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Ethical Host, Prudent Host. Can You Steal from a Thief?

Summary. Two parallel problems come under close scrutiny in my paper. First of them concerns the question whether victims of a (politically or economically) stronger thief are ethically entitled to steal their property in revenge? I argue that this kind of theft could be seen as a hidden form of protection because the symbolic relation between the first aggressor and his victim is extremely unequal. An ordinary man usually has no public means to oppose corporation or political institution. He has then to decide whether he chooses ethical perfection, which would stop him from doing anything; or he is ready, by himself, to inflict punishment on an (institutionalized) thief. The other problem concerns the consequences of the acceptance of 'the balancing strategy.' The case of modern state shows how hidden fighting against a stronger thief brings about opposite results. On one hand, an unfair political institution is deprived of its rights. But, on the other hand, the insubordinate citizen, who plays the part of the only owner of the criterion of fairness, destroys the rules of common life.

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Introduction

Theft is among those deeds for which the ethical judgment uniquely links representatives of diverse theoretical orientations. Researchers of the Middle Ages con-

sider individual property a resultant of the natural order (*ordo naturae*) and of the order of justice (*ordo iustitiae*). In the moral theology of St Thomas the right to have the exclusive possession of things is a type of revocation regarding those who serve society and the state better than others. It is precisely the common good (*bonum commune*) that is supposed to justify the inviolability of goods lawfully acquired.¹ They are subject to social protection because an attempt at appropriating them – understood in any way – would violate the general order. The problem of property is resolved differently by subscribers to liberal theory. In their opinion, the free market is a tool that, alongside the legal and democratic mode of justifying command-giving entitlements, shaped western lifestyle. A measure of the stability of liberal-democratic communities is whether their members respect the right to possess property even when this means their consent for far-reaching inequalities in regard to the redistribution of goods. Although the market is equipped with self-regulators, its proper functioning depends on whether it is dominated by players sufficiently resourceful economically to compete with each other, and sufficiently viable morally to trust one another.²

A feature common to the doctrines cited above is the intuition appearing in them regarding the fundamental values in the defence of which a (morally) healthy society should stand. Calling them into question turns common life into a “war of everybody against everybody,”³ because resistance by players incapable of openly opposing a subject perpetrating abuse boils down dangerously to secret activity.⁴ This occurs especially when the victims’ conviction (of the wrong suffered) is not accompanied by the skill of stigmatising evil. In my paper, I intend to show that stealing from a thief who is stronger in terms of integration and persuasion is an ethically justified yet at the same time socially destructive deed. In the ethical aspect, the intention of compensatory theft forces the individual to choose between defending their own ideals, forbidding them to perform dishonest deeds, and fighting specific evil with the aid of the means they actually possess. In a communicative aspect, on the other hand, undisclosed forms of confrontation are of a quality such that their (future) amendment is accompanied by ambiguity regarding the intention of the subject undertaking the compensatory-remedial action.

¹ J. Majka, *Katolicka nauka społeczna*, Warsaw 1988, pp. 119-157; E. Gilson, *History of Christian Philosophy in the Middle Ages*, London 1995, pp. 341-343.

² P.A. Samuelson, W.D. Nordhaus, *Economics*, Columbus 2009, p. 89.

³ T. Hobbes, *Leviathan, or the Matter, Form, and Power of a Commonwealth, Ecclesiastical and Civil*, New York 2008, p. 85; B. Hindess, *Discourses of Power: from Hobbes to Foucault*, Oxford 1996.

⁴ P. Rotengruber, *Perspektywy społecznego porozumienia. Pragmatyka dyskursu władzy*, Poznań 2006.

In the case of a political institution that does not want to or cannot stand in the defence of wronged citizens, defiance against it combines an intention to redress wrongs with consent for the disassembly (behind the scenes) of the rules of justice shaping the public sphere. The social bond succumbs to decay in regard to respected norms, while retaining appearances of endurance in regard to declared norms. Subsequent interventions heighten the sense of uncertainty constituting a consequence of the loss of orientation as to who is the aggressor and who the victim. This problem – something worth emphasising – steps beyond academic digressions. In the political history of the western world it constitutes one of the significant reasons why revolutions break out, governments fall, and the constitutional order changes. Which makes an investigation of its genesis all the more worthwhile.

