

Societies of Angels and Non-Coercive Legal Systems

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Lucas Miotto, [From Angels to Humans: Law, Coercion, and the Society of Angels Thought Experiment](#), **L. & Phil.** (2020).

A number of prominent contemporary legal philosophers have invoked thought experiments about societies of angels in support of an argument that a non-coercive legal system is possible. The basic scenario is this: morally perfect angels would need law to coordinate their actions and resolve disputes, but since they voluntarily comply with the dictates of law (given their moral perfection), the legal system can operate without coercion.¹

An obvious objection to these types of arguments is that talk of societies of angels (SoAs) has no bearing on human legal systems (never mind that it is a fantasy). Undeterred by such skepticism, legal philosophers continue to construct arguments on this imagined scenario without explaining why it merits being taken seriously. *From Angels to Humans: Law, Coercion, and the Society of Angels Thought Experiment*, by Lucas Miotto, robustly defends these arguments as sound. This superb essay is clear, astute, and balanced. Indeed, it is so balanced that, though setting out to defend SoA arguments, in closing Miotto moves “the discussion away from angelic scenarios.”

At the outset, Miotto considers four alternative interpretations of the argument that non-coercive legal systems are possible. *Nomologically* possible means that humans, given their biological and social requirements, can construct non-coercive legal systems—a position that many legal theorists reject. *Logically* possible means that non-coercive legal systems are not logically prohibited—which is true but trivial. *Metaphysically* possible means that a non-coercive legal system is “consistent with the most fundamental metaphysical principles and categories that structure reality.” Finally, *conceptually* possible means that a non-coercive legal system is consistent with our current, ordinary concepts of the world.

Among these alternatives, Miotto selects metaphysically possible as most consistent with the philosophical inquiry into the nature of law. His aim is to show that “we can (at least) justifiably state that a non-coercive legal system, as depicted in the society of angels thought experiment, is metaphysically possible.” There are various ways to construe metaphysical possibility. His baseline is set by background knowledge and experience (what is actual is metaphysically possible), which also serve as defeasible standards against which to determine the plausibility of claims about metaphysical possibility.

Building on these propositions, Miotto constructs his argument about non-coercive legal systems in societies of angels in a few steps, the first two about actual legal systems and the third about angelic legal systems. First, he observes, the degree of coerciveness varies among legal systems, and less coercion is necessary when people largely comply with the law, which means it is metaphysically possible for legal systems to drastically reduce coerciveness. Second, a substantial amount of law addresses coordination problems and other matters that do not involve coercion.

This brings us to non-coercive legal systems of angels. The basic assumption in these thought experiments is that angels are morally perfect. Miotto asserts that this assumption need not be controversial. “All that is needed is that moral perfection entails that angels would cooperate with one another when cooperation prevents the occurrence of morally bad outcomes and when cooperation helps angels to achieve morally good outcomes.” This assumption, he claims, can be grounded in our experience of morally good people who act cooperatively to achieve good outcomes. Now, if we accept that legal systems tend to reduce coercion when it is unnecessary, and that angels would cooperate with the law, then it follows that angel societies would have non-coercive normative systems.

The only difficult issue, he contends, is whether the cooperative normative systems in SoA *are legal systems*. To support this characterization, Miotto points out that there is a substantial overlap between the social needs served by legal systems in human societies and in angelic societies:

A society of angels might still have the need to create rules to allocate property, to regulate contracts, wills, taxation, to solve small and large coordination problems related to public goods, political processes, the organization of common space (including the organization of traffic, zoning, signals, etc.), assigning roles, allocating risk, *settling disputes*, and many other non-trivial activities that fall within the scope of the activities performed by actual legal systems. [emphasis added, relevance indicated below]

This functional overlap with human legal systems justifies characterizing non-coercive angelic normative systems as legal systems.

With this account in hand, Miotto responds to two criticisms of SoA arguments. First, Andrei Marmor objects that the thought experiment is inconclusive because the details of angelic societies are underspecified; more specifically, if angels face prisoner dilemma situations, coercion would be required to insure cooperation. Miotto denies that this is a problem because the angelic legal system can legally require cooperation (which they would comply with per assumption), the cooperative nature of angels would solve the dilemma in favor of cooperation (the best outcome), and the problem of a lack of specificity can be resolved by including more details about angelic societies and legal systems.

Second, Marmor and Dan Priel object that angelic societies are so different—so alien from human societies—that it is not clear anything relevant can be learned from this thought experiment. Miotto's response is that their societies are not that alien: "What we need to stipulate in the society of angels' scenario is clear enough: it is a society solely inhabited by creatures that resemble us in every respect except from being much more cooperative and law abiding."

