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### Response to Varden, Scholz, and Tollefson

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I would like to begin by thanking Sally Haslanger and the editorial board of SGRP for inviting this symposium on my book, and Professors Varden, Scholz, and Tollefson for their commentaries. I am gratified to see such different responses to my work, and I learned a lot from each of them.

I.

Helga Varden's observation that my view of coercion and law commits me to libertarianism is frankly a bit shocking to me. I think of Robert Nozick and Milton Friedman as paradigmatic examples of libertarian thinkers, and I have so many disagreements with them that it is disconcerting to think that my views would be lumped together with them. Varden's observation deserves scrutiny and analysis. What is the nature of the libertarianism that she claims I am committed to? And am I committed to this? If so, what are the implications of my libertarianism? And what would be the cost of giving it up? In responding to Varden I will answer these questions

and attempt to clarify the background moral theory that *Analyzing Oppression* requires.

Varden clearly identifies a soft spot in the theory when she asks what, for my view, constitutes rightful coercion, and notes that I simply wavered in the direction of a liberal contractarian theory, such as Rawls's or Gauthier's. She infers that I "ultimately [see] state power in terms of individual's rights against one another, and hence the form of liberalism [I endorse] is compatible with libertarianism." I agree with the first clause wholeheartedly. But as for the second, I see the "compatibility" of my theory with libertarianism as quite a bit weaker than Varden does. That is, I would agree that it is not inconsistent with libertarianism, but I would deny that my view entails or is committed to libertarianism. That is, unless Varden defines libertarianism much more broadly than I do. So what exactly is her definition of libertarianism? In the rest of her paper she critiques my adherence to libertarianism in ways that reveal this definition. First, she says that it is "unclear how [my] account secures non-oppressive conditions for groups consisting in powerless individuals" (2) because there would be no particular persons with the duties to secure those individuals' rights against oppression. Later she characterizes "the general libertarian problem of reconciling duty to intervene with 'self-ownership.'" And "the general dictum that the rights of the state are reducible to the rights of individuals and that the need for the state is merely prudential." (5) By this analysis, though, Rawls is also a libertarian, so I am less alarmed by the claim that I am a libertarian if I am in company in that regard with the most important theorist of the welfare state. I agree that I am committed to this loose, general sense of libertarianism, although I would call it "liberalism"; I disagree that I am committed to Nozick's minimal state or Friedman's laissez-faire ideal of capitalism.

Varden argues that libertarians cannot show "how citizens have rightful claims on public institutions (public law) that go beyond the right to enforce private law through state apparatus," nor can they "make good sense of how the rights individuals hold against one another is quite different in nature and extent from the rights they have in relation to public institutions." My response to these two claims is to agree with both, but to suggest that this does not mean that my commitment to libertarianism in the loose and general sense entails that I cannot show how law is justified in

fighting oppression. Let me briefly sketch how I think the argument should go. A contractarian argument will show that it is rational to consent to a state government apparatus to secure peace and individual rights. Once the basic structure is determined, however, the contractarian argument for state legitimation does not play a role unless that structure is threatened. The sort of structure that would be agreed to depends on the original situation, which itself requires argument to determine the initial situation of equality. I grant that this is an important point for determining what the basic structure will be. But whatever it is, it will license an institutional framework that can then impose duties on its citizens in order to uphold the framework. Thus, it seems to me, public law can be legitimated in a contractarian framework that meets Varden's conditions of libertarianism. In short, my view is that the institutional framework and public law emerges from an initially individualistic framework.

