

(From Prof. Peter de Marneffe, received by e-mail August 11, 2015. The questions have been inserted to give the reader the context of the answers.)

Dear Mr. Rose,

I found your letter and your book in my mail today, and have a few minutes to respond to your questions:

1) Is there any means by which any number of individuals can delegate to someone else the moral right to do something which none of the individuals have the moral right to do themselves?

(1) No (but this is irrelevant because government officials do not have their prerogatives as a direct result of delegation; they have them via a combination of legal and moral facts; see below).

2) Do those who wield political power (presidents, legislators, etc.) have the moral right to do things which other people do not have the moral right to do? If so, from whom and how did they acquire such a right?

(2) Yes. They have the moral right to do certain things that they are entitled by law to do, which other people are not entitled by the law to do. For example, the President has a moral right to live in the White House, which others do not have. The answer to the second part of (2) is "no one." Moral rights are not created by people; they are valid moral principles. The answer to the third part of (2) is that if a law is morally justifiable (according to the correct theory of morality, whatever it is), and it is adopted through the proper political process, and this law gives someone a legal right to do something, and it is morally permissible for someone to do this thing that he is legally entitled to do, then he has the right in virtue of these moral and legal facts.

3) Is there any process (e.g., constitutions, elections, legislation) by which human beings can transform an immoral act into a moral act (without changing the act itself)?

(3) No, an act cannot be moral and immoral at the same time (but this is also irrelevant, because there are morally relevant differences between the actions of government officials and private individuals, see attached paper).

4) When law-makers and law-enforcers use coercion and force in the name of law and government, do they bear the same responsibility for their actions that anyone else would who did the same thing on his own?

(4) Yes, actions are attributable to government officials as well as private individuals, and so they are "responsible" for their actions in the same way that private individuals are.

5) When there is a conflict between an individual's own moral conscience, and the commands of a political authority, is the individual morally obligated to do what he personally views as wrong in order to "obey the law"?

(5) No, no one is obligated to do something simply because it is the law, but yes, an individual is morally obligated to do what he personally believes is wrong if he has an objective moral obligation to do so.

A few years ago I was invited to comment on a book by Michael Huemer that defends a position similar to yours. If you're interested you can see why I find his arguments unconvincing.

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(Below is the paper referenced in Prof. de Marneffe's e-mail.)

**More Libertarianism without Foundations:
Comments on Michael Huemer's The Problem of Political Authority**

Peter de Marneffe October 2012

Michael Huemer's *The Problem of Political Authority* is a defense of anarchism, the view that, ideally, we should have no government. This defense of anarchism rests on libertarianism, the view that "the government should do no more than protect the rights of individuals" (p. 169). Why libertarianism? The book's central thesis is that libertarianism follows from the nonexistence of political authority.

Political authority, as Huemer understands it, is constituted by political legitimacy and political obligation (p. 5). Political legitimacy is "the right, on the part of a government, to make certain sorts of laws and enforce them by coercion against the members of its society—in short, the right to rule" (p. 5). Political obligation is "the obligation on the part of citizens to obey their

government, even in circumstances in which one would not be obligated to obey similar commands issued by a nongovernmental agent” (p. 6). Because, Huemer argues, governments do not have a right to rule and citizens do not have an obligation to obey, there is no political authority. Huemer believes libertarianism follows as a consequence, and argues that if libertarianism is true, then anarchism is the ideal social arrangement. In these comments I focus on Huemer’s defense of libertarianism.

The view that there is no political authority has been ably defended by others, notably A. John Simmons. Simmons argues that there is no general duty to obey the law. In other words, the fact that an act is prohibited by the law does not in itself provide a weighty moral reason not to do it. If this is true, then there is no political obligation in Huemer’s sense, and so no political authority. Simmons, however, does not argue that libertarianism follows as a consequence. Simmons makes a distinction between philosophical anarchism, which he endorses, and political anarchism, which he does not endorse (Simmons 2008, p. 63). Philosophical anarchism is the view that all states are illegitimate. On the a posteriori interpretation that Simmons endorses, this means only that all existing or actual states are illegitimate. It doesn’t mean that all possible states are illegitimate, which Simmons does not believe. To say that a state is illegitimate is to say “that it lacks the general right to make binding law and policy for its subjects (it lacks political authority)” and “that the state’s subjects lack the correlative general political obligation to support and comply with it” (Simmons 2001, p. 110). Philosophical anarchism, in other words, is the view that there is no political authority in Huemer’s sense. Political anarchism, on the other hand, is the view that it would be better if every existing state ceased to exist and that “it is morally imperative that we resist and overthrow existing states, replacing them with more benign or permissible kinds of social relations” (Simmons 2008, p. 63). Although Simmons endorses philosophical anarchism, he does not believe that political anarchism follows. This is because he makes a distinction between a state being legitimate and its being justified. Although no state is legitimate, it does not follow that we would be better off without any existing state (Simmons 2008, p. 63). Nor does it follow that all state actions are morally unjustifiable (Simmons 1979, p. 199). This bears on Huemer’s defense of libertarianism in the following way. If it does not follow from the fact that there is no political authority that state actions are morally unjustifiable, then one can consistently endorse philosophical anarchism while rejecting libertarianism. This is because one can consistently hold that although no state is legitimate in Simmons’s philosophical sense, it is still a good thing that the government has most of the policies that it has, including the social welfare programs that libertarians reject, and that the government is justified in administering these programs. Huemer must therefore explain why, to the contrary, it follows from the fact that there is no political authority that every social welfare program of this kind is morally unjustifiable.

Huemer’s defense of libertarianism rests on what I will call the private coercion principle. This is that the government is permitted to exercise a form of coercion only if a private individual would be permitted to exercise coercion in similar circumstances. Private individuals are permitted to exercise coercion to prevent assault and theft and to get needed help in some emergency situations, but they are not permitted to exercise coercion in other circumstances. Consequently

if the government were permitted to exercise coercion only in ways that private individuals are, some form of libertarianism would follow, and it would be wrong for the government to administer the kinds of social welfare programs that libertarians reject. Huemer believes that libertarianism follows from the denial of political authority because he believes the denial of political authority entails the private coercion principle. Or, as he puts it at the end of Part One, his libertarianism is based on skepticism about political authority: “the upshot of this skepticism is, roughly, that the state may not do what it would be wrong for any non-governmental person or organization to do” (p. 170). Is there any reason, though, to believe that the private coercion principle follows from the denial of political authority?