Individual vs. Enterprise

Are you allowed to steal from your neighbour? Certainly not. Should you guard your property? Yes, definitely. So how should one behave when unable to protect one's rights to possess items lawfully acquired other than by recovering them through devious means? In such cases the object of the theft gives no cause for doubt, yet the theft itself is considered by many a deed unworthy of an honest person. The victim of theft is afraid of moral bias causing them to justify decisions in keeping with their interest. In the meantime, mercantile circumstances, though very important, are not the sole motives behind compensatory-remedial action. The demand of responsibility for one's own good but also for the common good is not limited to the question of whether one is allowed to steal from those who previously stole from them. Rather it inclines the victim of theft to consider whether, in morally clear situations, they are allowed to back away from administering punishment. The public consequences of desisting throw a new light on the matter. They result in a blurring of the border separating retaliation from the obligation to stand up for what should be.

The problem of the civil courage of those affected by injustice is added to the distinction between retaliation and redressal. Everyday experience teaches that it is just as difficult to proceed with honesty in disputable situations as it is to act, even in secret, against a player who is more efficient in terms of integration and persuasion. The fear of confrontation and the conformism this entails (in the perspective of the deed) become similar to the requirements for moral perfection or loving thy neighbour. Yet this similarity is ostensible. Compliance as a spiritual exercise does not solve the problem of responsibility for pathology. It is rather fear of the consequences of protesting that denudes the weakness of a subject only seemingly

ethical. A wrong-doer unopposed by either victim or the social milieu (taking the role of a collective witness to the event) thus has their opinion of their own impunity confirmed. Such a conviction may then transmute into a series of confabulations regarding the alleged privileges of the ethical aggressor. After all, this is what leads to Orwell's "equal and more equal."

The need for resistance against the 'more equal' justifies the view that compensatory deeds, even when approaching retaliation, result from the duty to remedy damage. Because overt remedy – ideally taken by the organs of state authority – is not always possible, there remain measures subordinate to the rule of efficiency, evoking, among other things, their limited openness. This dependence relates in particular to events in which the moral transgressions of a host interweave with political consent for them. Among these belong the procedure of biopiracy, involving the appropriation of nature's genetic heritage, and sometimes the technological achievements of communities that – due to the lack of political or legal skills – are incapable of its protection.⁵

The abuses in question relate to the registration of seeds, genes, chromosomes, cells and tissue, etc. Until recently natural discoveries were not subject to legal protection other than that regarding new technologies (e.g. more efficient extraction and exploitation of raw materials), while medicinal substances produced in a traditional manner were treated as part of the legacy of their local producer. Today these goods, following their patenting by producers of drugs, seeds and plant protection products, are becoming the basis of a claim addressed also to their original users.⁶ Joseph Stiglitz reminds us that the victims are not only the (local) owners of the appropriated goods, but also those (weaker) participants of the political-economic games (consumer circles, developing countries) whose entitlements have been restricted to a degree threatening their security.⁷

How can one defend against such iniquity? The first restriction the ethical participant of public life should submit to is moderation in making judgments. When relating this directive to the procedure of biopiracy, one should first of all ensure whether the product that is the subject of dispute has been manufactured or appropriated, and then confirm the accusation of the entity carrying out the said appropriation having acted in bad faith. Putting things systematically, the choice of the *in dubio pro reo* approach is justified by the asymmetric communication obstruction separating

⁵ J. Stiglitz, *Globalization and Its Discontents*, London 2002, pp. 217-218.

⁶ J. Rifkin, *The Age of Access: The New Culture of Hypercapitalism, Where All of Life Is a Paid-Far Experience*, New York 2000, pp. 63-80.