I agree with Varden's observation that the most effective legal remedies for fighting oppression will be public law strategies such as the Equal Pay Act, the ADA, and the Civil Rights Act. But I do not see why these strategies are not available to a government that is grounded on individual consent. The individuals need only consent to form a state that will protect their private rights within an institutional system. The institutions can then make it the duty of individuals to enforce these rights through public law and public programs of affirmative justice. Varden claims, however, that the autonomy rights that I uphold are "inherently public laws," and that they are "not reducible to rights individuals hold against one another." (9) But what is meant by the term "reducible"? My argument does seem committed to the claim that the ultimate ground or justification of these rights and laws are individuals' private rights, but I do not see why my argument is thereby committed to the claim that public laws are nothing more than the combinations of individuals exercising their private rights. I claim that in effect public law and institutions emerge from the agreements of individuals, but new properties arise in the institution of government. For example, while my exercise of private rights to bodily autonomy allow me to act in self defense or to assist another whose bodily autonomy is threatened, I am also entitled to complain if others' bodily autonomy is not protected by the state, meaning the whole system of legislation, enforcement, and

prosecution. (In chapter two of *Analyzing Oppression* I argued for a holistic individualistic view of institutions, on which institutions are constituted by individuals but have properties that supervene on intentional states.) The latter could not happen without institutions of government, which are invented and erected only after the consent of private individuals to form a polity. There is no need for continual consent on my view; if there were, there would indeed be the problems that Varden suggests. But I am not sure why the contractarian argument for government requires constant consent, and she has not provided an argument for that.

Finally, what would be the implications of giving up my libertarianism? Varden suggests that I could maintain liberalism, yet still solve the problems she finds with my libertarian theory. She suggests that we should view ending oppression as a legitimate "public" rather than "social" goal. The difference is that the liberal state should only be allowed to interfere to prevent oppression in public, not private but social, interactions. I think that she is right about this and that I have misstated the matter. But what does the social/public distinction turn on? Again, it seems that she thinks my view is committed to the idea that if the justification of government is individual consent, then there cannot be public law and institution, and all collectives are nothing more than aggregates. That is not the social ontology I endorse, however, as I have said. Giving up the individual consent basis for governmental legitimacy is too great a price to pay in my view, and Varden has not convinced me that I need to do so.

## II.

Deborah Tollefson's paper concentrates on my theory of social groups. She offers three critiques. First, she suggests that in ruling out self-perceptions as the determinant of membership in social groups, I am privileging others' equally subjective perceptions of one's social group membership. It is true that I do not see one's self-perception as the determinant of one's social group membership; I cannot count myself as a Black just on a whim, for instance. My account does not count anyone's mere perceptions as the determining factor in what social groups I am a member of. But in so far as perceptions inform and guide actions, both self-perceptions and others' perceptions do make a difference for the determination of my social group status. I agree that others' perceptions are

equally subjective; it is only the objective actions and their objective effects that make a difference for social group status on my account. That is, it is not what people think that determine what social groups are or who belongs to them; it is what people do that matters for what social groups they and others belong to. Of course, what people do is affected by what they think.

Second, Tollefson questions how we will determine what social groups exist and suggests that there is no non-question begging way to do so. She reads me correctly as arguing that I rely on social scientists to identify the social groups by finding clusters of constraints that collections of people have in common. But she questions whether social scientists will be able to pick out the groups without begging the question about what groups exist. Tollefson is right about this, but I am not convinced that this is really problematic for my view. Surely social scientists who are concerned to delineate social ontology will begin from what they think they know about what social groups there are. But they won't stop with their folk conception of social groups. Rather, they will then check to see whether these really are groups, which means that they will check to see whether being categorized as a member of that group subjects one to common social constraints. Furthermore, they will investigate whether there are subgroups that are significant, and whether there are different groupings that have become more causally efficacious in peoples' lives. In this way the scientific account will begin from the folk concepts but revise and refine them in light of evidence about how being categorized in a group affects individuals' material and psychological states in systematic ways. I would not endorse the idea that social scientists wanting to map out social groups begin simply from physical features unless it is a part of the starting folk concept of a group that this is what marks the group. Still, beginning from some facts of physical appearance, after finding the various constraints that identify the social group, the social scientist needs to go back to see whether there are individuals who do not precisely share that physical appearance but who are still categorized as members of that group. In other words, on my account it is the shared constraints, not the physical features of persons in groups, that determines group membership of individuals of that group.