Huemer begins Chapter One with a “political parable.” He asks us to imagine a private individual who wants to stop vandalism in his village. To this end, he starts to kidnap local vandals on his own initiative, imprisoning them in his basement. He then asks the local villagers who benefit from the resulting reduction in vandalism for payment, and threatens to harm them if they don’t pay. Huemer refers to this imaginary private individual as “you” and writes “on the face of it, your activities are of the same kind as those of a government” (p. 5). If this were true—if coercive actions by government officials were “of the same kind” as coercive actions by private individuals--then the private coercion principle would be self-evidently valid, and no further defense of it would be necessary.

It is obviously false, however, that these actions are “of the same kind.” When government officials enact and enforce laws against vandalism, some of their actions are similar in some respects to the actions of the imagined vigilante in Huemer’s parable. But being similar in some respects is not nearly enough to make two actions “of the same kind.” To be actions of the same kind, they must be similar in all the morally relevant respects, which is clearly false in this case. A fundamental difference is that the government is not an agent; it is a set of agents who act in a coordinated way. Citizens elect legislators; legislators vote on laws; police arrest people who violate these laws; judges supervise the trials of these people; police officers take those convicted to prison; legislators pass laws requiring individuals to pay taxes to support this criminal justice system; if tax agents determine that someone has not paid the right amount, and this person is unwilling to pay it, a judge supervises a trial; if the court decides this person owes money and he still won’t pay, the police take him to prison. So when the government endorses and enforces laws against vandalism there is no single agent who acts in the way the private vigilante in Huemer’s parable does. There is no single agent who decides on his own to start fighting vandalism and to require others to pay him for the service. So when the government adopts and enforces laws against vandalism, there is no one person who exercises the kind of direct control over other people’s lives that the vigilante in the story does. The vigilante’s actions are therefore morally objectionable in one important respect in which the government’s actions are not. Because there is at least one morally relevant difference between the coercive acts of private individuals and government officials, the private coercion principle is not self-evident and requires philosophical defense. What defense does Huemer offer? He suggests that if we reject the private coercion principle, this is only because we believe in political authority. Or as he puts it in the analytic summary of section 1.1: “A private party who performed acts analogous

to those of the state would be strongly condemned. The state is not condemned because it is thought to possess `authority’” (p. vii).

This is a psychological claim, and not, strictly speaking, an argument. Huemer is saying that people believe that the government is morally permitted to adopt coercive policies not licensed by the private coercion principle only because they believe in political authority, which suggests that we would all accept the private coercion principle if we were as skeptical of political authority as Huemer thinks we ought to be. Although this wouldn't show that the private coercion principle is valid, it might be taken as evidence for it. So the first thing I want to say is that this psychological claim is not true of me. I believe that the government is morally permitted to adopt coercive policies that are not licensed by the private coercion principle, but I do not believe that the government possesses political authority. I do not believe it possesses political authority because I do not believe that citizens have a general obligation to obey the law. But I still think that government officials are morally permitted to adopt and enforce coercive laws beyond those permitted by the private coercion principle. For example, I think the government is permitted to adopt and enforce taxation laws that raise the money necessary for the education of children. Whether this money is ideally distributed via government operated schools, charter schools, or vouchers is a separate question. But whatever method of distribution is best, the government is morally permitted to raise money via taxation to finance education in some way. This policy, however, is clearly a violation of the private coercion principle because private individuals are not morally permitted to rob or steal from anyone in order to pay teachers to educate other people's children. So even though I am skeptical of political authority, I believe that the government is permitted to coerce people to act in ways that private individuals are not. Huemer must believe that this position of mine is incoherent, but he gives no explanation why, and it seems perfectly coherent to me. In believing that the government is morally permitted to enact and enforce laws raising revenue for education, I am committed to believing many things, but, as far as I can see, that citizens have a general obligation to obey the law is not one of them. I am committed to believing that it is morally permissible (a) for eligible adults to run for political office; (b) for citizens to vote for them; (c) for elected legislators to vote for laws raising money for education via taxation; (d) for elected legislators to vote for laws that establish a tax collection agency; (e) for elected legislators to vote for criminal laws against tax evasion; (f) for legislators to vote for laws funding a judicial system; (g) for legislators to vote for laws that establish and fund a police department; (h) for elected chief executives to appoint people to run police departments; (i) for eligible adults to accept these appointments; (j) for the heads of police departments to hire and arrange for the training of people hired as police officers; (k) for eligible adults to accept these jobs; (l) for police officers to enforce the laws that the elected legislature has enacted and to enforce them according to the police procedures established by the police chief. In believing that all these actions by individuals are morally permissible, I do not commit myself to any belief in political authority because I do not commit myself to any general duty to obey the law. Furthermore, my belief that these actions by individuals are morally permissible does not entail that similar actions by private vigilantes like the one in Huemer's parable are also morally permissible. So there is no puzzle here that political authority is necessary to solve.

