distinction (between a a priori and a a posteriori anarchism), sometimes in unfortunate ways. Gans, for instance, distinguishes "autonomy-based" anarchism (according to which "it follows from the very meaning of [the duty to obey the law], that its acknowledgement entails a surrender of moral autonomy") from "critical" anarchism ("the denial of the duty to obey the law which is based on a rejection of its grounds") (Philosophical Anarchism, 2). But autonomy-based arguments are (as we've seen) only one kind of a a priori anarchist approach, with appeals to equality or community, for instance, as clear and familiar alternatives; so these latter approaches are simply

Within the class of a posteriori anarchisms, we can distinguish theories (most fundamentally) according to the ideals of legitimacy (if any) they profess, and also according to the optimism they display about the possibility of realizing the ideal in the actual political world, and the distance of the ideal from the actual state of affairs in some or all political societies. Most a posteriori anarchists, of course, are not very optimistic about soon realizing their ideals (if they defend any), nor are their ideals very close to any existing modern political society. Indeed, anarchists who are either very optimistic about soon realizing their ideals, or who regard the real political world as a reasonably close approximation of their ideals of political legitimacy, should be thought of as "anarchists" in only the most nominal or technical sense.

Whether anarchists defend their central thesis of state illegitimacy as an a priori or an a posteriori judgment, they must defend as well some analysis of the idea of "illegitimacy" -- that is, some position on the moral content of judgments of state illegitimacy. What, for instance, does a judgment of state illegitimacy imply about our rights and obligations with respect to the state? While there are, of course, many senses of "legitimate" and "illegitimate" that we employ in discussing states and governments⁹, the view that probably deserves to be called the traditional view of state (or governmental) legitimacy holds that legitimacy consists in a certain (normally,

excluded by Gans' classifications. And Gans' characterization of critical anarchism is sufficiently general to cover any kind of anarchism (every anarchist denies political obligation by denying its grounds). Horton employs a different and more useful distinction between "positive" philosophical anarchism (which "offers a positive argument of its own as to why there are not, and could not be, any political obligations") and "negative" philosophical anarchism (which "simply concludes from the failure of all positive attempts to justify political obligation that there is no such obligation") (Political Obligation, 124). Horton's "positive" anarchism appears to be more or less what I've called a priori anarchism. But his "negative" anarchism plainly needs more careful definition (after which it will approach my a posteriori anarchism). For "the failure of all positive attempts" is only a reason (let alone a good reason) to reject political obligation if one also believes that these positive attempts add up to a complete or comprehensive attempt (refuting a handful of miserable, silly, half-hearted, or obviously incomplete positive efforts to show X clearly gives one no reason to believe not-X). "Negative" anarchist arguments thus need to be based either in an ideal of legitimacy (which existing states can be shown not to exemplify) or in some account of what an acceptably complete positive attempt would look like.

⁹ See, e.g., my Moral Principles and Political Obligations, 40-41, 58, 197.

limited) kind of authority or right to make binding law and state policy. State legitimacy (or authority) is viewed as the logical correlate of the obligation of citizens to obey the law (and to in other ways support the state) -- i.e., to the obligation that is usually referred to as political obligation.¹⁰ Most anarchists have embraced something like this traditional conception of state legitimacy, with the consequence that anarchist judgments of state illegitimacy are typically taken to entail that subjects of those (illegitimate) states have no political obligations. These subjects are, of course, still bound by their nonpolitical moral obligations and duties, and these nonpolitical duties will sometimes have the same substance as the subjects' legal requirements. But subjects have no political obligation to obey the law because it is law, or to support the political leaders or institutions that try to compel their allegiance.

This, we may say, is the "minimum moral content" of anarchist judgments of state illegitimacy: the subjects of illegitimate states have no political obligations. We can then define weak anarchism as the position that asserts no more than this "minimum content". Weak anarchism is the view that there are no general political obligations, that all (or, at least, virtually all) subjects of all states are at moral liberty to (i.e., possess a "privilege" or "permission" right to) treat laws as nonbinding and governments as nonauthoritative. What we can call strong anarchism also accepts this minimum moral content of judgments of state illegitimacy. But strong anarchists hold in addition that a state's illegitimacy further entails a moral obligation or duty to oppose and (so far as it is within our power) eliminate the state.¹¹ This obligation can be

¹⁰It is, of course, now reasonably common for theorists to attempt to deny this traditional (and, I think, perfectly acceptable) correlativity doctrine, defending judgments of state legitimacy and judgments of citizens' political obligations by means of quite different kinds of arguments. For one particularly clear example of such a strategy, see Jeffrey Reiman, In Defense of Political Philosophy, xxv, 18, 23, 42-44 (though even Reiman allows that the traditional correlativity doctrine captures "common usage" of the language of legitimacy [53-54]).

