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The Rights Forfeiture Theory of Punishment*

Christopher Heath Wellman

Punishment is notoriously difficult to justify because it involves visiting hard treatment upon those who are punished. The rights forfeiture theory of punishment contends that punishment is justified when and because the criminal has forfeited her right not to be subjected to this hard treatment. Because of a number of apparently devastating objections, this account has very few advocates. In this essay I aim to rehabilitate the rights forfeiture account by offering responses to the standard criticisms.

Among the many important questions concerning the morality of punishment are: Why do we want to punish? Why may we permissibly punish? Whom may we punish? How much may we punish? and Who may punish? The second of these questions—Why may we permissibly punish?—has attracted the lion's share of scholarly attention, and it will be my principal focus in this essay. In my view, the traditional approaches to punishment help explain why we may want to punish, but none can establish the permissibility of doing so. To answer this question, only the rights forfeiture theory will suffice. Because of a number of apparently devastating objections, however, very few theorists who write on punishment even take this approach seriously. This essay seeks to rehabilitate the rights forfeiture account by offering responses to each of these standard criticisms.

THE INADEQUACY OF THE TRADITIONAL APPROACHES

Given that punishment, by definition, involves visiting hard treatment upon those who are punished, and persons typically have a right not

* I am extremely grateful for the constructive criticism I received from two anonymous reviewers and the editors of this journal. In addition to audiences at the Australian National University and the University of Texas, I am indebted to Mitch Berman, Richard Dagger, John Deigh, Zachary Hoskins, Justin Tosi, and Carl Wellman for their written comments on earlier drafts of this essay.

to be subjected to this hard treatment, it would seem natural to conclude that the permissibility of punishment is centrally a question of rights.¹ This insight is lost on the vast majority of theorists working on punishment who focus instead on the aims of punishment. According to retributivism, the general justifying aim of punishment is to serve justice by giving criminals the hard treatment they deserve; utilitarianism suggests that the aim is to produce better consequences (chiefly by deterring everyone from committing crimes); moral education theory insists that the aim is to help morally educate the criminal and society at large; expressivist theory claims that the chief aim is for society to express its emphatic denunciation of the criminal; restitutive theory alleges that the aim is to restore the victims; and societal safety-valve theory claims that the aim is to provide an effective, peaceful outlet for socially disruptive emotions. I think that all of these aims help explain why we should want a properly constructed system of punishment, but none shows why it would be permissible to institute one. Only a rights-based analysis will suffice here, because the type of justification we seek for punishment must demonstrate that punishment is permissible, and it would be permissible only if it violated no one's rights.

To appreciate this basic point about the relationship among aims, rights, and adequate justification, imagine that I want some of Bill Gates's money in order to fund release time from my teaching and administrative responsibilities, so that I can dedicate myself full-time to designing a new model of mosquito net that would better protect vulnerable people in sub-Saharan Africa from malaria. These admirable aims may well explain why I want some of Gates's money, but they cannot by themselves explain why I would be justified in taking it, because they say nothing about the various rights involved. In particular, absent some sort of explanation to the contrary, Gates stands in a privileged position of ownership over his money, and this position entails that I may not unilaterally help myself to it, no matter how laudable my aims are.² If Gates had promised to finance my research, then this may well explain why I may permissibly help myself to the funds in question, but in this case, Gates's promise rather than my aims are the crucial variable. And certainly one can imagine a scenario in which Gates agrees to fund my leave from teaching precisely be-

1. On the definition of punishment, see Joel Feinberg, "The Expressive Function of Punishment" (reprinted in Joel Feinberg, *Doing and Deserving* [Princeton, NJ: Princeton University Press, 1970], 95–118).

2. I do not allege that Gates's right is perfectly general and absolute. If I needed some of his money in order to save the world from a nuclear holocaust, for instance, then presumably I could permissibly take it without his permission.

cause I have such lofty and important aims, but even here my aims are not by themselves a sufficient justification. Without Gates's consent, I may not permissibly take his money. In light of this, the centrality of rights (and the inadequacy of aims) is apparent.

Because being punished appears to violate one's life, liberty, and/or property rights, the permissibility of punishment seems to hinge on whether punishment is compatible with these rights. After all, just as the fact that Gates owns his money entails that others may not permissibly commandeer it, each individual's privileged position of moral dominion over her own affairs entails that others may not permissibly incarcerate or otherwise punish her. However, just as Gates can waive his right to his money (if he gives it to me, for instance), one can forfeit one's right against being punished. When one wrongly harms another, for instance, one forfeits the privileged position of dominion over one's self-regarding affairs. Moreover, how harshly one may be punished depends on how badly one mistreats others. This is why the innocent may not permissibly be punished, those who misbehave only a little may be punished only a correspondingly small amount, and those who behave worse may be punished more severely. As W. D. Ross puts it,

the offender, by violating the life or liberty or property of another, has lost his own right to have his life, liberty, or property respected, so that the state has no *prima facie* duty to spare him, as it has a *prima facie* duty to spare the innocent. It is morally at liberty to injure him as he has injured others, or to inflict any lesser injury on him, or to spare him, exactly as consideration both of the good of the community and of his own good requires. If, on the other hand, a man has respected the rights of others, there is a strong and distinctive objection to the state's inflicting any penalty on him with a view to the good of the community or even to his own good.³

Thus, contrary to the traditional strategy of citing the valuable aims which punishment can realize, the best approach for those who seek to explain the permissibility of punishment would seem to be to focus

3. W. D. Ross, *The Right and the Good* (Oxford: Oxford University Press, 1930), 60–61. Notice that Ross stipulates that you must violate someone else's right in order to forfeit your own right. Not all rights forfeiture theorists will agree with this. After all, there is clearly more to morality than rights and their correlative duties, so presumably one can behave culpably without violating someone else's rights. My thesis in this essay does not require me to take a stand on this issue, but I should say that I am inclined to accept Ross's view. While one may be liable to criticism for acting in a merely suberogatory fashion, I believe both that one may be subjected to the hard treatment of punishment only if one acts impermissibly and that one acts impermissibly just in case one violates a right.

upon explaining how criminals have forfeited their rights against hard treatment.