⁷ J. Stiglitz, *Globalization...*, p. 25; S. Amin, *Obsolescent Capitalism: Contemporary Politics and Global Disorder*, London & New York 2003, p. 123; J. Rifkin, *The Age of Access...*, pp. 63-80.

the one who takes the economic decision from those who are condemned to suppositions regarding its significance. Game theory representatives recall the profitable character of the abuse of trust committed by the deserter.⁸ His interlocutors do not want to bear the high costs of their own gullibility. But they have to take the risk. Because the intensification of fears regarding somebody else's iniquity obviously antagonises social relations. Distrust towards others as well as the ubiquitous nature of communicational obstructions means that fragmentary information becomes the proverbial spark falling on the gunpowder. A suspicious and demanding subject potentially sees an opponent in everyone.

Unfortunately, implementation of the principle of moderation in making judgments is limited in its scope. An institutionalised thief initiates a conflict, which, because of its secrecy, enormously hinders (future) agreement. The said difficulties relate to such issues as (1) the estimation of losses, (2) assessment of the admissibility of means of resistance, and, (3) the common undertaking of remedial measures. The last goal in particular seems difficult to accomplish. Camouflaged resistance combines (nominal) consent for evil with the intention of recovering lost goods. There is no room here for compromise. Its place is taken by blame and grudges, which – stretched out in time – become an important parameter of public life.⁹

Individual vs. State

The proper subject of these deliberations is analysis – cursory out of necessity – of the macrosocial consequences of choosing a surreptitious compensatory strategy. In the light of what has been determined to date, the ethical justification for the said strategy has been narrowed down to people (1) opposing the indisputable thief, and (2) helpless in open confrontation with the latter. The inversely proportional dependency linking openness in action and effectiveness of the socially weaker players is not, admittedly, complete. N. Klein provides a number of examples of scattered deeds that, thanks to a virtual exchange forum, achieve a better result than could be obtained from a traditional reckoning of forces.¹⁰ However, these examples should be treated as an exception to the rule. This is particularly evident when the dishonesty of economic institutions is tied to the dishonesty of a state (treated as a politically and morally inefficient system).

⁸ P.M. Blau, *Wymiana nagród społecznych*, in *Współczesne teorie wymiany*, eds M. Kempny, J. Szmátka, Warsaw 1993, p. 241; idem, *Approaches to the Study of Social Structure*, New York 1975.

⁹ E. Hankiss, *Pułapki społeczne*, Warsaw 1986, pp. 39-42.

¹⁰ N. Klein, *No Logo*, New York 2002, pp. 326, 437-473; J. Rifkin, *The Age of Access...*

We are approaching the essence of the problem under analysis. The case of a dishonest state cumulates difficulties accompanying the implementation of the demand for resistance against the offender, more efficient in terms of integration and persuasion. First of all one has to note that a (nominally) democratic state gives the individual the opportunity to disobey in an open manner.¹¹ Such a manner of proceeding, apart from the ethical arguments, has praxeological justification. A disobedient citizen counts on succeeding to get public opinion involved in (his) fight for a just cause. Choosing the role of victim is meant to generate appropriately high integrational potential, transforming the scattered participants of social and economic actions into a force capable of opposing a stronger opponent.

Unfortunately, civic disobedience – in the days of all-powerful media and disappearance of participation by western societies in the public sphere – rarely proves an effective solution.¹² The ideal of free communication, close to the views of Habermas, does not apply here.¹³ Those organisations with reason to fear a disobedient interlocutor have the means to effectively deride or trivialise communication threatening them.¹⁴ The situation looks just as bad from the point of view of the person keen on putting up resistance. Alongside difficulties regarding (1) restricted access to knowledge regarding their political and economic position, as well as (2) the relative inefficiency of the alarm-raising procedures they could use in situations of conflict, there is also (3) the objective absence of a criterion differentiating justified from unjustified defence. By remaining open to social structure, a subject learns to differentiate bad deeds from bad people (and bad institutions). However, this learning does not guarantee the validity of their verdicts. This applies to the problem that may be illustrated using the bald man paradox of Eubulides of Miletus (the Megarian school).¹⁵ Choosing the cautionary option – requiring moderation in one's judgment – withholds the subject from automatically equating abuse as a singular act (existential judgment) with criticism of those who perpetrated it (general judgment).

