

The Inadequacy of Paul Wolff's Authority-Autonomy Antinomy

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Review of **Paul Wolff's** *In Defence of Anarchism* New York, 1970.

In his justly famous politico-moral treatise *In Defence of Anarchism*, Robert Paul Wolff sets out to demonstrate that political authority is nothing short of a logical contradiction. To demonstrate this proposition, he constructs what this article will call 'the authority-autonomy antinomy' - which purports to show that the acceptance of political authority precludes moral autonomy and that preclusion of moral autonomy makes true moral choice impossible.

Wolff's personal moral philosophy is Kantian, but he intends his authority-autonomy antinomy to refute the possibility of a meaningful conception of political authority not only in Kantian political thought, but also in any theory of morality which relies upon concepts of autonomy and free will for the operation of the moral sphere. It cannot be overemphasised that Wolff hoped to show that political authority is logically impossible, for it claims the right to be obeyed - i.e., that the subject *ought* to follow the commands of authority - at the same time it makes morality impossible by negating autonomy.

Wolff's *In Defence of Anarchism* offers a basic challenge to the most cherished presuppositions of natural law legal theory. Wolff's thesis maintains quite simply, that authority conflicts unavoidably with the moral autonomy of the individual.(p.vii). Although authority may take a variety of forms, it is the claim of moral authority by the state upon which Wolff focuses his attention (p.3)

Wolff's definition of authority is simple and unobjectionable: 'authority is the right to command, and correlatively, the duty to be obeyed.' (p.4) By his forthrightness and by

his outright repudiation of the positivistic equation of authority with power, Wolff is able to distinguish between genuine moral authority, on the one hand, and the 'ability to compel compliance, either through the use of the threat of force,' (p.4) on the other.

Wolff digresses into the distinction between claiming authority and having authority: 'To claim authority is to claim the right to be obeyed. To have authority is then - what? It may mean to have that right or it may mean to have one's claim acknowledged and accepted by those at whom it is directed'.(p.5)

After exploring briefly a second interesting digression on the dichotomy between Rousseau's concept of absolute political authority and the Lockean notion of a limited sphere of societal authority(pp.5-6), Wolff gives a brief anthropology of authority, especially the sway of tradition.(pp.6-8)

Having outlined some of the descriptive aspects of the problem, however, Wolff's argument moves to its central question, the normative 'deduction of the concept of the state' - 'a non empirical argument proving ... legitimacy'.(p.8) With admirable precision, Wolff defines the core of the problem:

To complete this deduction, it is not enough to show that there are circumstances in which men have an obligation to do what the *de facto* authorities command. Even under the most unjust governments there are frequently good reasons for obedience rather than defiance. It may be that the government has commanded its subjects to do what in fact they already have an independent obligation to do; or it may be that the evil consequences of defiance outweigh the indignity of submission. A government's commands may promise beneficent effects, either intentionally or not. For these reasons, and for reasons of prudence as well, a man may be right to comply with the commands of the government under whose *de facto* authority he finds himself. But none of this settles the question of legitimate authority. That is a matter of the *right* to command, and of the correlative

obligation to obey the person who issues the command (p.9)

More succinctly still, we are told by Wolff that: 'Obedience is not a matter of doing what someone tells you to do. It is a matter of doing what he tells you *because he tells you to do it.*'(P.9)

The role of Kantian thought in the, formulation of the Wolffian antinomy becomes apparent when the issue of autonomy is examined in some detail. 'The fundamental assumption of moral philosophy is that men are responsible for their actions,' we are told, and furthermore, 'Taking responsibility involves attempting to determine what one ought to do...'.(p. 12) We are told, further, that every person possessed of free will and reason has an obligation to take responsibility for his own actions, and that while he may listen to the advice of others, he, ultimately, must make his own decision, including the decision whether the advice he has received is advice or not.(p. 13)

The core of the Wolffian anarchism is expressed in a brief paragraph:

'Since the responsible man arrives at a moral decision which he expresses to himself in the form of imperatives, we may say that he gives laws to himself, or is self-legislating. In short, he is *autonomous*.. As Kant argued moral autonomy is a combination of freedom and responsibility; it is a submission to laws one has made for oneself. The autonomous man, insofar as he is autonomous, is not subject to the will of another. He may do what another tells him, but not because he has been told to do it. He is, therefore, in the political sense of the word *free*.'(pp. 13-14)

On the surface of it, the Wolffian paradox seems unbreakable: If one is to be moral, one must be autonomous. If one is autonomous, one must make one's own decisions about the rightness or wrongness of any action. If one is under the authority of another, one does what that other has commanded simply because one accepts the authority of that other, and obeys because the other has commanded, therefore, if one accepts the authority of another (person or persons), then one is not acting autonomously. Authority

and autonomy are, therefore, irreconcilable opposites.