Given that it seems permissible to coerce and harm folks who have not forfeited their rights in other contexts, a critic might question why punishment cannot be justified unless the offender has forfeited her rights. Presumably it is permissible to kill an enemy soldier or innocent aggressor in self-defense, for instance. In response, I would stress that self-defense is commonly understood in terms of rights forfeiture, and the most sophisticated debates in these areas are more specifically about whether so-called aggressors and threats can forfeit their rights by merely posing a threat to others. Judith Jarvis Thomson understands self-defense in terms of rights forfeiture, for instance, and she argues that an "Innocent Aggressor" may permissibly be killed in self-defense only because, by threatening Victim's life, Innocent Aggressor has (irrespective of her culpability) violated Victim's right to life and thereby has forfeited her own right to life.⁴ Michael Otsuka objects to Thomson's account only because he rejects Thomson's contention that the Innocent Aggressor is violating Victim's right to life.⁵ In other words, Thomson and Otsuka agree both that (1) self-defense should be understood in terms of rights forfeiture and that (2) one forfeits one's right only when one violates another's right; they disagree only about what is necessary for one person to violate another's rights. And regarding the ethics of killing in war, notice that Jeff McMahan has (convincingly, I think) argued that we should jettison the dominant just war tradition's understanding of rights forfeiture (which stipulates that all combatants—whether just or unjust—are equally liable, while all noncombatants enjoy immunity) in favor of a more nuanced and moral responsibility-sensitive understanding of who forfeits which rights in war.⁶ It thus seems that these other areas are also understood in terms of rights forfeiture, and the only question is whether forfeiture can occur in the absence of culpability.

This comparison to self-defense raises an interesting question about rights forfeiture theories of punishment: Is the fact that the wrongdoer forfeited her right merely necessary for the punishment to be permissible or is it also sufficient? More specifically, may one punish someone who has forfeited her right against hard treatment for any purpose whatsoever, or must this punishment be necessary to

4. Judith Jarvis Thomson, "Self-Defense," *Philosophy and Public Affairs* 20 (1991): 283–310.

5. Michael Otsuka, "Killing the Innocent in Self-Defense," *Philosophy and Public Affairs* 23 (1994): 74–94.

6. Jeff McMahan, *Killing in War* (Oxford: Oxford University Press, 2009).

promote some important (retributive, utilitarian, or other) aim? In the case of self-defense, for instance, one may harm one's aggressor only if doing so is necessary to avoid being harmed oneself.

Here we might distinguish between weak and strong versions of rights forfeiture theory. Defenders of the weak version do not deny that punishment is permissible only when it is necessary to advance some valuable aim; they merely emphasize that realizing these aims would not suffice to justify punishment if the person punished had not forfeited her right. The strong version alleges that, if the person being punished has forfeited her rights, it is permissible to punish her for any purpose whatsoever. In other words, the weak version regards rights forfeiture as a necessary supplement to the more traditional theories, while the strong version views rights forfeiture as a substitute. Rights forfeiture theorists have tended to defend only the weak version, but I subscribe to the stronger version, and I shall try to vindicate this more ambitious thesis in this article. Put bluntly, then, I understand the rights forfeiture theory of punishment as the view that we should concentrate on which rights wrongdoers forfeit because this forfeiture is necessary and sufficient to explain the permissibility of punishment.⁷

Theorists who work on the morality of punishment have been reluctant to change their focus from the valuable aims we might achieve with a properly designed system of punishment to the rights which might be violated by such an institution because of a variety of powerful criticisms of rights forfeiture theory. The standard objections include (1) the problem of justification, (2) the problem of status, (3) the problem of indeterminate authorization, (4) the problem of relatedness, (5) the problem of suitability, (6) the problem of duration and

7. As should be clear from the preceding discussion, for two reasons, it is a slight oversimplification to say that rights forfeiture is necessary and sufficient for punishment to be permissible. First, given that I am not an absolutist about rights, I cannot say rights forfeiture is absolutely necessary. If one could save the world from a nuclear holocaust only by punishing an innocent person, for instance, then surely one may do so. And rights forfeiture is not always sufficient to make punishment permissible, because there may be other factors which ground obligations. If Alison promises Betty that she will not punish Carol, for instance, then the fact that Carol has forfeited her right not to be punished is not sufficient to make it permissible for Alison to punish her. So, as I indicated above, my claim that rights forfeiture is necessary and sufficient should be understood as a brief way of indicating that (1) in the absence of extraordinary circumstances, it is impermissible to punish someone who has not forfeited her rights, and (2) if someone has forfeited her right not to be punished, then one may permissibly punish her even if doing so is not necessary to promote some important aim.

breadth, and (7) the problem of rights type.⁸ As I will now argue, though, none of these standard objections is compelling.

THE PROBLEM OF JUSTIFICATION AND THE PROBLEM OF STATUS

The problem of justification alleges that defenders have yet to provide a satisfactory argument for the claim that wrongdoers forfeit their rights. Alan Goldman, Christopher Morris, and John Simmons all offer, or at least gesture toward, arguments on behalf of rights forfeiture. Goldman suggests the forfeiture of rights might follow from the relationship between rights and duties, Morris proposes a contractarian explanation, and Simmons invokes fairness.⁹ If any of these arguments is successful, then the problem is solved. Theorists like David Boonin, however, suggest that these arguments are all wanting. For the sake of argument, let us suppose he is right. If so, then I must either generate my own argument or concede that I am merely asserting that wrongdoers forfeit their rights.

I must confess that I have no original argument and thus must assume the truth of this central claim. But all arguments have to start somewhere, and given that there is no other considered conviction regarding punishment about which I am more confident (I am at least as confident that rights can be forfeited as I am in any of the assumptions Goldman, Morris, and Simmons makes in order to argue for the conclusion of rights forfeiture, for instance), this seems like a good place to start.

Critics might protest this is ad hoc or question begging. After all, (1) not everyone will share my intuitions, and (2) some theories of rights would actually appear to conflict with my premise. Regarding those who deny that violating the rights of others alters the moral status of the wrongdoers, we simply agree to disagree, and I must concede that my arguments will have no purchase with them. I am relatively sanguine about this possibility, though, because every argument in this area will require assumptions with which others may potentially disagree, and it strikes me that very few will actually deny

8. For instructive surveys of the putative problems with rights forfeiture theory, see Richard L. Lippke, "Criminal Offenders and Right Forfeiture," *Journal of Social Philosophy* 32 (2001): 78–89; and David Boonin, *The Problem of Punishment* (New York: Cambridge University Press, 2008), 103–19.