¹¹ Strong anarchists may treat this obligation as a uniform "threshold" obligation or as an obligation that varies in content with the extent of illegitimacy. In the former case, any state that crossed over the threshold of illegitimacy would thereby impose on us an obligation (with uniform content) to oppose it, regardless of how extensively illegitimate it was. In the latter case, the extent or nature of our obligation to oppose the state would be taken to vary with the extent of its illegitimacy. Illegitimate states are not necessarily equally illegitimate; some may

taken to bind either the subjects of the illegitimate state or persons generally. So where weak anarchism says we may regard the state as one more powerful bully whose commands and actions we may ignore where we can, strong anarchism argues that all such bullies must be deprived of their power to coerce. Weak anarchists, of course, may also hold that on independent grounds some or all states should be opposed and eliminated. But for the weak anarchist, any such obligation is grounded in factors beyond the mere illegitimacy of the state(s) in question. How strong a strong anarchist position is will depend on how weighty or imperative the obligation to oppose the state is taken to be.¹²

This last point plainly raises a second kind of question about the moral content of anarchist judgments of state illegitimacy: How are we to understand the weight of the rights and obligations said to be entailed by such judgments? Here there seems to be nothing distinctive about anarchist views. Anarchists treat questions of moral weight or finality in the same range of ways that other moral and political philosophers do. Two clearly opposed positions on these questions, at least, need to be distinguished. An anarchist can treat the relevant obligations (to oppose the state) and rights (to treat law as nonbinding) as immediately implying final or absolute moral judgments; or the anarchist may treat these obligations and rights as (possibly defeasible) moral reasons, understood as these would be within (what I will call) a "balance of reasons" view.

On the first approach, to say that there is an obligation to oppose the state is to say that there is a final, conclusive moral reason so to act. The obligation's weight is overriding or

be worse than others and so may require us to more actively (or in some other way differently) oppose them.

¹² Some moral obligations -- such as the obligation to keep a relatively insignificant promise to meet a friend for coffee -- are obviously quite trivial; others -- such as the promissory or contractual obligation of a paid nurse to care for a critically ill patient -- are clearly not at all trivial. "Strong anarchists" who nonetheless regard the obligation to oppose the state as relatively trivial weaken their position to the point where it becomes in practice indistinguishable from "weak anarchism".

absolute with respect to competing considerations (i.e., those supporting non-opposition, if any). And to say that there is a right to treat the law as nonbinding is to say that no further justification for so treating the law need ever be given. One's rights "trump" competing considerations (i.e., those supporting compliance, if any). On the second, "balance of reasons" approach, obligations and rights are treated as strong, but variably weighted and certainly not conclusive, reasons for action. Obligations and rights may on this view conflict with and possibly be outweighed by other obligations or rights, or they may conflict with and be outweighed by reasons for action of other sorts. Strong enough prudential reasons for action, for instance, may override weak obligations, just as strong enough reasons grounded in the happiness of others may render unjustifiable our acting on weak rights we possess. In short, the finality or imperativeness of rights or obligations is, on the balance of reasons approach, very much a function of the context within which the rights or obligations are exercised.¹³

II. We are now, I think, in a position to see more clearly what is (and what is not) distinctive about philosophical anarchism. Like other anarchists, philosophical anarchists can defend their central judgments about state illegitimacy on either a priori or a posteriori grounds. And like others, they take this judgment to entail the nonexistence of general political obligations -- that is, the removal of any moral presumption in favor of compliance with and support for the state. What is distinctive about philosophical anarchism is that its judgment of state illegitimacy (even of necessary state illegitimacy) does not translate into any immediate requirement of opposition to illegitimate states. (This is what leads many to contrast philosophical anarchism to political anarchism.)