So stated, the central theme of Wolff's work sounds undeniably correct, but there are three fatal flaws in his reasoning. which, by omission, destroy the cogency and validity of his work: 1) the failure to distinguish the concepts of *mala in se* and *mala prohibita* within the philosophy of law, 2) the failure to acknowledge and to deal with the general tradition of natural law theory whereby, in order to be true law (i.e. to have authority), a statute or command must be in conformity with the moral law, at least in the sense of not contradicting it, and 3) the assumption that the submission to authority is itself a non-moral act.

'*Mala in se*' refers to things held to be intrinsically evil (i.e. wrong in themselves) - e.g., murder, theft, etc. -while '*mala prohibita*' refers to those things which are not wrong in themselves, but which are wrong because forbidden by a just authority acting for the common good. This latter concept dates back at least to Aristotle who held that the '(merely) legal(ly) just is that which originally was a matter of indifference", *N. Ethics*, 5.7 [1143b20]) and is recognized by such natural law thinkers as St. Thomas Aquinas.(*Summa Theologica*, I-II, Q.95, A.2 ad 1) Driving on the right-hand side of the street in America, for example cannot by any stretch of the imagination be seen as intrinsically right or wrong, nor in its origins could it have come from simple prudence, since, despite the fact that it is obviously most prudent for all vehicles travelling in the same direction to drive on the same side of a thoroughfare, prudence dictates no means of deciding which side. Recognized authorities, in most of the world, dictate that driving on the right-hand side of the road shall constitute legal driving and that driving on the left-hand side of the road shall constitute illegal operation of a motor vehicle. Each authority that has so mandated then prescribes appropriate penalties for the proscribed activity.

With the concept of just authority, the acts which are *mala prohibita* become linked to the concept of *malum in se* because their commission involves a defiance of just authority, which defiance is itself an act

malum in se in several of the ethical traditions including natural law moral philosophy and Kantian deontology. An act which is inherently, intrinsically evil may or may not be forbidden by the positive law (government decree). All lying, for example, is held by most natural law moral philosophers (and by Kant) to be *malum in se*, but the law punishes only certain forms of the vice - perjury, fraud, obstruction of justice, breach of promise, etc. - while leaving the quotidianary taradiddle unpunished. (The position of many natural law thinkers in this regard is epitomized by St. Thomas's proposition that the positive law need not punish every vice, but only those that by their nature undermine the nature of society [*Summa Theologica*, I-II, Q.96, A.2])

There can be seen, then, to be three types of morally wrong actions from the natural law legal thinkers point of view: 1) acts simply *mala in se* but not forbidden by the positive law (simple lying, for example), 2) acts simply *mala prohibita* (tax codes, traffic laws, etc.), and 3) acts which are both *mala in se* and forbidden by just authority (murder, theft, rape, perjury, etc.). It is acts in categories 2 & 3 which are of interest here. Acts which are only wrong because forbidden by a just authority may be obeyed only because of fear of punishment or because of fear of practical consequences, but it is possible to obey such commands out of acknowledgement of the just authority of the one commanding in addition to, or even in the absence of, fear of legal sanctions or practical misfortunes consequent upon the violation.

Indeed, it is not merely the assertion of this article that such a scenario is possible, it is implicit in Wolff's very counterargument, for it is this very acknowledgement of authority against which Wolff struggles with his argument from the authority-autonomy antinomy.

In refraining from morally wrong actions of class 3, it could be argued that a man may show restraint solely because they are intrinsically evil and because they are forbidden by just authority. This becomes even clearer when the person obeys a law or decree the intrinsic morality of which he is in

doubt Let us take the example of an anti-incest statute which forbids marriage or sexual relations within the degree of consanguinity of third cousins or closer.

Instinctively or intuitively the person senses that relations between parents and children or grand parents and children, between siblings, and aunts and uncles with nieces and nephews, etc. are intrinsically evil, but he is uncertain as to where to draw the line in regard to cousins. The laws of his society, clan, tribe, or whatever draw the line inclusive of third cousins. He obeys the proscription without certitude as to the intrinsic morality of the case, but with certitude that he has no moral obligation to disregard the rule, and with certainty that the authorities of his nation, state, or group have forbidden it. Again, he has acted in moral recognition of authority.

