

## *Why Libertarians Should Be Welfare Liberals<sup>i</sup>*

### I. Introduction

There is no single libertarian platform. Most libertarians, however, accept something like the following proposition: To be legitimate, a state can only exercise coercive force over rights-respecting individuals to protect those individuals' liberty.<sup>ii</sup> Furthermore, most libertarians are not anarchists.<sup>iii</sup> Finally, some libertarians also accept actual consent theory.<sup>iv</sup> They believe that states are legitimate if and only if they secure their subjects' autonomous consent.<sup>v</sup> This paper argues that libertarians, who accept this much, should be welfare liberals; they should agree that legitimate states have to ensure that most of their subjects can secure at least some food, water, shelter, education, health care, social and emotional goods.<sup>vi</sup> This is a shocking conclusion given that most libertarians also reject welfarism. They do not think legitimate states must ensure that any of their subjects can secure any food, water, shelter, education, health care, social or emotional goods.

Still, one might not think it is worth arguing that libertarian actual consent theorists should accept any kind of welfare state. One might argue that actual consent theory is implausible. If a state cannot secure the consent of its subjects because its subjects have irrational or immoral preferences, this does not undercut that state's legitimacy. Alternately, if coercion is necessary to achieve a great good, perhaps it is justified. So, one might conclude, libertarians will reject actual consent theory.

There is something compelling about the thought that a state can be legitimate if the only reason its subjects will not consent to its rule is that its subjects have irrational or immoral preferences. But, there is also reason to worry about this idea. Why should states

be able to coerce even the irrational, mean, or deluded as long as they are not violating others' rights? Why should states be able to claim a *monopoly* on the use of coercive force over rights-respecting people without their autonomous consent? There is also something plausible about the idea that, if coercion is necessary to achieve a great good, it is justified. But few libertarians accept the premise that coercion is necessary to achieve a great good, and the libertarians we are addressing (henceforth *libertarians*) deny that violating an individual's right to freedom can be justified whenever doing so achieves a greater good. They believe states can only coerce rights respecting people to protect their liberty. Furthermore, not only *are* some libertarians actual consent theorists but, several authors have argued that libertarians of many stripes should be actual consent theorists.<sup>vii</sup> In his paper "Consent Theory for Libertarians," for instance, John Simmons gives a compelling version of this argument. So, there is no immediate reason to reject this paper's argumentative strategy. Hence, section II starts by saying a few words about states, actual consent theory, and Simmons' argument. Section III argues that libertarians should be welfare liberals. Finally, section IV considers further objections to this argument and actual consent theory.

## II. Why Libertarians Ought to Accept Actual Consent Theory

Perhaps the defining feature of states is that they exercise a monopoly on the use of coercive force within their territory.<sup>viii</sup> So, we can say that a state is *legitimate*<sup>ix</sup> if and only if the state has moral permission to be the only agent making coercive rules and giving coercive commands within its borders.<sup>x</sup> *Legitimacy* here is different from *justified authority*.<sup>xi</sup> A state has *justified authority* if and only if it is legitimate and its subjects have an *obligation* to comply with its rules.<sup>xii</sup> Some rights may carry with them

correlative duties.<sup>xiii</sup> Nevertheless, we need not assume here that if a state has a right to rule through force over its subjects, they are obligated to obey its dictates.

On actual consent theory, states are *legitimate* if and only if they secure their subjects' *autonomous* consent.<sup>xiv</sup> Or, in other words, states have the moral permission to exercise a monopoly on the use of coercive force within their borders if and only if they secure this consent.<sup>xv</sup> Although we will say more about the conception of autonomy at issue and motivate actual consent theory below, the intuition underlying actual consent theory is this: Just as the Sierra Club is justified in making people pay dues if and only if they have freely consented, states are justified in exercising a monopoly on coercive force if and only if their subjects have freely consented.<sup>xvi</sup>

Actual consent theorists need not think states must get all of their subjects' autonomous consent to every coercive act. To use an example from Simmons, "the Third Reich was justified in prohibiting rape and punishing rapists, however illegitimate that government may have been."<sup>xvii</sup> Actual consent theorists may think that some acts are impermissible violations of individual liberty and these acts are legitimately prevented by any person or institution even if prevention requires coercion. Actual consent theorists hold, however, that states can legitimately exercise a monopoly on coercive force if and only if they secure their subjects' autonomous consent.