One reason why Huemer seems to think that rejection of the private coercion principle entails a belief in political authority is that he seems to think of laws as commands. If laws are commands, then the validity of a law must rest on the validity of a command, and so on the authority of someone who is entitled to issue this command. If the government is entitled to make criminal laws beyond those licensed by the private coercion principle, this must be because the government has a special kind of authority to issue commands that private individuals lack. Huemer writes: “*Nearly all political discourse centers on what sort of policies the government should make and nearly all of it—whether in political philosophy or in popular forums—presupposes that the government has a special kind of authority to issue commands to the rest of society*” (p. xxvi). But this is false. When I consider what policies the government should make, I do not presuppose that the government has a special authority to issue commands to the rest of us. I don’t think it has any such authority, but I still think about what policies the government should adopt. I think about this by thinking about what policies there is sufficient reason for legislators to support or oppose. I can engage in this kind of reflection without supposing that the government has a special right to issue commands because I need not see laws as commands. Hobbes viewed laws this way, and so did the nineteenth century philosopher of law John Austin. But H.L.A. Hart firmly rejected this view (even as applied to the criminal law (Hart 1961 pp. 41-48)), and I can’t think of a single leading contemporary philosopher of law who accepts it. Immediately after claiming that most of our political discourse presupposes that the government has the right to issue commands, Huemer illustrates this claim with the example of immigration law, writing: “*When we argue about what the government’s immigration policy ought to be, for example, we normally presuppose that the state has the right to control movement into and out of the country*” (p. xxvi). This is true in one sense, but false in another, and the sense in which it is true fails to support Huemer’s claim about commands and authority. It is true that when we think about what the government’s immigration policy should be, we normally presuppose that the government has the right to control movement into and out of the country. We normally presuppose it in this sense: that it is morally permissible for the government to control its borders because it does not violate people’s rights in doing so. But if we are to think seriously about immigration reform, then we must be open to the possibility that the government does violate people’s rights in controlling its borders the way it does. Freedom of movement is an important liberty and it might be impossible to justify current immigration policy while giving this liberty its due weight. So although it is true that we normally presuppose that the government does not violate people’s rights in controlling immigration, it is false that in thinking about immigration policy we always or must presuppose this. This is obviously not presupposed by someone who objects to a government’s immigration policy on the ground that it violates people’s rights. In any case, the fact that we normally presuppose that the government does not violate anyone’s rights in controlling immigration does not presuppose that the government has a right to issue commands to anyone or that anyone has a moral obligation to obey these commands. It is important to distinguish here two different meanings of the phrase “the government has a right to control immigration.” In one sense, this is a claim about moral permissibility. It means that the government is morally permitted to control immigration in certain ways because it does not violate people’s moral rights in doing so. In another sense, it is a claim about the right to rule. It means that the government has the authority to issue commands regarding immigration which

others have a moral obligation to obey. Normally when we discuss immigration policy we assume that the government has the right to control immigration in the sense that it is morally permissible for it to do so, but in presupposing this we do not assume that it has the right to issue commands that others are morally obligated to obey.

In a revealing footnote, Huemer writes:

Simmons (1979, p. 196) denies that there are any 'legitimate' governments, or that any governments have the 'right' to coerce or to punish their citizens. However, he seems to use these terms in a stronger sense than mine, because he goes on to accept that governments may be morally justified in their activities (p. 199). This is confirmed by Simmons 2001, pp. 130-1. Hence, Simmons' apparent agreement with me is only verbal; in my terminology, Simmons accepts political legitimacy, whereas I reject it (Huemer, p. 18, n23).

Huemer's terminology is problematic, though, precisely because it conflates the two different notions of a right that I just distinguished.

This is how Simmons states the notion of legitimacy that he (Simmons) rejects:

A state's (or government's) legitimacy is the complex moral right it possesses to be the exclusive imposer of binding duties on its subjects, to have its subjects comply with these duties, and to use coercion to enforce duties (Simmons 2001, p. 130).

On the next page, he identifies a different notion of legitimacy, which he characterizes as "weaker":

Some theorists have advocated weaker moral notions of legitimacy, according to which legitimacy is a mere liberty right or "justification right"—a right which correlates with no other parties' obligations (e.g., with obligations to obey the law or to refrain from rival attempts to impose duties) (Simmons 2001, p. 131).

Although these two notions of legitimacy are quite different, Huemer merges them when he defines legitimacy as "the right, on the part of a government, to make certain sorts of laws and enforce them by coercion against the members of its society—in short, the right to rule" (p. 5). Although the "right to rule" refers to the first, stronger notion of legitimacy that Simmons rejects, the "the right, on the part of government to make certain sorts of laws and enforce them by coercion against the members of society" refers to the second, weaker notion of legitimacy that Simmons does not reject.

The right to rule is the right to impose duties on others that they are morally obligated to obey, or as Simmons puts it in another passage "the right to command and be obeyed" (Simmons 1979, p. 196). In the army, a captain has the right to issue commands to his lieutenant and his lieutenant has a general obligation to obey. Simmons rejects the idea that the government has the right to

command anyone in the way that this captain does or that citizens have a general obligation of this kind to obey in the way this lieutenant does. So he rejects the idea that the government has a right to rule. He does not, however, reject legitimacy understood as a liberty right consisting of the fact that it is morally permissible for the government to act in certain ways so as to promote justice and human welfare. So he does not reject “the right, on the part of government to make certain sorts of laws and enforce them by coercion.” Huemer’s definition of legitimacy suggests that these two ideas--having the right to rule and being at liberty to govern-- are the same thing, but clearly they are different, because only one of them entails that citizens have a general obligation to obey.

Huemer suggests that it is not possible to separate the justifiability of coercive government policies from the existence of political authority where he asks: “Do we need this notion of authority to explain the moral difference between the vigilante in section 1.1 and the government? Or can one explain the difference by appealing only to differences between the government’s behavior and the vigilante’s behavior?” (p. 7). But this is a false dilemma. Huemer maintains that we can’t fully explain the moral difference by appealing only to differences in behavior because both kinds of behavior involve threats of harm. But it doesn’t follow that we need the notion of political authority to explain the difference. We need only explain why people occupying certain offices—i.e., the police--are morally permitted to exercise coercion in ways that others are not. To do this we need only explain the validity of the rules that create the special prerogatives of police officers. What best explains this depends on what the best moral theory is, but whether we are consequentialists, Kantians, or contractualists, we don’t need the notion of political authority to explain the validity of these office-defining rules. We need only explain why these rules are valid, given the moral theory we think best.

To return to the main issue, although the foundation of Huemer’s libertarianism is the private coercion principle, he gives no reason to think it is valid. It would be valid if its denial entailed the existence of a kind of political authority that does not exist, but Huemer gives no reason to believe that it does. Huemer nonetheless concludes Part I by explaining how his defense of libertarianism differs from that of Rand, Nozick, and Narveson. Whereas they rely on controversial philosophical premises, he relies only on common sense morality (p. 170). But this is ridiculous. The private coercion principle is not itself a matter of common sense, and most people would reject it as soon as they understood its implications. Nor is deduction of the private coercion principle from the denial of political authority a matter of common sense. To the contrary, given Simmons’s distinction between justification and legitimacy, it is a non sequitur. Huemer’s defense of libertarianism is therefore no less vaporous than what we already have from Rand, Nozick, and Narveson.