Philosophical anarchists hold that there may be good moral reasons not to oppose or disrupt at least some kinds of illegitimate states, reasons that outweigh any right or obligation of

¹³ For further discussion of these two views of the weight or finality of judgments of obligation (or right), see my Moral Principles and Political Obligations, 7-11, and The Lockean Theory of Rights (Princeton: Princeton University Press, 1992), 93-95, 111-12.

opposition. Our practical stance with respect to the state, the philosophical anarchist maintains, should be one of careful consideration and thoughtful weighting of all of the reasons that bear on action in our particular political circumstances. The illegitimacy of our state (and the absence of binding political obligations that it entails) is just one moral factor among many bearing on how persons in states should (or are permitted to) act. Even illegitimate states, for instance, may have virtues, unaffected by the defects that undermine their legitimacy, that are relevant considerations in determining how we ought to act with respect to those states. And the refusal to do what the law requires is, at least in most (even illegitimate) states, often wrong on independent moral grounds (i.e., the conduct would be wrong even were it not legally forbidden). So there may be a variety of sound moral reasons not to oppose or not to act contrary to the laws of even (some) illegitimate states.

What does this mean in terms of the distinctions drawn in Section I of this essay? It means, first, that philosophical anarchists must reject the view of obligations and rights as final moral reasons and accept some version of the "balance of reasons" approach. For if the "permission right" entailed by the absence of political obligations is seen as providing a final justification for disregarding or opposing law and government, no moral reason for supporting a government or complying with a law could ever outweigh our permission right. And this, I am claiming, is one thing philosophical anarchists wish to deny. Second, philosophical anarchists must either embrace (what I've called) weak anarchism, or else a version of strong anarchism which takes the obligation to oppose the state to be a relatively weak obligation. Otherwise, of course, they will be committed to a moral obligation of opposition to illegitimate states that will be likely to outweigh any competing reasons for non-opposition or compliance, even within the best illegitimate states. This, again, is a position that philosophical anarchists wish to avoid. What is distinctive about philosophical anarchism, then, is chiefly its position on the weight or finality of the moral obligations and rights entailed by judgments of state illegitimacy.

Can philosophical anarchism intelligibly deny in this way the connection between, on the one hand, the illegitimacy of the state and the absence of political obligation, and, on the other

hand, a strong obligation or right to oppose and try to eliminate the state? I think it is clear that it can. A state's being illegitimate means that it lacks the general right to make binding law and policy for its subjects (it lacks "political authority"), and it means that the state's subjects lack the correlative general political obligation to support and comply with it. But this, by itself, entails neither that the state could have no right to command (and citizens no obligation to obey) on some particular occasion, nor that the state could have no moral justification for its actions in particular cases (based on moral reasons unrelated to any strict right to act). Nor does it entail that citizens, simply because they lack general political obligations, have strong or conclusive rights to oppose the state or act contrary to its legal requirements. Our general duties to our fellow citizens qua persons, our general duties to promote justice and other values, and our other (non-duty) moral reasons to treat others well, will all often be good reasons not to disrupt the state's functioning or to act contrary to its laws.¹⁴ Within many decent, but still illegitimate, states, serious (e.g., revolutionary) opposition to the state or regular conduct contrary to its laws will simply not be morally justifiable on balance.

To this point, I've been concerned primarily to clarify what philosophical anarchists must say, if their position is to be distinctive in the way its primary defenders have wished it to be, and if their position is to be at all plausible. Let me add, now, a few words about what philosophical anarchists should say, if they wish their position to be not just distinctive and initially plausible, but also correct. Philosophical anarchists should, in my view, defend their theory, first, as a form of a posteriori anarchism and, second, as a form of weak anarchism.

While it is not possible to show (without presenting a complete defense of an ideal of state legitimacy) that no form of a priori anarchism could be successful, it is hard on the face of things to see how a convincing a priori case could be made by the anarchist. If the anarchist values autonomy or free choice, for instance, it is hard to see why a possible ideal state which

¹⁴ For a fuller presentation of these lines of argument, see my "The Anarchist Position", esp. 275-79.

promotes or respects these values could not be described. A fully voluntary, genuinely contractual democracy could only be rejected as an ideal on such voluntarist grounds, it seems, if the voluntarist anarchist was also prepared to deny the legitimacy of the ordinary practice of promising -- on the grounds, say, that promissory obligations objectionably constrain freedom (despite their being freely undertaken). This seems too high a price to pay, as Wolff's failed attempt to defend a voluntarist a priori anarchism clearly shows.¹⁵ Similarly, if the anarchist values equality or community, say, it is hard to believe that a strict egalitarian state, or the kind of state favored by strict communitarians, could not be defended in those terms as an ideal of political legitimacy. If the anarchist argument is only that actual states have never even approximated (and likely never will approximate) these voluntarist, egalitarian, or communitarian ideals, the argument seems persuasive. But that argument is perfectly consistent with a posteriori anarchism. The a priori anarchist must argue not just that there never has been and never will be a legitimate state, but for the more dramatic and less plausible claim that such a state is not even possible. In anarchist writings such claims have often (mistakenly, in my view) had to be based on assuming that the forms that all modern states have taken provide us with the proper definitional content of the term "state".¹⁶