9. Alan Goldman, "The Paradox of Punishment," *Philosophy and Public Affairs* 9 (1979): 42–58; Christopher Morris, "Punishment and Loss of Moral Standing," *Canadian Journal of Philosophy* 21 (1991): 53–79; and John Simmons, "Locke and the Right to Punish," *Philosophy and Public Affairs* 20 (1991): 311–49.

this particular premise.¹⁰ To establish this, it seems the best I can do is to offer a scenario and hope that readers will agree with my analysis. In view of this, imagine that Victim and Bystander are eating their lunches, when suddenly, without provocation, Criminal punches Victim in the face and then runs off with Victim's briefcase. All that the rights forfeiture thesis alleges is that Criminal's moral status has changed in such a way that Victim (or perhaps the authorities) may now treat Criminal in a way that would have been impermissible before Criminal struck Victim and stole her briefcase. That is, before Criminal violated Victim's rights, Victim (or the authorities) could not permissibly do anything to Criminal that she could not also do to Bystander, but this is no longer the case. Finally, the rights forfeiture theorist claims that the reason Victim (or the authorities) may now treat Criminal in ways that she (or they) cannot treat Bystander is because, in acting the way she did, Criminal forfeited her rights against this treatment.¹¹ Admittedly, not everyone will agree with this analysis, but it strikes me as merely commonsensical. In any event, for the purposes of this essay, this analysis is my starting place, and those who find it counterintuitive will receive no arguments designed to change their minds on this foundational claim.

As for statement 2, most believe that right holders qualify for their rights in virtue of having some status (e.g., in virtue of being human beings or having the capacity for rationality or autonomy), and rights forfeiture appears to fly in the face of this, because the wrongdoer does not seem any less of a human or to have lost her capacity for rationality/autonomy. So how could she have lost her rights? This problem is sometimes referred to as "the problem of status." But notice: the rights forfeiture view need not contest that we qualify for moral rights in virtue of our status as human beings or rational/autonomous agents; it conflicts only with the view that we qualify for nonforfeitable rights in virtue of that status. So the question is not whether we qualify for rights in virtue of our status, it is what type of right we qualify for as rational agents or human beings. And to settle this question, it seems the best that one can do is simply to return to our intuitions; as the scenario involving Criminal, Victim, and Bystander was designed to show, it seems obvious that rational/human beings qualify for rights that can be forfeited by bad behavior. Given this, perhaps we should say that our fundamental moral status as a person or rational/autonomous being is what makes us the type

10. Indeed, even critics like David Boonin, who list any number of objections, concede that this is a plausible premise.

11. As we shall see below, there is room for rights forfeiture theorists to disagree about which particular rights any given criminal forfeits.

of thing that qualifies for moral rights in general, but which specific moral rights we currently enjoy is a function of our behavior. Thus, just as Bill Gates can alter his moral status by waiving the right to his money (when he promises to fund my research, for instance) without changing his fundamental moral status, Criminal can change her moral status by forfeiting her right not to be punished (when she steals Victim's briefcase) without changing her fundamental moral status.

Finally, my strategy of assuming rather than arguing for the claim that rights can be forfeited raises the following question: if the core premise of rights forfeiture is as obvious and self-evident as I allege, then why does the rights forfeiture theory of punishment have so few advocates? Any answer I proffer here will obviously be speculative, but I do have some thoughts. First, it is important to distinguish between the modest claim that rights can be forfeited (which I assume for the sake of argument) and the more ambitious contention that rights forfeiture theory provides the best answer to the question of why we may punish (for which I will argue in this essay). Although I expect most to accept the former, it alone is not sufficient to establish the latter. Notice, for instance, that moral theorists who do not work in this area (as well as laypeople who have never seriously considered the morality of punishment) routinely speak of folks forfeiting various rights. I suspect that many legal theorists reject the rights forfeiture theory of punishment, despite believing that rights can be forfeited, because they are (wrongly, as I shall argue below) impressed by at least one of the standard objections against the rights forfeiture theory of punishment.

Another reason that rights forfeiture theory has not been better received, I think, has to do with a historical accident. Specifically, the major fault lines in the literature on the morality of punishment emerged in the 1960s, well before focusing on moral rights was in vogue. The two main ethical camps when punishment was being explored were utilitarianism and Kantian deontology, so it is not surprising that the twin dominant accounts of punishment are deterrence and retributivism. Still, it is somewhat surprising that more theorists have not migrated to rights forfeiture theory in the past several decades as talk of rights has become ubiquitous, but perhaps that is merely because most scholars enter the punishment debate via the canonical literature.

THE PROBLEM OF INDETERMINATE AUTHORIZATION

The next worry about rights forfeiture theory is sometimes called the Problem of Indeterminate Authorization: if a criminal forfeits her rights, then presumably anyone—not just the state—may permissibly

punish her. As a consequence, this view opens the door to vigilantism. The idea behind this objection is that we must reject rights forfeiture theory—no matter how well it might answer the question of “Why may we punish?”—because it generates an absurd answer to the question of “Who may punish?” Here my answer is simple: guilty as charged; rights forfeiture theory does not rule out vigilantism.¹² But why think that this is a problem?

As I understand the literature, a central and enduring question of political philosophy is whether and why the state enjoys a monopoly on the permissible use of punishment. (This question occupied the entire first part of Nozick’s *Anarchy, State and Utopia*, for instance.) Thus, given that the permissibility of vigilantism is none other than the fundamental debate between anarchism and statism, it seems to me that we should be suspicious of any theory of punishment that did antecedently rule out anarchism. That said, let me add that I am a statist who has argued that we can build upon a rights forfeiture foundation to explain the impermissibility of vigilantism for citizens of a legitimate state.¹³ But the crucial point is that these are not arguments to which all rights forfeiture theorists must be committed. They are distinct considerations of political philosophy. Perhaps we should not be surprised that philosophers of law (who have been the ones to craft most of the literature on punishment) would take statism for granted, since the anarchism/statism debate is a core issue of political, not legal, philosophy.¹⁴

Finally, to those who remain inclined to reject rights forfeiture theory because it does not in itself explain why only the state may punish, it is worth pointing out that other approaches are also silent on this question. Take retributivism, for instance. While most retributivists are presumably statists, some are not. In other words, the

12. If only the victim has a right to punish, then perhaps vigilantism does not constitute such a problem. There are two worries about this potential response, though. First, the dominant view (to which I subscribe) is that, while the victim enjoys a special claim to reparation, all enjoy a competitive right to punish. And second, even if we assume that the victim has an exclusive executive right, we still need a plausible story about how this right gets transferred from the victim to the state. In theory, individuals could transfer this right to the state via a social contract. As virtually everyone now concedes, however, contemporary states have not in fact garnered the morally valid consent of all of their constituents.