Most of Part One is devoted to explaining why political authority is an illusion, and I found most of Huemer’s arguments here clear and convincing. But Huemer goes on in Chapter 7 to identify some policy implications of this position, and this I found unconvincing. Huemer maintains that if there is no political authority, then government paternalism, government moralism, rent-seeking policies, and government-mandated wealth-redistribution are all morally impermissible.

This is true, however, only if the nonexistence of political authority entails libertarianism, which it does not. Some might think that, even if the denial of political authority does not entail that all these policies are morally impermissible, it does entail that some of them are. They might think, for example, that if there is no political authority then government paternalism is impermissible. But this is also false.

A natural reaction to paternalism is indignation. What gives the state the right to tell me how to live my own life? One might think that paternalism is justifiable only if the government has a right to tell people how to lead their own lives, and that the government has the right to tell people how to live their own lives only if it has the right to rule. If there is no right to rule, paternalism is therefore unjustifiable. This line of reasoning is flawed, however, because the justifiability of government paternalism does not depend on anyone having the right to tell others how to lead their own lives.

Suppose you ask me what I think of motorcycle helmet laws and I tell you that I think it should be illegal for anyone under 21 to ride a motorcycle without a helmet. If you ask me what gives me the right to tell other people how to lead their lives, I would say that I have no such right. That is, I have no right to command or dictate how other people are to lead their own lives, no right to issue orders to them about how to live. But I do have a right to form my own opinion about what traffic safety laws the government ought to adopt and I have a right to express this opinion in the appropriate circumstances. Now suppose I'm a legislator about to vote in favor of a law that requires anyone under 21 to wear a helmet when they ride a motorcycle, and you ask me what right I have to tell other people how to lead their own lives. Again, I would say that I have no such right, but, being a duly elected legislator, I do have the right to vote for legislation that I believe is in the public interest when it comes up for a vote. Now suppose I am police officer who has just cited someone under 21 for riding a motorcycle without a helmet. Suppose he asks me what right I have to tell him how to lead his own life. Again, I would say that I have no such right, but I do have the right to enforce duly enacted traffic safety laws according to proper police procedures. A libertarian might now impatiently ask, But what right does the state have to tell a person how to lead his own life? I would answer that "the state" is the name of a fictitious character created by libertarians and anarchists as a bogeyman, in the way Orwell created Big Brother, because it is useful in their polemics. The state is an abstract entity that has no rights, and so no right to tell anyone how to lead his own life, and so no right to tell motorcyclists to wear helmets. Only persons have rights. The persons in my imaginary examples—me as the concerned citizen, the legislator, the police officer—have rights in my examples only because they are persons in my examples. They have the rights they do only in virtue of some valid system of moral principles and institutional rules, and not in virtue of some imagined right to rule.

Although Huemer explicitly recognizes that the state is not an individual agent or a person like you and me (p. 196), he seems to forget this when it is rhetorically convenient. This enables him to portray the government as an extortionist thug running a protection racket. It also enables him to make the suggestion that citizens of a modern democracy accept policies beyond those

permitted by the private coercion principle because they are the victims of Stockholm Syndrome (pp. 119-125). This refers to the inappropriate feelings of loyalty and attachment that some people who have been kidnapped or wrongfully detained develop toward their captors. Huemer identifies the empirical conditions that must be met for Stockholm Syndrome to occur and cleverly argues that these conditions are met by citizens of modern democracies in their relation to the government. But it is an important feature of Stockholm Syndrome that it consists of emotions and attitudes that captives feel toward other human beings, individuals who can experience and express and themselves be the objects of human empathy. Huemer's suggestion that law-abiding citizens are victims of Stockholm Syndrome thus implicitly presupposes, quite falsely, that the government is a human being like you and me. This is relevant to the issue of paternalism because the negative emotional reaction that some have toward paternalism seems to arise from viewing the government as an intrusive and controlling parent who doesn't respect the rightful independence of his adult children. The government, however, is not a person, and so is not at all like an intrusive and controlling parent, and so cannot have the same kinds of objectionable attitudes towards its citizens, and so is not the appropriate object of this kind of (adolescent) emotional reaction.

If one believes that paternalism is always wrong, then one appealing feature of libertarianism will be that it offers a clear explanation why. If libertarianism is true, then the government is permitted to use coercion only to protect people's rights. Assuming, then, that a person cannot violate his own rights, the government may not coerce him for his own good, at least not without his prior consent. If a person agrees ahead of time to have his liberty limited in some way for his own good--the way Ulysses agreed not to be untied by his men as they sailed past the Sirens—then this kind of paternalism might be compatible with some forms of libertarianism. But the government would never be justified in limiting a person's liberty for his own good against his will, which is the kind of paternalism that critics since Mill have found most objectionable.

If libertarianism is false, however, then there is no good reason to believe that paternalism is always wrong. If a paternalistic policy violates someone's rights or if its costs outweigh its benefits, then it ought not to be adopted or it ought to be repealed. But no one, including Mill, has convincingly explained why every conceivable paternalistic policy either violates someone's rights or has costs that outweigh its benefits. This doesn't mean that any particular paternalistic policy is justifiable, but it does mean that to explain what is wrong with a paternalistic policy one must do more than label it as paternalistic. One must explain why this particular policy violates someone's rights or why its costs outweigh its benefits, the same way one would criticize a nonpaternalistic policy.

In Chapter 7, Huemer gives an argument against paternalistic drug laws that some nonlibertarians might also accept. This is that drug laws are unjust "*because they violate a substantive moral right, the right to control one's own body,*" (p. 165). This argument is independent of libertarianism because one can believe that there is a substantive moral right to control one's own body without being a libertarian. Observe, though, that recognizing a substantive right to control one's own body does not commit one to rejecting all paternalistic

drug laws. It commits one to thinking that drugs should be decriminalized, but it does not commit one to thinking that drugs should also be legalized.