We see therefore, that the simple fact that an act is made obligatory by the moral law does not make its being commanded by a just authority through the positive law morally superfluous, and this, of course, is even more apparent in the case of acts purely *mala prohibita*, for those acts are (in themselves) morally neutral without the intervention of the law-giving authority. On the other side of the coin, Wolff makes no mention of the standard natural law position that authority cannot properly command that which is unjust: '*Non videtur esse quae iusto fuerit*' - 'That which shall not have been just would not seem to be law'. (St. Augustine, *De Libero Arbitrio*, I, 5)

An immoral thing cannot be commanded by just authority, i.e. when such commands are issued, they do not bind the subject prudentially, as when the defiance of the rule of law would produce a greater evil for society than the carrying out of the unjust command. Thus, although to be a lawful command of a just authority, an act must be in conformity with the moral law (i.e. be moral or be morally neutral in itself), the positive law of a just authority is not merely an educational recapitulation of the moral law.

It should be noted, therefore that in most ethical theories, the commitment to just authority is a conditional one. The moral man commits himself to obey authority only

when the commands of that authority do not violate the moral law. An unconditional commitment to authority, therefore, would be viewed by traditional ethical systems not as a non-moral act, but as an immoral act. Just as a person is not supposed to consume alcohol or any other substance in such quantities as to rob him of his rationality, so that the agent loses control of his moral faculties, so a person must never give so unqualified a commitment to a temporal authority as to lose true moral autonomy - i.e. never so unreserved an assent to authority as to fail to hold it up to the standard of the moral law.

Wolff's setting up of the antinomy of authority and autonomy requires that he implicitly assume that obedience to a just authority is not itself a category of moral action, which is the heart of the issue at dispute. If we assume for a moment the contrary, which is that obedience to the command of just authority, when the command does not violate the moral law, is itself a separate moral act or at least a separable aspect of the same moral act, autonomy can be reconciled with authority.

"The defining mark of the state is authority, the right to rule. The primary obligation of man is autonomy, the refusal to be ruled. It would seem, then, that there can be no resolution of the conflict between the autonomy of the individual and the putative authority of the state. Insofar as a man fulfils his obligation to make himself the author of his decisions, he will resist the state's claim to have authority over him. That is to say, he will deny that he has a duty to obey the laws of the state simply because they are the laws. In that sense, it would seem that anarchism is the only political doctrine consistent with the virtue of autonomy.'(p.18)

The terms 'philosophical anarchism' or 'theoretical anarchising' are used because Wolff does not require that the laws necessarily be disobeyed, or even ignored, but only that they not be respected *qua* law, i.e. as specially binding in conscience beyond the strict dictates of the moral law and the rule of prudence.

In fact, the individual retains his moral autonomy only not only in the exercise of determining whether the positive commands of the state are in accord with maxims of the moral law, and thus, true law, binding *qua* law in conscience, but also in his moral response to the *claims* of the state. His autonomy enters on the second level because he knows that he can defy the laws of the state, just as he can defy the maxims of morality, and he can choose to obey or to disobey on the moral grounds of accepting or rejecting that authority, amongst other grounds. This would be quite in addition to such other motivations as prudential consideration, including regard for the effects of the negative sanctions of the penal law.

Also, in the more difficult case of acts *mala in se*, there seems to be no logical reason why a person may not abstain from a proscribed action both because it violates the moral law and because it violates the positive law, the violation of which may be a further violation of the moral law or at least an aspect of the evil of the violative act. An example of this might be the case of a child taught not to steal because it violates the moral law and also commanded not to steal by his father. As the boy grows up, he learns that statutory law also demands that he refrain from theft. There does not seem to be any more contradiction between obedience to the moral law *per se* and simultaneous obedience to the statute law, than between obedience to the moral law and simultaneous obedience to his father.

Wolff, then, has produced his antinomy by surreptitiously assuming that which he presents the antinomy in order to prove. His work is far from valueless, however, for in order to reply to him, one is forced to clarify to a greater degree the natural law and Kantian approaches to the true role of just authority.

With the collapse of Wolff's authority-autonomy antinomy, the philosophical "balance of power" returns to the *status quo ante* between theoretical anarchism and natural-law/just-authority politico-legal philosophy. The theoretical anarchist denies the possibility of just authority while the natural law theoretician asserts its reality. In the case

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of both systems, these crucial opposing assumptions must necessarily be asserted, for neither of them can be proven conclusively and neither of them can be refuted conclusively. Wolff's gallant effort was an unsuccessful attempt to prove beyond doubt the very concept of authority – in the sense of morally grounded authority – was an impossibility, and thus that the only reasonable position for people was a theoretical anarchism which reacted prudentially to governmental decrees, but otherwise granted them no moral weight.

In this study of Wolff's attempt, we have shown Wolff to have failed to refute the possibility of just authority; we have not, of course, demonstrated that just authority does, in fact, exist.

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