13. I defend a legitimate state’s right to exclusive control over criminal law in Christopher Heath Wellman, “Rights and State Punishment,” *Journal of Philosophy* 106 (2009): 419–39.

14. John Simmons observes as much in “Locke and the Right to Punish”: “There is, however, a fourth way of understanding the question, which is not so often touched on in the literature on punishment because it places the question more squarely within the province of political philosophy” (311).

question of anarchism versus statism is an intramural debate that retributivists can have among themselves, and no retributivist accuses another of failing to be a retributivist because of her stance on this question. More importantly for our purposes here, no one rejects retributivism as a theory of punishment merely because it is compatible with anarchism. On the contrary, to the extent that theorists attend to the question of who may punish, they recognize that retributivists must supply extraretributive (though perhaps retributivism related) considerations to explain the necessity of statism. And if we all understand that retributivism's failure to rule out anarchism gives us no reason to reject retributivism, why not extend the same courtesy to rights forfeiture theory?

THE PROBLEM OF RELATEDNESS

Unlike the first three potential objections, the problem of relatedness cannot be so easily brushed aside. Indeed, in my view, this is by far the most difficult question a rights forfeiture theorist must confront. This issue, which was raised most prominently by Warren Quinn, is that if a criminal forfeits her rights, then she may be punished for any reason. But presumably a state acts unjustly if it punishes me for committing crime *X*, even if (unbeknownst to the authorities) I committed an equally serious crime *Y*.¹⁵ Imagine that, in an attempt to address a growing problem of luxury car theft, for instance, some corrupt authorities frame, convict and then imprison me for stealing a \$60,000 car. Suppose further, though, while I have never stolen a car, unbeknownst to the authorities, I did recently steal a \$60,000 boat. If so, and if the authorities do not imprison me for longer than would be permissible for stealing the boat, then rights forfeiture theory implies that the authorities have not violated my rights. And since rights forfeiture theorists allege that permissibility boils down to no more than respect for rights, by sheer luck the authorities in this case have done nothing wrong. But this conclusion seems absurd.

Rights forfeiture theorists can respond in one of two ways; they can try to supply arguments in defense of what Stephen Kershnar calls a "limited-reasons account" or bite the bullet and stick with an "unlimited-reasons account." As Kershnar explains, limited-reason theorists insist that "if a person infringes or threatens to infringe the moral right of another person, then she forfeits a moral right with regard to, and only to, certain reasons for action," whereas unlimited-reason theorists contend that "if a person infringes or threatens to infringe

15. Warren Quinn, "The Right to Threaten and the Right to Punish," *Philosophy and Public Affairs* 14 (1985): 327–73, 332.

the moral right of another person, then she forfeits a moral right with regard to any reason for action.”¹⁶

Before analyzing the debate between limited- and unlimited-reasons rights forfeiture theory, three things should be noted. First, if the unlimited-reasons approach is really problematic, this does not give us reason to abandon rights forfeiture theory; more minimally, it entails only that we should eschew unlimited-reasons accounts of rights forfeiture theory. In other words, just as the putative absurdity of anarchism should lead us to reject anarchist versions of rights forfeiture theory rather than rights forfeiture theory as a whole, the unpalatability of unlimited-reasons approaches should lead us to reject only unlimited-reasons versions of rights forfeiture theory. Second, if critics of unlimited-reasons accounts can furnish decisive arguments against this approach, then there seems no reason why rights forfeiture theorists cannot help themselves to these arguments to show why limited-reasons accounts of rights forfeiture theory are to be preferred over their unlimited-reasons cousins. And finally, it may now be clear why this is the most difficult question with which a rights forfeiture theorist must contend, as it appears to present a moral analogue of the Gettier problem.¹⁷ Just as Gettier offered examples in which a person's reasons for believing a true proposition did not seem to be the right reasons for believing this proposition, Quinn has called our attention to the possibility of cases where an agent's reasons for doing a (permissible?) action do not seem to be the right reasons for performing this action. And given the extent to which epistemologists struggled with the Gettier problem, perhaps we should be patient with rights forfeiture theorists as they grapple with this issue.

Still, those who press this objection deserve an answer, so let us begin by noting that John Simmons has offered a number of arguments in support of the limited-reasons account. Among other things, he notes that we sometimes voluntarily transfer our rights for specific reasons. As Simmons explains, “You may give your doctor the right to act during your upcoming surgery as he thinks best—but only when he acts for medical reasons, as opposed, say, to his acting for financial reasons or to enhance his professional reputation.”¹⁸ And if we can waive our rights so that others may permissibly act only for certain reasons, why may we not also forfeit our rights so that others may permissibly punish us only for specific reasons? Put in terms of

16. Stephen Kershnar, “The Structure of Rights Forfeiture in the Context of Culpable Wrongdoing,” *Philosophia* 29 (2002): 57–88, 77.

17. Edmund Gettier, “Is Justified True Belief Knowledge?” *Analysis* 23 (1963): 21–23.

18. Simmons, “Locke and the Right to Punish,” 340.

Quinn's example, if it is plausible to insist that the doctor can permissibly perform surgery only for medical reasons, why not suppose that the authorities can permissibly punish me only for the right reasons, that is, because I stole a boat.¹⁹

If Simmons's arguments are sound, then the problem is solved, as rights forfeiture theorists would have principled grounds for avoiding the awkward scenarios to which Quinn calls our attention. A number of critics (including other rights forfeiture theorists, like Morris and Kershnar) have found these arguments unsatisfying, though.²⁰ For the sake of argument, then, let us assume that Morris and Kershnar are right. In fact, in the spirit of facing this objection head-on, let's concede *arguendo* not only that Simmons's attempt fails but that no adequate arguments can be supplied on behalf of the limited-reasons account. Given this assumption, what could be said on behalf of the unlimited-reasons account? To begin, consider the following case:

Eve and Adam are walking to a bar when twenty dollars falls out of Eve's pocket, is blown against Adam's pocket by a short gust of wind and then falls to the ground. Eve notices this bill out of the corner of her eye just as it touches Adam's back pocket and then falls to the ground. Eve believes that it has fallen out of Adam's pocket. Rather than merely pick up the money and give it to Adam, Eve diverts Adam's attention and then picks up the money and puts it (back) in her pocket. Eve thinks that she has just stolen twenty dollars from Adam, but she has in fact only picked up the money that just fell out of her own pocket.