As I use the term, drugs are criminalized when there are criminal penalties for the use of or possession of small quantities of recreational drugs. Criminal penalties of this kind violate our right to control our bodies because they prohibit us from putting drugs into our bodies so as to affect our brains so as to produce certain mental states. For this reason drugs should be decriminalized. It doesn't follow that drugs should be legalized. As I use the term, drugs are legalized when there are no criminal penalties for the manufacture or sale or possession of large quantities of recreational drugs. These laws do not violate anyone's right to control his own body, because they are consistent with people being at liberty to put whatever drugs they like into their own body. Recall that during Prohibition although it was illegal to manufacture and sell "intoxicating liquors," it was legal to drink them and to make them at home for one's own personal use. So Prohibition did not violate the right to control one's own body because it did not prohibit or (as we all know) prevent those who wanted to drink from doing so. From this it is commonly concluded that Prohibition didn't work. But in fact Prohibition did work because it nonetheless reduced heavy drinking substantially, by making alcoholic beverages more expensive and less easily available.

Critics of current U.S. drug policy--the so-called War on Drugs—argue that it costs outweigh its benefits. I agree, but this doesn't mean that every drug control policy is unjustifiable. Suppose, as some experts believe, that drug abuse would increase dramatically if drugs were legalized—if it were legal to manufacture and sell drugs in the way it is now legal to manufacture and sell alcoholic beverages and cigarettes. The reason why drug abuse would increase is that if drugs are legalized they will be much less expensive and much more easily available, and so there will be more drug use as a result. On this assumption, a benefit of maintaining laws against the manufacture, sale, and possession of large quantities of drugs is that there will be much less drug abuse as a result. Suppose, then, that the costs of enforcing these laws are minimized by reducing the number of people in prison for drug trafficking offenses. Some experts believe that the number of people in prison for drug offenses could be reduced by half without significantly decreasing the price of drugs or increasing their availability, and so without undermining the effectiveness of drug control. Suppose, too, that the use of drugs and the possession of small quantities is decriminalized, so that no one is arrested, tried, or imprisoned solely for drug possession. This policy would be far less costly than the current War on Drugs. If this policy would reduce drug abuse by a great deal, this benefit might therefore justify the costs of this policy.

The purpose of this last paragraph is not to provide a conclusive defense of drug laws, but to set up the point I want to make about paternalism and the right to control our own bodies. Suppose, for the sake of argument, that the benefits of the kind of drug control policy just described do outweigh its costs. Suppose, too, that the government adopts this policy in order to make it less likely that people will abuse drugs to their own detriment. There is a sense then in which this policy would be paternalistic. It would not, however, violate the right we have to control our own

minds and bodies because going into the commercial enterprise of manufacturing and selling drugs is not an important aspect of controlling our own minds or bodies--no more than going into any other commercial enterprise is. Some libertarians might use the phrase "the right to control one's own body" as code for a general libertarian system of rights, and Huemer might use it this way, because he labels it "the right of self-ownership" (p. 165), an alleged right that is popular among libertarians. But Huemer also identifies the right to control one's body as a substantive moral right, which suggests that it is something he recognizes independently of his commitment to libertarianism. In any case, the point here is that a nonlibertarian liberal can also consistently recognize a substantive moral right to control one's own body—which I would call the right of self-sovereignty to distinguish it from the libertarian right of self-ownership--while defending some forms of paternalism, specifically paternalistic laws that prohibit the manufacture and sale of drugs (but not their use and possession of small quantities). This is because a nonlibertarian liberal can consistently hold that whereas drug criminalization violates the right to control one's own body, the nonlegalization of drugs does not.

Observe that in claiming that the government might justifiably prohibit the manufacture and sale of certain drugs, I am not claiming that those who manufacture and sell these drugs would be violating any general moral obligation in failing to obey this law. I am also not claiming that they would be violating anyone else's rights in manufacturing and selling drugs. The justification for this kind of policy is not that manufacturing and selling drugs violates anyone's rights. It is that, because laws against the manufacture and sale of drugs violate no one's rights, they can be justified as reducing the harms of drug abuse. Drug laws reduce drug abuse by increasing price and reducing availability. They do this by creating incentives not to go into the drug business. These disincentives work by creating prudential reasons not to go into the drug business, and not by creating moral reasons. It is therefore unnecessary to argue that there is a general moral obligation to obey the law in order to argue that the government is morally justified in prohibiting the manufacture and sale of drugs.

Does Huemer offer any other argument against this kind of paternalism? In a section of Chapter Seven entitled "The Problem of Legitimacy" (pp. 90-96), Huemer appears in places to be offering an independent argument. As far as I can tell, however, the antipaternalistic conclusions that he reaches in this section all rest on the validity of the private coercion principle. What Huemer does here is identify the kinds of government coercion that can be justified on consequentialist grounds even if the private coercion principle is true. He then argues, correctly, that these grounds do not warrant government paternalism. This, however, is no argument against paternalism unless the private coercion principle is valid, and Huemer gives no good reason to think it is.

In the beginning and at the end of Chapter of 7 Huemer presents the familiar libertarian positions on government paternalism, government moralism, rent-seeking policies, government-mandated wealth redistribution, and so on. In the middle of Chapter 7, however, Huemer enters some new territory. Nagel and Murphy have argued that it makes no sense to object to taxation on the grounds that it violates the right we have to our pretax income, because taxation is necessary to

fund the legal system that protects property rights and without such a legal system there would be no property rights (Murphy and Nagel 2002). Huemer considers this argument and dismisses it in the following paragraph (pp. 140-141):

Nagel and Murphy assume that . . . property rights are created by governmental decree. This is plausible only for one who presupposes a strong doctrine of political authority. Nagel and Murphy ascribe to the state a moral entitlement, arising from its power to create property rights, to coercively enforce its chosen distribution of resources. Since no non-governmental agent may declare a distribution of resources and a regime of property rights and then coercively enforce them, the state's right to do so would require political legitimacy. At the same time, the state's creation of a regime of property rights would presumably impose obligations on the part of citizens to respect that regime. These would be political obligations. If, therefore, the state has no authority, it has no such power of creating property rights as Murphy and Nagel suppose.