¹⁵ Wolff, it seems, cannot bring himself to deny that promises or contracts are morally binding, with the result that in the end he concedes that "a contractual democracy is legitimate, to be sure, for it is founded upon the citizens' promise to obey its commands. Indeed, any state is legitimate which is founded upon such a promise" (In Defense of Anarchism, 69). But this, of course, directly contradicts his earlier a priorist claim that "the concept of a de jure legitimate state would appear to be vacuous" (ibid., 19). Contractual democracies, on Wolff's view, are legitimate states, but they gain their legitimacy through their citizens' sacrifice of their autonomy. Perhaps this introduces a second notion of "legitimacy*" in Wolff ("legitimacy*" states would be those that reconcile citizen autonomy and state authority); and perhaps it is only the concept of the "legitimacy*" state that is vacuous. But it is hard to understand how a theorist committed to the importance of autonomy could intelligibly claim both that all promises are morally binding and that some promises (i.e., political ones) objectionably sacrifice autonomy. For further difficulties in Wolff's arguments, see Reiman, In Defense of Political Philosophy; Keith Graham, "Democracy and the Autonomous Moral Agent", in K. Graham (ed.), Political Philosophy: Radical Studies (Cambridge: Cambridge University Press, 1982), 113-37; Gans, Philosophical Anarchism, 10-41; Horton, Political Obligation, 124-31.

¹⁶The anarchist argument often then proceeds by maintaining that while no legitimate state is

As for my preference for weak over strong anarchism, I have argued already that even if philosophical anarchism is defended as a strong theory, it must still accept that the obligation to oppose the state is a relatively weak obligation. But there are good reasons to believe further that the mere illegitimacy of a state entails no such obligations (weak or strong) to oppose it. Only if illegitimacy is taken to be a far more inclusive failing in a state than traditional philosophical analyses of legitimacy imply, will it entail a moral obligation to oppose the state. For a state can clearly lack the general right to make binding law and policy without being sufficiently evil that it must be opposed and (if possible) eliminated. This is why the idea of, say, a "benevolent dictatorship" makes sense; there are (at least) two conflicting moral characteristics of such a state (benevolence, dictatorship), which makes our assessment of it complex.

I take the legitimacy of a state (with respect to me) and the other moral qualities of a state to be independent variables, just as I take the right of a business to, say, bill me, and the charitableness or efficiency of a business to be independent variables. In both cases, the legitimacy (or right) is a function of its transactions or relations with me, while its other general qualities need have nothing to do with me at all. The fact that a state (or a business) has virtues appropriate to it cannot, by itself, argue for its having special rights over me or for my owing it special obligations (nor, of course, do these special rights and obligations, where they exist, necessarily override moral duties to oppose a vicious state). Only if the state also has special relations to me will special rights or obligations of that sort follow. Indeed, even if I had quite general duties to promote states (or businesses) which exemplified the appropriate virtues, these duties would be owed equally to all such exemplary objects, not specially to any particular one.¹⁷ But insofar as even equally illegitimate states will exemplify the "stately" virtues in different

possible, it is possible to have a legitimate large-scale, cooperative, rule-governed association that incorporates positions of rightful authority. To me it seems reasonable to call such an association a "state", but nothing of substance turns on the language we choose to use.

¹⁷ They would thus not satisfy what I have elsewhere called the "particularity requirement" for accounts of political obligation (Moral Principles and Political Obligations, 31-35, 143-56.).

ways and to different extents (if at all), it cannot be supposed that all illegitimate states should be treated in the same ways by their subjects (or by others), simply by virtue of their common illegitimacy. Some illegitimate states may be hopelessly evil; others decent and benevolent (though not, for that, necessarily legitimate with respect to all or any particular citizens).

III. Suppose the philosophical anarchist defends, as I have recommended, a weak, a posteriori anarchism, understanding the weight of the rights this entails from a "balance of reasons" perspective. Are there obvious objections to which the resulting position would be liable? There are none, I think, that are convincing. As a start to showing this, I want to mention here and indicate appropriate responses to the three objections that have been raised in the most prominent recent criticisms of philosophical anarchism.