How should we morally evaluate Eve's behavior? One might be tempted to say that she acted impermissibly, but I believe this is incorrect.²¹ I admit that Eve's actions revealed that she has deplorable values, but this is a judgment of agent appraisal, not act evaluation. By sheer luck, Eve happened to have acted permissibly, but this does

19. Interestingly, McMahan stakes out an analogous position within the ethics of war in *Killing in War* when he states that "it is sometimes objected to theories of forfeiture that if, for example, a person forfeits his right to life, that must mean that anyone may permissibly kill him, for any reason, at any time. But the form of forfeiture that corresponds to liability to attack in war is highly specific. For a person to cease to be innocent in war, all that is necessary is the forfeiture of the right not to be attacked *for certain reasons*, by certain persons, in certain conditions" (10). And if theorists like McMahan are free to make this move within the context of the ethics of war, why cannot a rights forfeiture theorist argue along analogous lines regarding the morality of punishment?

20. Kershnar critically discusses Simmons's arguments in "The Structure of Rights Forfeiture in the Context of Culpable Wrongdoing" (77–81), and Morris discusses this issue in "Punishment and Loss of Moral Standing" (76–79).

21. For an excellent recent discussion of this issue, see Peter A. Graham, "In Defense of Objectivism about Moral Obligation," *Ethics* 121 (2010): 88–115.

not change how we should evaluate her as a moral agent. And notice: this analysis is in keeping with mainstream ethical analysis which routinely distinguishes between act evaluation and agent appraisal and submits that the deontic status of an action is not a function of an agent's motivation. (It is widely acknowledged that I do not act impermissibly in rescuing a drowning swimmer when my motivation for doing so is wholly selfish or even sinister, for example.)

If this interpretation is accurate, then rights forfeiture theory's implication regarding the permissibility of punishing me for stealing a car when I actually (unbeknownst to the authorities) stole a boat does not seem so crazy. We could still criticize the person who punishes for the wrong reasons, but this does not mean that she violated my rights, and it does not mean that she acted impermissibly. As with Eve, the distinction between agent appraisal and act evaluation is paramount here. Just as Eve's action need not be impermissible for us to regard her as utterly contemptible, we can condemn the authorities without alleging that they acted impermissibly in framing me. Conceivably, the authorities were just incredibly lucky to have acted permissibly, but because I had in fact forfeited my right not to be punished when I stole the boat, they did not violate my right when they (culpably) sent me to jail for stealing the car.

One might resist this analysis of these cases for fear that it would imply that we would have no justification for punishing the authorities who framed me. After all, it is permissible to punish someone only in the presence of *actus reus* and *mens rea*, and if the authorities did not act impermissibly in framing me, then there is no *actus reus*. So those who are convinced that we would be justified in punishing the authorities who framed me may thus be tempted to reject my emphasis on the distinction between agent appraisal and act evaluation.

I am not sure that it would be permissible to punish the culpable authorities (I am disinclined to think that we would be entitled to punish Eve, for instance), but there is ample room for rights forfeiture theorists to disagree on this issue, because one's stance on the permissibility of punishing the corrupt authorities depends upon one's answer to a number of controversial questions. If one believes as I do that (1) one forfeits a right only if one violates someone else's right and that (2) the corrupt authorities did not violate my rights when they punished me for the wrong reasons, then it appears that one cannot justify punishing the culpable authorities.²² But other rights forfeiture theorists may well deny beliefs 1 and/or 2. If one

22. As one of the *Ethics* editors suggested to me, even if the authorities do not violate my rights when they (culpably) punish me for stealing the car, they may violate the rights of all citizens when they egregiously abuse their authority.

can forfeit one's rights against punishment without violating someone else's right, for instance, then perhaps Eve and the culpable authorities performed the requisite *actus reus*. And if one is a limited-reasons rights forfeiture theorist, then one can simply insist that the corrupt authorities did in fact violate my rights when they punished me for the wrong reasons. So one should not abandon rights forfeiture theory as a whole for fear that adopting this general approach will rule out the permissibility of punishing the authorities in Quinn's example.

To recap what has been a long and convoluted analysis of the problem of relatedness, one cannot automatically dismiss rights forfeiture theory for its implication that it would be perfectly permissible to punish someone for reasons entirely unrelated to her actual guilt, because if one forfeits one's rights only to be punished for limited reasons, then presumably rights forfeiture theorists can accommodate that fact by espousing a distinctly limited-reasons account. What is more, as the analysis of Eve's conduct reveals, adopting an unlimited-reasons version of rights forfeiture theory may be the right way to go after all. And finally, fears that endorsing an unlimited-reasons account will rule out the permissibility of punishing agents like Eve and the authorities who framed me are unwarranted, because those convinced of the justifiability of punishing such actors can simply construe *actus reus* so that it does not require the defendant to have violated someone else's rights.

THE PROBLEM OF SUITABILITY

The next objection, the problem of suitability, accuses rights forfeiture theory of implausibly suggesting that it is permissible for authorities to kill killers, rape rapists, and torture torturers. After all, if wrongdoers forfeit those rights which they have violated, then this approach appears to provide no reason why the authorities should not impose upon horrific criminals the same gruesome treatment that they inflicted on their victims.

My response to this objection is threefold. First, I am no cheerleader for the death penalty, and I certainly would not advocate state officials raping rapists or torturing torturers, but I am not convinced that this is because killers, rapists, and torturers do not forfeit their rights to be killed, raped, and tortured. To be clear: I am not insisting that killers necessarily do forfeit their right to life; I am merely suggesting that it is hard to rule this out. In my view, this is the type of thing about which reasonable people can disagree (and it seems objectionable to say that one is necessarily unreasonable if one believes that these core rights can possibly be forfeited). Indeed, one common complaint about the international criminal legal system's movement

toward prosecuting and punishing the political and military leaders responsible for the most egregious human-rights atrocities is that no punishment could suffice, given the magnitude of the evils perpetrated by these moral monsters. I am an enthusiastic supporter of international criminal law, but I must confess that I have some sympathy for this familiar sentiment. Even if I did not, though, it is not clear how one could establish the unreasonableness of the claim that Hitler, for instance, forfeited his right not to be tortured to death. How can one rationally defeat the claim that the members of the paramilitary groups in the former Yugoslavia who engaged in mass rape as an element of their campaign of so-called ethnic cleansing forfeited their rights against being raped?