Tollefson's third critique is to suggest that if I individuate groups by the set of constraints that their members face, then I might be forced

to see each person as a unique group. Further, she suggests that my account risks ontological excess if it classifies such groups as bald men or beautiful women as social groups. I agree that the social science of groups has to make judgments about which groups are significant and what are the boundaries of grouphood. It will have to decide whether a certain grouping is explanatorily useful and when they are not. To some degree this will depend on the purpose of the social scientific study that is under way. For example, if the point of a study is to examine the causes of unequal achievement in education then certain constraints, such as being subject to certain racial stereotypes and epithets, and thus being treated in certain characteristic ways by teachers, fellow students, community members, and parents will be relevant, while others, such as the color of their toothbrushes or the second letter of their first names will likely not be relevant. Again, the social scientist is likely to begin from the folk social groups she considers relevant, but in gathering data she should then be sensitive to ways in which the actual groupings might be somewhat different from what she initially expected.

Finally, Tollefson suggests that my use of the term "oppression" might tend to trivialize the term. Her example that is supposed to show this is the social group, children, which she argues is oppressed on my account. It is true that I find children to be a puzzling case, so it is useful for her to raise this issue. On the one hand it does seem clear that children are unjustly harmed because they are children, and that adults gain from their privileges relative to children. Children clearly form a social group in that they face common constraints, some of which are unjust, such as coercive laws and rules that apply to all and only them by virtue of their age. So yes, they fit the definition of an oppressed social group. Yet some children are well treated and live flourishing childhoods. So is it trivializing to say that children are oppressed as children?

My first response to this is to say that in every social group there are individuals who do well and others who do much more poorly than average. That is the nature of an average after all. Tollefson's children are among an extremely small subset of children of the world, most of whom are taken advantage of in ways that harm them seriously. But there are children who are well off, just as there are women, Blacks, gay men and lesbians, and even poor people who are well off. This does not mean that they are not harmed by

their social group status, but it does mean that they have resources, privileges, or just plain good luck that sets them apart from others in their groups. Yet a person of the correlative social group with the same resources, privileges, and good luck will be even better off, unfairly so.

III.

Sally Scholz's paper nicely points out where my theory of oppression and my theory of resistance needs a theory of empowerment. My theory of oppression stresses the psychology of belief and desire formation under oppression that results in false consciousness and deformed desires. But given that these psychological processes are beyond the victims' control, Scholz argues, my claim that that the oppressed individuals have a duty to resist oppression asks too much. She not only thinks that it is psychologically difficult for victims to meet their obligation, but it may rob them of autonomy to require it, which would create an internal tension in my liberal account.

I want to separate the autonomy objection from the empowerment suggestion, however. Scholz's claim that my view robs women of autonomy is, I think, mistaken. We should distinguish between holding someone morally responsible for something and forcing them to act on that responsibility. In the domestic violence example, I might agree (under the right circumstances) that a woman is morally required not to return to a battering situation. Yet I would not argue that society ought to physically restrain her from doing so. Furthermore, I would agree that we should help women in violent situations to see what their obligation is, rather than try to manipulate them or coerce them into anything. Holding someone morally responsible for something is not the same as manipulation, force, or coercion, and does not violate autonomy. Indeed, to hold persons morally responsible is to treat them with respect as autonomous beings.

Scholz offers that a theory of empowerment would strengthen my account by showing how oppressed persons can be brought to believe that they are oppressed and to want to be freed from their oppression. She suggests a psychological theory that people must in effect discover the truth for themselves, aided by suggestions and moral and material support for their transitioning phase. This seems like a useful suggestion to me, and I accept it. However, I believe

that it would require me to alter my theory of the moral responsibility of the oppressed slightly. For at least some of those in the transition phase are not yet in a position to recognize the oppression of their social group, and as such are not yet in a position to be held morally responsible. They are thus not yet autonomous beings, but rather should be seen as in the process of developing autonomy skills.

In conclusion I want to thank Helga Varden, Deborah Tollefson, and Sally Scholz again for their commentaries on my book. It has been enormously fruitful for me to grapple with their criticisms and develop responses. Whether my responses are adequate, I leave to the readers to decide.