There are two general lines of attack on philosophical anarchism that may be sensibly pursued by its critics. One, of course, is simply to defend a systematic theory of political obligation and state legitimacy and show that it applies to existing states. In my view, efforts along these lines have uniformly failed, but I will not pursue such questions here. The alternative approach is to try to directly discredit the philosophical anarchist's position -- for instance, by showing it to be internally inconsistent or to have unacceptable implications. It is criticisms of this latter sort that I will discuss here.

(1) Perhaps the most fully developed of these attacks is that mounted by Chaim Gans in his recent book Philosophical Anarchism and Political Disobedience. Gans (like many others) argues, in effect, that philosophical anarchism is not really anarchism at all, that it is a "toothless" theory with an "embarrassing gap" between its "radical look" and its quite "tame" practical implications.¹⁸ Further, Gans maintains that philosophical anarchists draw the intuitive support for their view from focussing "on trivial and esoteric contexts, jaywalking at three o'clock in the

¹⁸ Philosophical Anarchism, 90, xi. See also, e.g., Miller, Anarchism, 15 (where philosophical anarchism is described as "bloodless") or Reiman, In Defense of Political Philosophy, xvi, xxiii-xxiv (where philosophical anarchism is described as "chasing its tail").

morning", while simply conforming to common opinion about the need for obedience in more familiar, everyday contexts.¹⁹ More damning still, Gans' analysis of this move by philosophical anarchists is that while they officially reject the well-known arguments for political obligation (and, on the strength of this rejection, proclaim state illegitimacy), they then implicitly rely on these very same arguments (they "resurrect" them) to maintain that even illegitimate states need not always be disobeyed or disrupted. It would be more honest simply to accept the familiar arguments for obedience to law, Gans suggests, especially once we recognize that accepting political obligation does not mean that obedience to law is always morally required.²⁰

Gans' critique of what he calls "critical anarchism" seems to me to miss almost entirely the point of defending weak, a posteriori philosophical anarchism. It does this in several ways. First (and most obviously), it neglects to mention that only by embracing either a radical moral scepticism (or "nihilism") or an unconvincing prioritization of moral concerns could a philosophical anarchist give his theory the "teeth" that Gans thinks a true anarchist theory should have. And second, Gans' critique completely -- and mistakenly -- collapses the very distinction between political obligations and general moral reasons for acting on which philosophical anarchism relies.

On the first point: it is, of course, a matter of only terminological interest whether we call philosophical anarchism a form of true anarchism, or instead argue that it is misnamed. I have located the essence of anarchism in its thesis of state illegitimacy; others might argue that its essence is rather advocacy of active opposition to (and elimination of) the state²¹ -- in which

¹⁹ Ibid., 90.

²⁰ Ibid., 90-91. These claims are undoubtedly related to Horton's assertion that "most denials of political obligation ... are more or less disingenuous" (Political Obligation, 160). R. George Wright also seems to accept this line of argument in Legal and Political Obligation (Lanham: University Press of America, 1992), 280. One recent denial of a general obligation to obey the law that probably is vulnerable to Gans' analysis is in Kent Greenawalt, Conflicts of Law and Morality (New York: Oxford University Press, 1989), Part II.

²¹ See, e.g., Miller, Anarchism, 6-7; Reiman, In Defense of Political Philosophy, xxii, 48; Nathanson, Should We Consent to be Governed?, 54, 57, 86.

case, "philosophical anarchism" would be an unhappy name for a still perfectly defensible political philosophy. What it is important to see, however, is what would be required for anarchism to defend the "radical" practical stance Gans seem to associate with real anarchism. All anarchists -- with the exception only of moral sceptics (nihilists) and those embracing extremely eccentric moral theories -- must allow that in virtually all modern states, including even those that are deeply unjust and otherwise illegitimate, a significant body of the law's requirements (both criminal and civil) constitutes a formalization (with the backing of coercive sanctions) of independently binding moral requirements. Even, then, if the law has no moral standing, the conduct required by law is often morally obligatory. Similarly, the fact that our illegal actions would cause widespread suffering, unhappiness, and frustrated (reasonable) expectations surely makes these actions morally suspect, even if their being merely illegal does not.