Again, in conceding the difficulty (if not the impossibility) of conclusively defeating these claims, I am not insisting that there are no limits on which rights one can forfeit. Even if there were no such limits, however, it would not follow that rights forfeiture theorists would necessarily be committed to recommending these draconian punishments, because there are a variety of obvious practical, policy, and perhaps even principled reasons why we should not want our legal authorities killing killers, raping rapists, and torturing torturers. Even if a criminal has forfeited all of her rights, many believe that there are impersonal (non-rights-based) deontological side constraints against certain treatments, for instance, that would rule out any “cruel and unusual” forms of punishment.²³

Finally, the most direct response to the problem of suitability is to emphasize that we need not construe rights forfeiture theory as the claim that the wrongdoer forfeits the same particular right which she herself violates. This is admittedly one especially salient brand of rights forfeiture theory, and certainly some rights forfeiture theorists have championed this view, but it is clearly not the only option. I will say more about this in response to the next objection, but for now it suffices to note that, just as some but not all retributivists endorse the *lex talionis* principle, rights forfeiture theorists need not insist that the wrongdoer necessarily forfeits all and only those particular rights she violates. To emphasize: rights forfeiture theorists are committed to the general claim that a wrongdoer forfeits some of her rights, but this general proposition must not be confused with the more specific

23. A standard move here (which seems equally available to a rights forfeiture theorist) is to suggest an “equivalence” approach which allows authorities to punish criminals in ways that are distinct from, but equivalent to, rape, torture, and such. Against this approach, Boonin has recently countered that “if a given right really is equivalent to another, then if it is unacceptable to deprive someone of one right, it must be equally unacceptable to deprive him of the other” (*Problem of Punishment*, 111).

claim (which some rights forfeiture theorists have admittedly endorsed) that a wrongdoer forfeits all and only those rights she herself has violated. Given this, there is no reason why a rights forfeiture theorist must claim that a murderer forfeits her right not to be killed or that a torturer has no right not to be tortured. It would admittedly be odd for rights forfeiture theorists to contend that a murderer or torturer has forfeited none of her rights (if you do not forfeit any rights when you murder or torture, when would you?), but rights forfeiture theorists can defend competing accounts of which particular rights the murderer and torturer forfeit.

THE PROBLEM OF DURATION AND BREADTH

The next objection, the problem of duration and breadth, poses a related but distinct problem for rights forfeiture theory. This concern is sometimes registered in terms of this theory's inability to provide plausible answers to the following two questions: Do criminals forfeit their rights temporarily or permanently? Do they forfeit their rights broadly, or narrowly? To see why these questions are thought to be so problematic, imagine that Tom kidnaps Jerry for three days. Can Tom be imprisoned permanently or only temporarily? Permanent incarceration seems excessive, and the only nonarbitrary temporary jail sentence is three days, which seems woefully insufficient. Similarly, imagine that Itchy steals five dollars from Scratchy. Has Itchy forfeited all or only a portion of her property rights? If we say all, that seems excessive, but if we say some, the only nonarbitrary punishment is a fine of five dollars, which is clearly insufficient.

Given our analysis of the previous objection, it should be clear that rights forfeiture theorists can easily sidestep this worry by simply denying that the criminal must be understood to have forfeited that particular right which she herself violated. Punishment of three days in prison for Tom and a five dollar fine for Itchy may well be the most obvious or salient, but rights forfeiture theorists need not understand their theories in the simplest, most formulaic terms. Instead, it seems more plausible for a rights forfeiture theorist to insist merely that a criminal forfeits a right against an appropriate or proportionate punishment.

At this point a critic might understandably wonder what precisely is an "appropriate" or a "proportionate" punishment for any given crime, and how do we go about discovering this? Other rights forfeiture theorists may have an easy answer to this question, but I do not. I would hasten to add, however, that while my lack of a ready answer to this particular query might be regarded as suspiciously convenient, it is not *ad hoc*. The most sophisticated retributivists routinely shy away from offering precise punishments for specific crimes, and in-

tuitionists from W. D. Ross to Russ Shafer-Landau have contended that, while general moral principles are self-evident, verdictive moral conclusions are not. So if this concession about the inability to supply obvious and self-evident conclusions at every level is prevalent not only within the literature on punishment but across the field of (meta)ethics more generally, my inability to supply a simple formula for determining which specific rights are forfeited by any given crime is not ad hoc and should not be regarded as a distinctive weakness of the rights forfeiture theory of punishment. In sum, then, while our response to the problem of duration and breadth reveals that rights forfeiture theory may not be as simple and/or powerful as some might like it to be, the theory cannot be rejected for recommending that criminals must be punished either too leniently or too harshly.

THE PROBLEM OF RIGHTS TYPE

The last objection I want to consider, the problem of rights type, has been raised by David Boonin in his recent book, *The Problem of Punishment*.²⁴ Boonin invites the rights forfeiture theorist to clarify which type of right she is discussing. Does a criminal forfeit a legal right by violating a legal right, or does she forfeit a moral right by violating a moral right? Unfortunately for the rights forfeiture theorist, neither answer appears plausible. We cannot be speaking only of legal rights, because we want to know why it is morally, not just legally, permissible to punish. But if it is morally permissible to punish people as long as they violate a moral right, then rights forfeiture theory seems to recommend state punishment in at least three types of awkward cases: (1) when someone is morally guilty but legally innocent; (2) when someone violates a relatively inconsequential moral right, as when I steal a potato chip off of a friend's plate at lunch; and (3) when someone commits a paradigmatically "private" wrong, as when a spouse commits adultery. Let us consider each of these cases in turn.

Permitting the state to punish someone who is legally innocent is problematic only if we have a right not to be punished unless we break the law, but is there such a right? At first blush, it certainly seems so. After all, the unfairness of punishing someone for conduct that is either not illegal or not easily known to be illegal explains our insistence that criminal law be clear, promulgated, and prospectively applied. Imagine if we criminally punished Nancy for failing to come to a complete stop at a deserted intersection if there were no stop sign, stop light, or any other legal requirement (or even presumption) that one stop at all intersections. It seems safe to conclude, then, that one has a right not to be punished unless one breaks the law, and

24. Boonin, *Problem of Punishment*, 115–17.

thus it would be problematic if rights forfeiture theory permitted one to be punished as long as one had merely violated a moral right.