The most serious transgression may be described as a series of individual occurrences. Which is why one should ask when can the subject legitimately call the (institutionalised) perpetrator of a theft a thief? The matter seems simple when the

¹¹ H. Arendt, *On Violence*, Orlando 1970; R. Dworkin, *Taking Rights Seriously*, New York 1997, pp. 333-399.

¹² A. Giddens, *Modernity and Self-identity: Self and Society in the Late Modern Age*, Stanford 1991, pp. 225-226.

¹³ A. Szahaj, *J. Habermasa teoria działania komunikacyjnego*, in *Wokół teorii krytycznej Jürgena Habermasa*, eds A. M. Kaniowski, A. Szahaj, Warsaw 1987; R. A. Dahl, *Democracy and Its Critics*, pp. 170-188; P. Śpiewak, *Obietnice demokracji*, Warsaw 2004, pp. 101-180.

¹⁴ J. Habermas, *The Structural Transformation of the Public Sphere*, Cambridge 1991, pp. 339-418.

¹⁵ D. Laertius, *Lives and Opinions of Eminent Philosophers*, London 1853, pp. 186-187.

decisions of an enterprise are the subject of appraisal, as it deserves punishment – appropriately – for every abuse of social trust. The balance of loss and gain usually justifies such conduct, because although the enterprise is a good that is subject to protection, society is subject to greater protection as the maker and the depository of the community bond. Punishment for violating this bond, even if badly calibrated, is rarely unfounded.

However, fighting the state is something quite different. An attack on the state leads – apart from in cases of tyranny – to disassembly of the axiological framework surrounding public space. This vague phrase means that the gradual overturning of the conditions of the social contract – initially violated by the political sovereign – threatens a return to the state of general war.¹⁶ Admittedly, a version of collective disobedience is possible, justified by the call for a new and – by implication – better state. (Let the case of Solidarity in 1980 serve as an illustration.) However, this scenario has but a faint chance of succeeding. The lack of a vision integrating the individual contesters entails the threat of their political responsibility transforming into isolated concern for their own fates. Then the Camusque “I’m rebelling and therefore I am” adopts a grotesque form. The reason behind the rebel’s isolation is not the social ostracism accompanying him, but his own choice of measure distancing him from others.¹⁷

Conclusions

Theft as a type of economic or political abuse justifies the taking of compensatory actions even when the said actions are, out of necessity, taken in a clandestine manner. As portrayed by St Thomas Aquinas, the common good (as a fundamental value) led beyond the order of justice (*ordo iustitiae*) then becomes similar to behaviour typical of the order of nature (*ordo naturae*). An attack, all the more brutal as based on an advantage of entitlements and bonds based on trust and specific competences, demands a reaction precisely because of this model of conduct, reduced to self-interested behaviour. The wrongdoer must be punished in the name of the (forgotten) rule of justice. This gives rise to doubt about how to punish. Probably such that the punishment proves effective. However, there is something else at stake here. It is just as important that it be administered in a manner enabling restoration of the (violated) order.

¹⁶ M. Foucault, *Society Must Be Defended Lectures at the Collège de France, 1975-1976*, transl. D. Macey, New York 2003 p. 47; B. Hindess, *Discourses of Power...*, pp. 28-44; M. Philp, *Michel Foucault*, in *The Return of Grand Theory in the Human Sciences*, ed. Q. Skinner, Cambridge 1990, pp. 79-99.

¹⁷ A. Camus, *The Rebel*, transl. A. Bower, New York 1991, p. 25.