We should not, then, be very surprised or troubled -- as Gans seems to be -- to find that both defenders and opponents of political obligation argue for similar practical stances with respect to many of the law's requirements and with respect to revolutionary political activities. That both the anarchist and the defender of state legitimacy find murder, assault, and acts aimed at producing massive and violent social upheaval to be morally indefensible in no way suggests that their theories are really indistinguishable. For the theories clearly differ importantly both on the source of these moral worries -- independent moral concerns versus violation of general political obligations -- and on the issue of to whom the relevant moral duties and moral consideration are owed -- our fellow citizens qua persons versus our government or our fellow citizens qua citizens.

"Radicalness" of practical implications is hardly the only measure of substantive difference in political philosophies. Indeed, to acquire the radical "teeth" that Gans wants anarchist theories to brandish, these theories have to either deny the existence of independent moral concerns about murder, assault, and causing widespread misery, or else argue that the evil represented by the existence of the (i.e., every) state is sufficiently great to justify (or require)

violence and rending the social fabric in an effort to remove that evil. I myself, along with many anarchist philosophers, find neither of these moves compelling. Philosophical anarchism's less radical "teeth" will be found rather in its assertions that many distinctively political legal requirements -- such as payment of certain taxes or military service -- along with many paternalistic and moralistic laws and laws creating "victimless crimes" may be disobeyed without moral impropriety.²² This is no revolutionary stance; but neither is it addressed to or motivated by only "trivial and esoteric contexts".

But (to turn now to my second concern about Gans' critique) does this anarchist reasoning not just amount to reintroducing (after the official denial of political obligation) the very same moral considerations that are usually (and properly) employed in defending accounts of political obligation? No, it does not. Anarchists allow for justifiable disobedience in many cases (such as those noted above) where Gans does not; and (as we will see) anarchists typically reject most of the lines of argument on which Gans crucially relies, rather than implicitly reintroducing them (as Gans suggests they do). Indeed, it is not the philosophical anarchist who has implicitly given up the game to the defender of political obligation, as Gans suggests, but Gans who has unwittingly given up the game to the philosophical anarchist.

Gans' own defense of political obligation (or, as he usually prefers, of "the duty to obey the law") is in fact cobbled together from four different familiar (purported) justifications of political obligation -- justifications appealing to consequences, fairness, the duty to support just institutions, and communal obligations.²³ But not only does Gans never bother to argue that these varied justifications can all be motivated by one consistent moral theory (let alone give us any hint of what such a theory would look like); he also accepts many of the well-known shortcomings of these styles of justification, moving on to new arguments in the face of the

²² I discuss these claims more fully in "The Anarchist Position", 276-79, and On the Edge of Anarchy, 262-69.

²³ Philosophical Anarchism, 89.

acknowledged weaknesses of the ones under consideration.²⁴ The cumulative force of the many arguments is supposed to somehow make up for their individual defects. And then the resulting "political obligation" is weakened to make its affirmation consistent with substantial levels of disobedience.²⁵ What Gans then succeeds in presenting (insofar as the argument is successful at all) is less a case for a general political obligation than a list of often (though by no means always) operative reasons -- of distinctly variable weight -- for refraining from actively disrupting political life in just societies. But anarchists, of course, can (as we've seen) embrace a similar list without committing themselves to the legitimacy of the state.

Gans' project in effect just ignores the distinction between moral reasons for acting (of variable weight and application) and grounds for a general political obligation. Anarchists can happily allow, for instance, that acting contrary to law will often have profoundly negative consequences for others. It will also often have no such consequences. Where these consequences are at issue, they may constitute moral reasons for doing as the law requires. But this would in most cases be true independent of the law's formalized requirements. It is also true that negative consequences for others often give us some reason to refrain from causing them, even where there is nothing like a strict duty, moral or legal, to refrain. (It is not my duty, moral or legal, to tell the stranger the time of day when she politely requests it.) The moral weight of negative consequences can, for philosophical anarchists, both range far beyond the realm of duty and be regarded as largely independent of the institutional facts of legal requirement. It is very hard to see how anyone could take such a stance to amount to an implicit acceptance of a general political duty to obey the law.

And anarchists often just reject, rather than deceptively "resurrecting", the other lines of justification for political obligation that Gans defends²⁶. Gans' attempt to piece together a

²⁴ See, e.g., *ibid.*, 71-78, 82-83, 87.

²⁵ *Ibid.*, chs. 1 and 4.