This conclusion may be too quick, though. From the practical and policy perspectives, it would certainly be preferable to punish only lawbreakers, but because not all offenses are like Nancy's failure to stop at a deserted intersection, there may be some cases for which there is no principled objection to punishing the legally innocent. Think of the defendants at Nuremberg, for instance. Because their conduct was contrary to neither existing German nor international criminal law, at least some of these Nazi officials were legally innocent. Did they therefore have a right not to be punished? It is not so clear. While we may have qualms about punishing Nancy for failing to stop at the deserted intersection because it seems unfair to assume that she should have known to do so in the absence of a clear law requiring that one stop in those circumstances, it does not seem similarly unfair to expect those who commit unspeakable atrocities against innocent victims to know that they are behaving culpably, and thus are rendering themselves liable to punishment. David Luban has recently argued along these lines. As he puts it, "My basic response to the fair-notice argument is that when the deed is morally outrageous—*malum in se*, as criminal lawyers say—then no reasonable expectations of the defendants are violated when they are tried for it."²⁵ With respect to Nuremberg in particular, Luban concludes that "though there is no getting around the fact that the Nuremberg Tribunal applied law retroactively, it did not treat the defendants worse than they had reason to expect, which is the moral basis for the ban on retroactivity."²⁶

I am inclined to agree with Luban on this point: whether or not one may permissibly be punished for actions that were not at the time illegal seems to me to depend on the nature of one's conduct. If one commits a sufficiently despicable act, then perhaps one has no right not to be punished. For the sake of argument, however, let us assume that Luban is wrong about this. That is, let us grant that no matter how immorally one behaves, fairness (or perhaps some other consideration) explains why one retains the right not to be punished unless one also breaks the law. If this were the case, would it be problematic for rights forfeiture theory? Not at all. If there is some story we can tell to explain why legal guilt is always necessary for punishment to

25. David Luban, "Fairness to Rightness: Jurisdiction, Legality, and the Legitimacy of International Criminal Law," in *The Philosophy of International Law*, ed. Samantha Besson and John Tasioulas (Oxford: Oxford University Press, 2010), 569–88, 584.

26. *Ibid.*, 584. For an explanation as to why the punishments at Nuremberg may have been justified even if their ex post facto nature rendered them unjust, see Andrew Altman and Christopher Heath Wellman, "A Defense of International Criminal Law," *Ethics* 115 (2004): 35–67.

be justified, then rights forfeiture theorists can simply invoke this story to explain why those who are legally innocent retain their rights not to be punished. To recapitulate: As Luban's analysis of the defendants at Nuremberg illustrates, Boonin may be too quick to assume that it is always impermissible to punish those who are legally innocent. And even if Boonin is correct that those who have not broken the law may never be punished, it is unclear why rights forfeiture theorists cannot help themselves to whatever reasons support this fact to establish why they, too, would insist that the legally innocent have not forfeited their right not to be punished.

Boonin's second concern about asserting that one forfeits one's moral right not to be punished as long as one violates a victim's moral rights is that it would license the state's punishing defendants for having violated even the least important of rights. Imagine, for instance, that I steal a potato chip from Zach's plate while we are at lunch together. Assuming that Zach did not give me permission to take his potato chip, I violated his right in helping myself to it. The rights forfeiture theorist appears unable to explain why the state may not punish me for this transgression. But this seems absurd. Virtually everyone who works in this area affirms *de minimis*, the doctrine that one should not be legally punished for minuscule or trivial offenses.

In response, I concede both that states should not be in the business of punishing trivial offenses, and that rights forfeiture theory appears unable to explain why this is so. It should be noted, however, that no theory of punishment fares any better than rights forfeiture on this score. And this is no coincidence: as Doug Husak has recently argued, there is no principled reason that *de minimis* crimes may not permissibly be punished.²⁷ If states should not be in the business of criminally prosecuting and punishing defendants for trivial crimes, this is only because the criminal law is such a blunt instrument that it could not help but severely overpunish someone for an offense as minor as taking a potato chip from someone's plate. To emphasize: given the limited utensils a prosecuting attorney has at her disposal, there is no punishment she could recommend that would not be grossly disproportionate to such a minor rights violation.²⁸ Given this, and given that it would be a horribly inefficient utilization of funds if our criminal system were to concern itself with such trivial matters, we have compelling practical (but no purely principled) reasons to

27. Doug Husak, "The De Minimis 'Defence' to Criminal Liability," in *The Philosophical Foundations of Criminal Law*, ed. R. A. Duff and Stuart P. Green (Oxford: Oxford University Press, 2011), 328–51.

28. Antony Duff suggested this analysis during the discussion of Husak's paper at a conference on Criminal Law at Rutgers Law School in October 2009.

insist that states refrain from criminally prosecuting de minimis offenses.

In addition, it is worth noting that our concerns about the state's punishing defendants for trivial crimes do not necessarily apply to non-state actors, so it remains an open question as to whether others (perhaps Zach, for instance) might permissibly punish me for stealing a potato chip. This is a possibility from which I do not shrink. In my view, tiny rights violations may well lead to correspondingly small rights forfeitures, and thus there seems nothing awkward about supposing that Zach would perhaps be entitled to unilaterally help himself to a bit of food from my plate only because I forfeited my moral dominion over my lunch when I stole some of Zach's. This is not a position to which I am necessarily committed; I mention it only because it is consistent with rights forfeiture theory and, unlike the idea of state punishment for such a minor offense, it seems fairly plausible.

Boonin's third worry about suggesting that one is morally liable to punishment as long as one violates a moral right is that it opens the door to the permissibility of the state's punishing defendants for committing so-called private wrongs, such as lying or breaking a promise. Imagine, for instance, that I commit adultery after promising my wife, Donna, that I will be faithful to her. Given my pledge, my extramarital sex violated Donna's right that I remain monogamous. But it seems awkward to claim that the state may permissibly punish me in this case; no matter how culpable I may be for cheating on Donna, it is simply not the state's business to pass judgment, let alone to punish me for my infidelity.

To begin, I must concede that most theorists who work in this area seem to agree with Boonin on this point. R. A. Duff has supplied some of the most sustained and sophisticated attention to the question of what gives the state its standing to preside over the punitive process, for instance, and he repeatedly emphasizes that the state clearly has this standing only over public matters.²⁹ But while Duff and others would certainly endorse Boonin's contention that the state may not punish me for cheating on Donna, no one to my knowledge has provided anything like a compelling argument as to why state punishment must be restricted exclusively to those rights violations that occur in the public realm. There is nothing necessarily wrong with asserting the self-evidence of any given proposition (especially one as popular as this), but we should be wary of doing so in this

29. As Duff puts it (Antony Duff, *Answering for Crime* [Oxford: Hart, 2007], 52), crimes are "public wrongs, not because of some further injury that they do to 'the public', but because they are wrongs that properly concern 'the public', ie [*sic*] wrongs that properly concern us all as citizens."

context. Given that legal experts traditionally took it for granted that the state had principled reasons to refrain from interfering in the putatively “private” matters of men beating and raping their wives and children, perhaps we should not be so quick to reject the rights forfeiture approach for its inability to explain why the state must not punish clear rights violations that we now (without argument) believe are not for “public” adjudication.