Let me momentarily pause the recitation of his argument to make a few critical observations about his defense of the SoA scenario. The differences between (imaginary) angel societies and human societies are not just a matter of degree. Not only are humans not moral perfectionists, but moral perfection is possible only if objective truths exist about the right and good (*summa bonum*) and these truths are universally known by angels and perfectly manifested in the law. After all, if angels pursue moral perfection, but they have differing views of what this requires in a given instance, not only will they disagree among themselves about what is required, but they also will not comply with a law they consider contrary to what moral perfection requires (either the law generally or as applied in a particular instance).² In these situations, coercion must be applied to force angels to comply with what the law requires.

So the SoA scenario presupposes that angels are moral perfectionists, and it presupposes the truth of natural law and that angels interact in ways that conform to natural law. Angel societies are natural law based (though a number of legal philosophers who invoke SoA are legal positivists who do not accept natural law). Needless to say, human societies are nothing like this heavenly scenario—which entails far more than angels being nicer versions of humans. Nor is it obvious that a heavenly society would need a legal system, since every angel would be doing what is right at every moment anyway. Why would any disputes arise?

Miotto is aware of this objection, which he waves away. "From the fact that angels are morally perfect one could conclude that there would be no need for courts to adjudicate disputes about facts. (But, even if this is true, couldn't angels have institutions they don't strictly need? Maybe having a legal system is just more convenient to them.)" If no disputes arise, however, there is simply no use for a legal system with courts. Coordination can be resolved through known rules, duly obeyed by all, and no conflicts will arise.

Now let us return to his argument, which takes a sharp turn following his defense of the validity of the SoA thought experiment. Miotto acknowledges that SoA arguments "won't tell us whether a legal system for humans could possibly exist without coercion." A legal philosopher can insist that a metaphysical argument need not tell us whether humans

can have non-coercive legal systems, since the aim is to show what is metaphysically (not humanly) possible. But Miotto does not rest on this position. He proceeds to argue based on thought experiments revolving around human legal systems that coercion is a contingent feature of typical legal systems.

His thought experiment posits a society in which all institutions of law enforcement are disabled by a terrorist attack; society will carry on, and legal arrangement will largely be complied with, owing to a sense of solidarity. Miotto admits that human legal systems that lack coercion will not survive for long in this condition, but the point remains that they are *possible*—which is sufficient to refute the assertion that coercion is a necessary element of legal systems. (What this thought experiment shows is not only that law can exist without coercion, at least temporarily, but also that social order is maintained largely through social factors more so than through the legal system itself.)

Miotto then addresses the obvious objection to his thought experiment, that criminal punishment plays a large role in the legal systems of all societies. In response, he offers a novel argument that a legal system can punish people in a way that is not coercive—thereby maintaining the position that coercion is not necessary. He stipulates that “A salient, and essential, feature of coercive actions is that the coercer does not address the coerced with respect. Coercers do not guide or attempt to guide the coerced’s actions; coercers goad them.” A legal system can punish people for their wrongful actions “without resorting to the kind of disrespectful treatment characteristic of coercive actions. All of these functions could be fulfilled by a non-coercive criminal law system, without stopping the *punishment* of citizens.” Miotto goes on to argue that criminal systems *should* punish in non-coercive ways.

A legal system that punishes in ways that treat people with respect is undoubtedly a worthy ideal. But this does not eliminate coercion. Coercion in a legal context simply means forcibly compelling people to do something they would not otherwise willingly do. Requiring someone to pay a substantial fine (under threat of the seizure of their property) or putting them in jail (subject to threat of capture), when they would prefer not to—whether done in a respectful or disrespectful manner—involves coercion.

In closing, I should emphasize that my critical engagement with Miotto’s argument does not detract from the value and quality of his essay. His articulation and defense of the SoA scenario is systematic and thorough, enabling a more incisive examination of the argument. And his use of thought experiments about non-coercive human legal systems moves the analysis on this topic in a potentially fruitful direction. Proponents as well as skeptics of society of angels arguments about non-coercive legal systems will benefit from this fine essay.

1. See, e.g., Leslie Green, *The Forces of Law: Duty, Coercion, and Power*, 29 **Ratio Juris** 164 (2016).
2. See Brian Z. Tamanaha, *Pragmatic Reconstruction in Jurisprudence: Features of a Realistic Legal Theory*, ___ **Canadian J. L. & Juris.** ___ (2021).

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