²⁶ They may reject arguments from a duty of justice because (a) this would bind us to no particular state (but only to all just states), and (b) the justice or injustice of a state varies

general political obligation from a wide variety of variable moral considerations both fails in its own right, I think, and in effect amounts to admitting that the proper political stance is the one that philosophical anarchism prescribes -- namely, the careful weighing of a range of moral considerations that are at issue in some, but not even nearly all, cases of legal disobedience, even within just political societies. No general moral presumption in favor of obedience can ever be defended in this way, nor do Gans' efforts succeed in showing how this might be done.

(2) The other two recent criticisms of anarchism (that are intended to apply to the kind of weak, a posteriori philosophical anarchism I am defending) can, I think, be answered more quickly now that we have a better sense of the extent of philosophical anarchism's commitments. The first of these remaining criticisms, for instance, claims (directly contrary to Gans) that philosophical anarchism's implications are too radical to be intuitively acceptable. Embracing philosophical anarchism, it has been said, will "encourage general disobedience to critical laws" and prove "a tragedy for liberal regimes"²⁷; it will have "extreme" and "startling" consequences.²⁸ We can see now, however, that these claims are far too strong. Philosophical anarchism will not argue for mindless obedience to law; but neither, of course, will most

independently of its legitimacy (with respect to particular persons). They may reject arguments from fairness because (a) it is not unfair to benefit incidentally from schemes in which one has not willingly included oneself, and (b) modern states do not sufficiently resemble the voluntary cooperative schemes (in "civil society") from application to which the "principle of fairness" derives its intuitive force. And they may reject arguments from communal obligations because (a) there are no political communities (in any strict sense of "community") in the modern political world, and (b) communal obligations are not self-justifying, but themselves require some external justification of a sort similar to that required by the very political obligations these communal obligations are invoked to justify.

²⁷ Steven DeLue, Political Obligation in a Liberal State (Albany: State University of New York Press, 1989), x, 1.

²⁸ Thomas Senor, "What if there Are no Political Obligations? A Reply to A. J. Simmons", Philosophy & Public Affairs 16 (Summer 1987), 260. For similar criticisms, see Tony Honore, "Must We Obey? Necessity as a Ground of Obligation", Virginia Law Review (February 1981), 42-44, and George Klosko, "Political Obligation and the Natural Duties of Justice", Philosophy & Public Affairs (Summer 1994), 269-70.

defenders of general political obligations. Nor will philosophical anarchists argue for mindless disobedience to law. It argues rather that the simple fact that conduct is required (or forbidden) by law is irrelevant to that conduct's moral status, even within "decent" states; we should decide how best to act on independent moral grounds.²⁹

The practical recommendations of philosophical anarchism will converge with those of defenders of political obligation wherever legally required conduct is independently required or recommended by moral considerations. The two views will diverge principally where the law prohibits harmless conduct, where it imposes specifically political duties, and where disobedience has no dramatic negative consequences for individuals or for those aspects of their social structure on which they may reasonably rely. But the claim that selective, thoughtful disobedience in these latter areas would be "a tragedy for liberal regimes" seems to me most implausible. If the recommendations of philosophical anarchists were generally followed, subjects would regard themselves (within this range of cases) as free to either obey or disobey, as their tastes and interests dictated -- though, of course, social pressure to conform and the threat of legal sanctions would typically push in the direction of obedience. And even if the choice was uniformly one of disobedience, such actions might very well push states to be more open, cooperative, and voluntary, to be less coercive in the name of contested moral and religious doctrines, to be less free with the money and with the lives of their subjects, and so on -- in short, to become less "state-like". It would presumably be the most liberal states that would have the

²⁹Obedience to law thus stands as much in need of justification as disobedience. Mark Murphy has argued that philosophical anarchism (by which he means the view that "there is no reason to obey the law as such") does not in fact imply, as I've claimed, that obedience is as much in need of justification as disobedience ("Philosophical Anarchism and Legal Indifference", American Philosophical Quarterly [April 1995], 195-98). But his argument, without his appearing to see it, actually attacks not the implication in question, but the truth of philosophical anarchism -- i.e., Murphy in effect asserts that there is a reason to obey the law as such, by appealing to MacIntyre's (in my view unjustified) privileging of the status quo. But since the actual, not the believed, reason-giving force of existing laws or conventions is precisely what is at issue in the debate over philosophical anarchism, an argument that simply appeals to our ordinary acceptance of actions conforming to existing rules (and our questioning of those that fail to conform) is hardly likely to have much force in deciding the debate.

least trouble with disobedient anarchists, since the most liberal states would have the smallest body of laws whose content could not be independently (i.e., independently of any appeal to general obligations to obey) defended on uncontested moral grounds.