For the sake of argument, however, let us assume that marital infidelities and other qualifying broken promises are in fact purely private matters. Regardless of whether Boonin, Duff, and others are led to this conclusion by an argument or because of its self-evidence, why think that this truth poses a problem for rights forfeiture theory? If there is a good argument for why states should not punish cheating spouses, then why cannot rights forfeiture theorists simply invoke that argument to explain why their view does not commit them to punishing rights violators in this case? Or if others are free to simply assume without argument that states have principled reasons to refrain from punishing “private” rights violations, then why cannot a rights forfeiture theorist also help herself to this assumption? To emphasize: in the absence of some argument as to why this argument for and assumption of the morally significant distinction between public and private wrongs is inaccessible to a rights forfeiture theorist, this distinction (even if we assume *arguendo* that it is genuine) gives us no reason to question the truth of rights forfeiture theory.

Finally, it is worth noting why rights forfeiture theory is actually particularly well positioned to counter this potential criticism. To appreciate this, recall that rights forfeiture theory is not a justification for state punishment; it is merely a justification for punishment. As explained above, it is an open question as to whether rights forfeiture theorists should endorse statism or anarchism. Given this, it is unwarranted to infer from rights forfeiture theory’s conclusion that I may permissibly be punished for stealing a potato chip or cheating on my wife, that rights forfeiture theory is committed to the state punishing me for these trivial and/or “private” rights violations. Indeed, it is especially interesting to see critics like Boonin raise these concerns so shortly after protesting that rights forfeiture theory must be dismissed for failing to rule out anarchism. After all, how can Boonin simultaneously insist that rights forfeiture theory must be jettisoned for its inability to rule out non-state actors meting out the punishments and also object that this approach must be abandoned because it implies that states should necessarily do all of the punishing? I have tried to argue that rights forfeiture theory is vulnerable to neither attack, but clearly it at least cannot be dismissed on both grounds at the same time.

WHITHER THE THEORY?

Even if a reader is satisfied with all of my analysis so far, a new question emerges: do I still have a theory of punishment? In responding to these standard objections, time and again I have insisted that it is not the business of rights forfeiture theory to provide an answer. Against the worry about anarchism, I have suggested the rights forfeiture theory can remain agnostic on the anarchism/statism debate; in response to concerns about unsuitable, lenient, or excessive punishments, I have insisted that rights forfeiture theory itself need take no stand on which particular rights are forfeited; regarding worries about authorities being permitted to punish for the wrong reasons, I have countered that rights forfeiture theorists may advance either limited-reasons or unlimited-reasons accounts, and so on. Even if each of these individual responses is fair, a critic might worry about their cumulative result. Put bluntly, it now appears that rights forfeiture does so little—it answers so few of our questions—that it hardly qualifies as a “theory” of punishment. After all, how can I claim to be defending a theory of punishment if rights forfeiture tells us nothing about who may punish, how much we may punish, or the reasons we must have for punishing?

This is a legitimate question, but there are several things that can be said in response. First, as I explicitly acknowledged at the outset, there are a variety of important questions concerning the morality of punishment, and this essay seeks to address only one: Why may we permissibly punish? It is not for me to stipulate that all and only answers to this particular question qualify as theories of punishment, but it is certainly true that this question has attracted the most philosophical attention, and those who write on this topic typically sort theories of punishment according to their competing answers to this question.

Second, to the extent that I am inclined to agree that the rights forfeiture approach does not constitute a theory of punishment, it is only because I am tempted to regard it as a family of theories. Indeed, retributivism strikes me as more of a group of theories than a single theory, so perhaps we should say the same about rights forfeiture accounts. Third and perhaps most importantly, this comparison reminds us that there seems to be something of a double standard at play here. Everyone appreciates that there is plenty of room for intramural debates among retributivists, restitutivists, and utilitarians, but critics of rights forfeiture seem to presume that rights forfeiture theory must take one particular (and often particularly implausible) form. If any given retributivist recommends anarchism, for instance, then critics may well attack that particular brand of retributivism, but

they do not (mis)understand themselves to be rejecting retributivism as a whole. Unfortunately, the same cannot be said for opponents of rights forfeiture theory, who all too often fasten upon one distinctive version of rights forfeiture theory which they regard as absurd and then conclude that they have thereby defeated rights forfeiture theory as a whole. What explains this double standard? Perhaps it has arisen because, with so few defenders of rights forfeiture theory, commentators do not recognize that it is a family of views within which there is plenty of room for vigorous debate among family members. In any event, I would urge that we turn this last potential objection on its head: rather than insist that rights forfeiture cannot qualify as a theory of punishment because it leaves open many important questions about punishment, we should appreciate that rights forfeiture is a family of theories, whose virtues and liabilities should be assessed in the same way that we evaluate the more traditional approaches to the morality of punishment.

Finally, while one can endorse the general thesis that rights forfeiture is necessary and sufficient (or merely necessary, if one endorses only a weak version of rights forfeiture theory) to explain the permissibility of punishment without taking a stand on many of these controversial issues, presumably most of these questions will be answered by the specific account one defends. As I have indicated at various points throughout this essay, for instance, the particular theory I favor is (1) strong (2) statist, (3) unlimited-reasons, (4) requires one to have violated someone else's right, (5) regards the executive right in the state of nature to be competitive, and (6) eschews the rights forfeiture analogue of the *lex talionis* principle in favor of a less formulaic specification of which particular rights are forfeited by any given wrongful act. Appealing to this more specific version of rights forfeiture theory, I can provide concrete answers to virtually all of the questions raised by the various standard objections. Of course, these answers will be controversial even among fellow rights forfeiture theorists, but my principal aim in this essay is not to defend this particular version of rights forfeiture; it is to vindicate rights forfeiture theory in general. And if my arguments have been on target, rights forfeiture theorists can now move on to the important intramural debates that have been brought to the surface by the standard objections canvassed above.