This argument is fallacious. To explain I'll why I'll leave Nagel's and Murphy's beliefs aside and rely on my own. I believe that property rights are created by the legal system. I do not mean that in an imaginary state of nature one person could not wrong another person by taking what he possesses. I mean that without a functioning legal system there are no complex property rights of the kind we find in developed market economies. It does not follow that property rights are "created by governmental decree." It is only on the command theory that laws are decrees. Because the command theory is one we can sensibly reject, the belief that property rights are created by a legal system does not presuppose a strong doctrine of political authority.

Furthermore, in holding that property rights are created by a legal system one need not ascribe to the state a moral entitlement to coercively enforce its chosen distribution of resources, whatever it is. One need suppose only that government is morally permitted to adopt and to enforce a morally justifiable system of property rights. Because Huemer conflates moral permissibility with a right to rule, in the way described above, he assumes that the view that the government is morally permitted to create a system of property presupposes a strong doctrine of political authority. But it does not presuppose political authority because it does not presuppose any moral obligation on the part of individuals to obey whatever property rules the governments adopts. It presupposes only that no one has a decisive moral objection to the government adopting and enforcing a morally defensible system of property rights.

Because he rejects a strong doctrine of political authority, which he claims that Murphy's and Nagel's view presupposes, Huemer concludes that "the result would seem to be that even after the state has made its laws, there still are no property rights" (p. 141). This is also false. Once the state adopts and enforces a morally justifiable system of property rights, this affects what obligations and rights people have. If I am legally entitled to possess some good and to do certain things with it, then you may not take it from me without my consent or without weighty reason to do so. In this sense I have a moral right to it, and you have a duty to respect my right. So there can be property rights, even if they are created by a legal system and even if there is no such thing as political authority. Because it doesn't follow from this that anyone is morally obligated

to follow all the property laws that the government makes, whatever they are, this position doesn't presuppose the kind of political authority that Huemer rejects.

Huemer concludes this argument as follows:

In short, the defender of taxation must hold that the state, rather than the taxpayers, is justly entitled to the tax revenues that the state collects. There is no plausible way to defend this view unless one assumes a doctrine of political authority (p. 141).

But one does not need a doctrine of political authority to defend the view that the government is morally permitted to collect taxes, and that it is therefore entitled in this sense to the tax revenues it collects. Again, what makes this morally permissible depends on what the correct moral theory is. But any skilled consequentialist, Kantian, or contractualist could explain why, according to his favored theory, the government is permitted to collect taxes to fund the legal protection of property rights. So a doctrine of political authority is unnecessary to explain why the government is entitled--in the moral permissibility sense--to the tax revenues that it collects, which is the only sense of entitlement one needs to defend taxation.

So far I have argued that Huemer fails to explain why denial of political authority warrants libertarianism or antipaternalism or a principled opposition to taxation, but I haven't said much against libertarianism or in favor of paternalism and taxation. As I see it, the government is justified in establishing a criminal and civil justice system and in raising the funds through taxation that are necessary to fund these systems. It is also justified in adopting the coercive policies necessary to ensure that every child is adequately educated, including the policies that are necessary to raise the funds to pay for this. What does Huemer have to say on the topic of education? Nothing. Early on he admits that there are some topics that he will not cover, and argues that an abstract political treatise like his need not have something to say about every important policy issue. This is true, but the education of children is not a minor detail to be cleared up later. It's hard to take seriously a political philosophy that has nothing intelligent to say about it. Plato understood the centrality of education in thinking about the ideal society. Rawls recognized the centrality of education to social justice in defending what he called "fair equality of opportunity." Free market advocates such as Milton Friedman and James Buchanan have addressed the issue seriously. So Huemer's silence on education is striking. It is hardly anomalous among libertarians, though. In the more than one thousand grueling pages of *Atlas Shrugged*, Rand does not, as I recall, address the issue of education once. None of her heroes has children. As far as I could tell, there are no children in her ideal world. Nor do I recall any children in the nonideal world that John Galt flees. This makes things easy. Since children don't exist, the issue of their education needn't be addressed. Nozick raises the issue of education once toward the end of *Anarchy, State, and Utopia* and admits that "children present still more difficult problems" (Nozick 1974, p. 330), but he has nothing to say about them. This is not entirely surprising, since it's hard to see how a libertarian could endorse any political mechanism for practically ensuring that all children are adequately educated without compromising his fundamental principles. Narveson spends more time on the subject, but as far as I can tell his

answer is that in a libertarian free-market society most children would be adequately educated and at a lower cost per student than in the current school system (Narveson 1988, p. 275-281). He does not, however, identify any reliable mechanism for ensuring that all children will be adequately educated and he doesn't deny that some children just won't be educated. It is also true that some children in our own society are not adequately educated, and this may happen in any feasible human society. But a view that does not recognize the important interests that every mentally able child has in being adequately educated or does not endorse a way in which a society might practically ensure this cannot credibly claim to be based on an ethic of equal respect for persons.