(3) The last criticism of philosophical anarchism that I will consider here might be said to "bridge" the two I've discussed already. The argument here concerns not the practical implications of philosophical anarchism (on which the two previous criticisms take opposed positions), but the higher order denial of political obligation itself. Philosophical anarchism, the argument goes, is "out of keeping with our general considered judgments", for "the idea that we have obligations to particular countries is a basic feature of our political consciousness".³⁰ Insofar as we think (as many moral and political philosophers do) that coherence with our considered judgments is an important part of the justification of moral principles (or general moral judgments), and insofar as we agree that general political obligations are a firmly fixed point in our set of basic judgments about political morality, then it may well seem that the anarchist's denial of political obligation must be unjustifiable -- unless he can show that these particular judgments (i.e., that we are politically obligated) are "suspect" in a way that our other basic moral judgments are not.³¹

The philosophical anarchist can avoid the force of this criticism in a variety of reasonably obvious fashions. First, of course, he can simply deny that coherence with considered judgments has any (or, at least, such a privileged) place in the justification of moral principles or general judgments. Let us leave that possible response aside, though, and assume arguendo that some version of this coherence method (the Rawlsian version, say) is correct.

There are still at least three convincing avenues of response available to the philosophical anarchist.³² First, the philosophical anarchist can argue that the alleged "considered judgments"

³⁰ George Klosko, The Principle of Fairness and Political Obligation (Lanham: Rowman & Littlefield, 1992), 26, 24.

³¹ *Ibid.*, 25.

³² Variants of all of these kinds of arguments are advanced in Leslie Green, "Who Believes in

(of general political obligation) against which our theoretical judgments are supposed to be measured are not in fact the kind of particular moral judgments that coherence theories can appeal to in their accounts of justification. A judgment of general political obligation is itself a general theoretical judgment, not a "provisional fixed point" in our pre-theoretical moral sensibility (such as, to use Rawls' examples, the particular judgments that slavery and religious intolerance are unjust). As a theoretical judgment, the judgment of general political judgment is either affirmed with the appropriate supporting body of theory, or it is not. In the latter case, it can be discounted as clearly irrational. And if the reasons for the theoretical belief offered within the theory do not support the belief, it can again be discounted as irrational. The philosophical anarchist, of course, affirms precisely that the reasons offered do not support the belief; and he may affirm as well that if ordinary persons are in fact committed to this theoretical judgment of general political obligation, they are probably for the most part irrationally committed to a theoretical judgment which requires support that they are unable to provide or even understand.

Second, philosophical anarchists can simply deny that political obligation is for all, or even most, of us "a basic feature of our political consciousness". While most of us clearly believe that it is wrong, at least most of the time, to do what law forbids, many of us do not believe that it is (for example) wrong to break the law where it harms no one, wrong to use marijuana, to engage in oral sex, or to refuse military induction on moral grounds, even where such actions are proscribed by law, and even within a basically just society. The principles of anarchist political philosophy may square with this set of "considered judgments" at least as well as do the principles of political obligation.

Finally (third), philosophical anarchists can offer reasons why judgments of political obligation are more "suspect" than our basic moral judgments generally. Where beliefs in political obligation (and the habits of obedience, subjection, or loyalty such beliefs engender)

clearly serve the interests of particular powerful classes of persons -- those possessing (or actively aspiring to possess) political power, those endeavoring to coercively impose their favored moral or religious vision, etc. -- our more basic moral beliefs (e.g., in the wrongness of murder or the injustice of slavery) quite plainly do not (Marxist claims to the contrary notwithstanding). Suggestions of manipulation and inculcation as the source of our beliefs are thus far more convincing in the former case (of beliefs about political obligation) than in the latter. Beliefs about political obligation -- insofar as we actually have any -- are, I think, "suspect" as a kind of "false consciousness" that it serves the interests of powerful others to induce in us³³. Compared to our more basic moral beliefs, beliefs in political obligation have less compelling justifications, more insidious implications, and they more obviously and constantly advance the interests of some over others.

If I am right in this, then there are ample grounds for rejecting as well this last recent criticism of philosophical anarchism. And if, as I have argued, these recent criticisms all fail to establish any substantial defects in the weak, a posteriori anarchism we have been considering, then we have good reason to be confident about the plausibility of such a political philosophy. Only a quite new and unanticipated theory of political obligation and state legitimacy should shake this confidence.

NOTES

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³³ Moral Principles and Political Obligations, 195.