The matter is similar with liberal justification. Breaching of the social contract means that the individual as a signatory has no reason to pay for something that, put in the terms of a transaction, has quite simply ceased to apply. Unfortunately, there are side effects of such behaviour. In the realities of confrontation it is hard to anticipate whether retaliation as a reaction to wrongdoing leads, as claims Hobbes, to a state of war, of everybody against everybody, or whether – in line with Locke's diagnosis – it is the start of negotiations for a new social contract. In the case of a citizen's conflict with a thieving state, then the more serious the transgressions by the political sovereign, the greater the personal responsibility for enforcing just retribution. Such transgressions result in the goal of the compensatory measures becoming the actual sovereign. It would seem that nothing extraordinary is happening; after all the citizens – from time to time – should take matters into their own hands. Except that this taking of the initiative by scattered participants in the public sphere, understood as a withdrawal by the *polis* of the prerogatives for the monopolisation of violence, entails the serious threat of a collapse into a state of anarchy.

The state is an institution that – in the name of the public good – should fight pathology. Therefore, when the source of the pathology is the actual state, then a camouflaged struggle with it becomes a way of protecting individual freedoms just as much as it is conduct leading to the revocation of rules providing order for the public sphere. Resistance, including that justified by the fear of losses, has a spiral effect. The defence of community convictions regarding what is good and right entails a simultaneous undermining of trust in the player taking the road of confrontation. Sociologists of knowledge remind us that order-giving measures taken by individuals applying a different cognitive perspective will miss the target if not preceded by coordination enabling mutual control.¹⁸ And so the circle closes. Because in the case of clandestine measures it is impossible to fulfil this condition.

Associating the threats cited above leads to the paradox of the justified theft. Whereas theft as a compensatory measure is easy to accept on a local scale, its reference to macro-social dependencies, and especially those dependencies within which an oppressive state is the aggressor, causes a merging of arguments regarding the object of the defence of ethics. In this dependency this is – to an equal degree – the wronged individual and the wrongdoer state. The right to the protection of property encounters an objective obstacle in the form of (future) risks that the disobedient citizen creates. This is the paradox of the victim – aggressor: of the one

¹⁸ K.W. Frieske, *Socjologia w działaniu. Nadzieje i rozczarowania*, Warsaw 1990; K. Mannheim, *Ideology and Utopia*, London 1968; P. Bourdieu, L.J.D. Wacquant, *An Invitation to Reflexive Sociology*, Chicago 1992; P. Rotengruber, *Ideologia, anarchia, etyka. Dyskurs ponowoczesny a "dialog"*, Poznań 2000.

who by covertly performing in defence of social norms contributes at the same time to an erosion of the community bond.

In the meantime, becoming entangled in the said paradox should not dampen anybody's initiative. When the wrong whose perpetrator is an (institutionalised) thief is obvious, and when the compensatory measures do not directly threaten public order, then there are no major reasons for not asserting one's claims. Provided that the state – as a synonym for collective order – is subject to the particular protection of ethics, then a dishonest enterprise does not fit within this formula. A citizen dispensing justice to an economic entity not only does not threaten the public order, but even – and frequently – restores that order. Besides, he is not always alone in this; in the case of socially significant ventures, then in principle others – family, friends, fellow citizens – take the role of judge confirming the validity of the intervention. In a eudaimonistic mode they all generate a measure differentiating compensation from theft. Restricted clarity of the proceedings does not have to clash with the aspiration for ethical correctness. On the contrary, it is precisely in dialogue with others that the subject makes certain that, in administering punishment to a thieving institution, they are doing the right thing.

The rule thus reproduced substantiates the conclusion bringing these deliberations to a close. Theft is rightly acknowledged as a wrong. However, one must not forget that this wrong is sometimes the only weapon with which players who are weaker in terms of integration and persuasion can fend off the attacks of more powerful interlocutors. It is impossible to renounce this wrong without simultaneously renouncing good (especially when the good is associated with everyday challenges). We threaten one another, yet aware of these threats we wish to avoid the costs that each party would bear in the event of conflict. Praxeological arguments interweave here with the claims of ethics. As a result a tool though controversial yet also useful emerges, because although ethics mixed with the notion of interest does not give its users solace as understood in terms of worldview, it does at least force them to take one another seriously.

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