The issue of education bears too on the defensibility of anarchism. Huemer's ideal anarchist society is constituted by a plurality of homeowners' associations which hire private protective agencies to protect the homeowners from violence and property crime. Huemer has many clever things to say about how this system might work in theory, but it's worth considering a real-world example, such as Colorado City, Arizona. Before being put into receivership by the courts, there was a single homeowners association in Colorado City, the United Effort Plan, which owned, distributed, and managed the residential property there. This homeowners association was controlled by the leadership of the FLDS church, which believes in the practice of polygamy as taught by the Mormon Prophets Joseph Smith and Brigham Young. The local police were also hired and supervised by the FLDS leadership. As a result the local police were commonly used for the following purposes: (1) retrieving wives who were attempting to flee the community with their children, (2) retrieving young unmarried girls who were attempting to flee the community because they did not want to marry the men they were being assigned to marry, (3) enforcing bans on teenage boys who had been banished from the community for such activities as listening to the radio, drinking beer, and single dating, (4) enforcing punishments, such as the confiscation of homes, imposed by the FLDS leadership on disobedient male members, (5) intimidating outside observers so as to shield members of the FLDS leadership from arrest, prosecution, and public criticism for child abuse, child neglect, statutory rape, violation of child labor laws, and domestic violence. The FLDS leadership also closed down the public schools, in order to ensure that Colorado City children would receive a private religious education focused solely on FLDS theology, Mormon religious texts, and recorded speeches by the Prophet Warren Jeffs, until, that is, the FLDS leaders decided to shut down the religious schools too. Consequently the education provided to FLDS children in Colorado City has been entirely inadequate, partly because it has not prepared those who wish to leave this community to thrive outside it. The state of Arizona has also not done enough to ensure that FLDS children are adequately educated, but at least Arizona is in the legal position to do more if the political will were there. In the kind of anarchist society that Huemer sees as ideal, no outside agency would be in a position to do anything to ensure that FLDS children are adequately educated. Add to this the multiple reports of child abuse and neglect in Colorado City, and the practice of using boys for unpaid construction labor instead of sending them to school, and it seems obvious that the interests of children in being educated and properly cared for will be inadequately protected in the kind of ideal anarchist society that Huemer envisions.

The issues of education and adequately protecting the interests of children are also related to the issue of paternalism. If every human being upon reaching a certain age, say 16 or 18, reasoned as well as most mentally able 45 year olds who are not seriously depressed or mentally ill do, and if at 16 or 18 everyone had the same sort of foresight and self-control that people in middle age ordinarily do, then very few, if any, paternalistic prohibitions of adult activity would be justified. Humans mature slowly, though, and at different rates. For this reason many young people have interests that are protected by paternalistic legislation, and in some cases the interests protected by this legislation clearly outweigh any interests that are threatened by it. For instance, given the dangers of riding a motorcycle without a helmet, and the relative inexperience of teenagers in driving safely, and in operating a motorcycle skillfully, a law requiring anyone under 21 to wear a helmet while riding a motorcycle protects the safety interests of some teenagers, and the interests it protects clearly outweigh any interests that are threatened by this law. This doesn't mean that a law requiring forty-five year olds to wear a helmet when they ride their Harleys for fun on sunny Tucson Sundays is also justified. But we don't turn 45 when we turn 18, and Huemer's libertarianism would rule out all paternalistic legislation, including legislation that is aimed only at promoting the health and safety of young adults.

Toward the end of his book, Huemer argues that anarchism is required by respect for persons. He writes:

Broadly speaking, the evolution of values has been in the direction of greater respect for persons, a stronger presumption against violence and coercion, and a recognition of the equal moral status of all persons. This shift in values has driven the trend away from authoritarianism and towards liberal democracy. But these moral values are ultimately not consistent with government in any form. All governments are founded practically upon unjust coercion, and philosophically on a claim by the state to a special moral status that sets it above all nongovernmental persons and groups. Equal respect for persons is not compatible with the doctrine of political authority (p. 311).

Whether or not equal respect for persons is compatible with the doctrine of political authority, governments are not "founded philosophically" on this doctrine. This is because, as Simmons points out, the claim that some governmental activities are morally justifiable does not entail that the state has a special moral status that sets it above all nongovernmental persons.

I would go further and argue that governments are required by respect for persons. Respect for persons requires that we value each other properly as persons, as beings with the capacity for practical reason. This requires that we treat each other only in ways that we can justify to each other. This requires that we treat each other only according to principles governing our interactions that none of us could reasonably reject. This requires that we treat each other only according to principles that could be justified while giving all of our important interests due weight. Among our important interests are our interests in being adequately educated as children. If a society refuses to ensure the adequate education of its children, it fails to protect their interests adequately. So a principle that prohibits the government from acting so as to ensure that

children are adequately educated is one that children have good reason to reject. Whether anyone could reasonably reject a principle permitting the government to raise taxes to ensure that all children are adequately educated depends, too, on whether this policy threatens any interests of comparable weight, but it does not. People have a general interest in having more disposable income and so in paying lower taxes, but the interests of children in being adequately educated have much greater weight than this general interest. Consequently no one could reasonably reject a principle that permits the government to fund primary and secondary education for all children via taxation. Furthermore, a society that fails to ensure that its young people are adequately educated when this is feasible fails to treat its young people with respect. Because only an institution like the government can ensure this, respect for persons requires government or something like it, and it requires us to reject anarchism, libertarianism, and the private coercion principle.

Toward the end of his book, Huemer writes: “*There is no reason to think that all reasonable persons could agree, even in idealized circumstances, on even the most basic political theory*” (p. 320). This echoes an argument he gives earlier in discussing hypothetical agreement as a possible basis for political authority. This claim may seem to undermine the kind of contractualist argument I have just sketched for a right to education. So I want to explain why it does not. First, though, I want to identify something wrong with an earlier argument Huemer gives against a contractualist account of political obligation.

Huemer considers the hypothetical contractualism of Rawls as a possible method for justifying the existence of political authority. He considers the possibility that in the Original Position behind the Veil of Ignorance everyone would agree that there should be a government and that everyone has an obligation to obey it. Huemer doesn't think that this claim would justify political authority even if it were true, because he doesn't think that hypothetical contracts of this kind are binding. But he also argues that parties in the Original Position would not agree to political authority. He writes:

Why does Rawls believe that the parties in the original position could reach agreement, rather than persistently disagreeing as people do in the actual world? The reason is simple: ‘[S]ince the differences among the parties are unknown to them, and everyone is equally rational and similarly situated, each is convinced by the same arguments.’ Rawls’ conclusion does not follow from his stated premises. Rawls assumes that, once all particular inclinations and all (knowledge of) individual characteristics are excised, all reasonable and rational people will be convinced by the same arguments. This assumption rests on a particular diagnosis of the phenomenon of widespread intellectual disagreement: that such disagreement is due entirely to such factors as ignorance, irrationality, and biases created by knowledge of one’s individual characteristics A more plausible diagnosis of widespread and persistent philosophical disagreements is that human beings experience differing intuitions and other intellectual appearances” (pp. 48-49).

But this diagnosis rests on a misunderstanding of the kind of argument Rawls is offering. Rawls does not argue that, because the Veil of Ignorance prevents cognitive bias, everyone would be

convinced by the same moral arguments. He argues that everyone in the Original Position would agree on the same principles because they are not influenced by moral arguments at all. Rawls assumes that parties in the Original Position, behind the Veil of Ignorance, have the same goals, make the same empirical assumptions, are presented with the same options, and choose among options according to the same principles of rational choice (Rawls 1971 pp. 118-161). The fact that people in the real world have different moral intuitions is irrelevant because the parties in the Original Position are assumed to be motivated only by self-interest, and not by moral considerations. Although the Veil of Ignorance prevents people from having information about what social arrangement will actually benefit them most, Rawls believes there is still a way for them to do as best as they can for themselves (and their descendants), which, he supposes, is all they care about in choosing among possible principles of justice. The sense, then, in which parties in the Original Position are “convinced by the same arguments” is just that there is no difference in goals, information, options, or strategy that could rationally lead one party to favor a principle as benefitting him that another party could rationally reject as placing him at a disadvantage.

Huemer correctly observes that anarchists and nonanarchists in the real world make different empirical assumptions about the way society works, and he is right that this disagreement is relevant to how the Original Position should be set up (p. 149). Rawls assumes that everyone in the Original Position makes the same assumptions about how society works and so about how it would work without any government. He assumes that a government is necessary to guarantee everyone the highest possible minimum share of primary social goods, and that parties in the Original Position know this, and that securing the highest possible minimum is all they care about. If so, they would all agree to a government and possibly to a general duty to obey the law as well. If Rawls is wrong in his empirical assumptions--if no government is necessary to secure for everyone the highest possible minimum index of primary social goods or if the existence of government would make this distribution of goods less likely than having no government at all--then parties in the Original Position would not agree to a government or to a general duty to obey the law. But this has nothing to do with the different moral intuitions of anarchists and nonanarchists in the real world. It has to do with the different empirical assumptions they make. It is hard to imagine an informed and intelligent anarchist disagreeing with Rawls's assumption that a government is necessary to guarantee everyone the highest possible minimum of primary social goods. What he is likely to reject is that the ideal society is one that ensures this via coercive policies. Someone who makes this objection, however, would object to the substantive assumptions that Rawls makes in setting up the Original Position. He would not be arguing that parties in the Original Position would not reach an agreement even if it were set up in accordance with all of Rawls's specifications.

In explaining above why I think that government is required by equal respect for persons I argued that government is necessary to ensure that everyone is adequately educated. In making this argument I explained why I thought that, given the interests of children in education, someone could reasonably reject Huemer's private coercion principle. A common objection to this kind of contractualist argument is that for virtually any principle of political morality, there

is some reasonable person who rejects it, or someone who reasonably believes that this principle is invalid. This might be true, but it is irrelevant. The notion of reasonableness relevant to contractualism is not epistemic; it is not the reasonableness of belief. It is the reasonableness of an agreement or a contract (hence “contractualism”). An agreement can be reasonable even if someone reasonably, but mistakenly, believes that it is not. It can be reasonable in being fair and in adequately protecting everyone’s interests. So when one claims that no one can reasonably reject a principle of political morality one is not claiming that no one could reasonably believe that this principle is false. One is claiming that there is no good reason for anyone to object to this principle on his own behalf, or no good reason to object to everyone being required to observe this principle that has greater weight than the strongest self-interested reason anyone has to want this principle to be generally observed. So although Huemer would no doubt be unconvinced by the contractualist argument for a right to education that I sketched above, this fact about his psychology does not show that this argument is unsound because it does not show that anyone could reasonably insist—in the relevant sense of reasonable--on the general observance of the private coercion principle.

Huemer concludes his book by reiterating some of his central claims. So I will conclude these comments by reiterating some of mine. Huemer writes:

The modern state claims a kind of authority that obliges all other agents to obey the state’s commands and entitles the state to deploy violence and threats of violence to enforce those commands, independent of whether the commands are in themselves just, reasonable, or beneficial (p. 320).

This is false. The state is not a person, and makes no claims, and so no claims to authority of this kind. Nor is it necessary to claim that the state has any such authority to defend the justifiable coercive policies that modern governments in fact adopt. Huemer continues:

The argument of the first half of this book is that that sort of authority, ‘political authority’, is an illusion. No state is legitimate, and no individual has political obligations (p. 320).

This is two-thirds true. No state is legitimate in the sense of having a right to rule, and no individual has a general obligation to obey the law, but some governments are legitimate in the sense that it is morally permissible for them to adopt some coercive policies. Huemer continues:

This leads to the conclusion that at minimum, the vast majority of government activities are unjust (p. 320).

This is false. Huemer holds that the denial of political authority warrants this conclusion partly because he conflates two different notions of legitimacy and assumes that if a government does not have the right to rule, then it is not permitted to enact and enforce any coercive policies that are not permitted by the private coercion principle. This, however, is a non sequitur because the non-existence of political authority does not entail the private coercion principle and therefore does not lead to the conclusion that all those government activities that are not licensed by this principle are unjust.

Huemer begins his book by writing “*This book addresses the foundational problem of political philosophy: the problem of accounting for the authority of government*” (p. xxvi). So I’ll end these comments by denying that this is the foundational problem of political philosophy. The only foundational problem of political philosophy is to identify the correct moral theory for the evaluation of government policy and the political actions of individual agents. Political authority is not even an important philosophical problem because neither the permissibility of government action nor our evaluation of government policy presupposes it. Political authority, Huemer writes “*has always struck me as puzzling and problematic. Why should 535 people in Washington be entitled to issue commands to 300 million others? And why should the others obey? These questions, as I argue in the following pages, have no satisfactory answers*” (p. xxvi). I agree with Huemer that these questions have no satisfactory answers, and I think he does a good job of explaining why. But he’s wrong that libertarianism follows from this because no substantive policy position follows from this. The problem of political authority is not foundational; it is irrelevant.

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