Similarly, actual consent theorists need not hold that subjects must autonomously agree to every single part of their state for it to be legitimate. Like Kant they might only hold that subjects must autonomously agree to the principles underlying their state's institutions in a piecemeal fashion. Alternately, actual consent theorists might require

only that individuals autonomously agree to the general structure of the state, not every subsidiary rule and institution.<sup>xviii</sup>

On the strictest version of actual consent theory *everyone* subject to the coercive force of a state must consent to that state's rule for it to be legitimate.<sup>xix</sup> Coercing anyone without their consent is unacceptable. But libertarians might argue that this version of actual consent theory is implausible; a state does not need the autonomous consent of the permanently comatose, for instance, to be legitimate. So, let us suppose here that the relevant version of actual consent theory is one on which states are more legitimate the more autonomous consent they secure. A state would be perfectly legitimate, then, if it secured the consent of all those capable of consenting.<sup>xx</sup>

Finally, actual consent theorists might not think subjects must be able to autonomously consent to their states, if subjects autonomously agree to relinquish this ability.<sup>xxi</sup> Nonetheless, it is plausible to suppose, as the following argument does, that people would not autonomously agree to relinquish their ability to autonomously consent. Even if some people would relinquish this ability, however, actual consent theorists will at least agree to the following condition for legitimacy: Subjects must autonomously consent to their states until and unless they autonomously relinquish their ability to autonomously consent.<sup>xxii</sup> The skeptic can emend the following arguments appropriately.

Proceeding, then, with this understanding of actual consent theory, consider John Simmons' argument that libertarians must be actual consent theorists. Although his argument may not apply to some libertarians, it should apply to most. Simmons starts from the observation that libertarians generally do not discuss political legitimacy. He says that this is because doing so would expose a deep tension within libertarianism.

Simmons suggests that there are two major strands in libertarian thought that lead naturally to two different, incompatible, accounts of legitimacy -- consensualism and minimalism.<sup>xxiii</sup>

In their consensualist moments, libertarians advocate an almost unlimited right of contract. People, they insist, can freely agree to sell their labor and possessions or contract for protective services. Some libertarians even argue that people can legitimately contract into slavery.<sup>xxiv</sup> Naturally, one would think, if people have an almost unlimited right of contract, they can autonomously consent to a state having a monopoly on the exercise of coercive force over them. And, since the contracts libertarians defend are usually enforceable, if someone does autonomously consent to be ruled by a state, that state would usually be justified in forcing that individual to uphold his or her part of the contract. Subjects can legitimize almost any state by their free consent.

In their minimalist moments, libertarians argue that only rights-respecting states can be justified. For instance, a widely held (right) libertarian proposition is that there is one basic right “to live your life as you choose so long as you do not infringe on the equal rights of others.”<sup>xxv</sup> States cannot violate the civil, political, and property rights that are necessary for individuals to live their lives as they chose as long as individuals themselves respect the basic right(s) of others. States must be minimal to be legitimate.

The tension within libertarianism is this: If anything subjects freely consent to is legitimate, even basic libertarian rights can be legitimately violated. Subjects can legitimize non-minimal states by free consent. But if legitimate states cannot violate basic rights, non-minimal states cannot be legitimated even by free consent. To put the point another way, If libertarians embrace consensualism, and people can legitimize almost

anything by autonomously consenting to it, then people can legitimize a non-minimal state by autonomously consenting to it (so minimalism is false). But if libertarians embrace minimalism, they believe only minimal non-rights violating states can be legitimate so people cannot legitimize a state that does not respect basic libertarian rights even by free consent (so consensualism is false). According to Simmons, libertarians must either embrace consensualism or minimalism.

One might initially think that libertarians would want to deny consensualism rather than minimalism. After all, the paradigmatic libertarian, Robert Nozick, does not embrace a consensualist theory of legitimacy. Nozick does not try to show anarchism to be unjustified by arguing that it is possible that everyone could legitimize a state by freely consenting to it. Perhaps the reason Nozick does not do this may just be that doing so would be too easy. Nozick wants to give a *plausible* analysis of how a minimal state might be justified and free consent plays a large role in justifying the move to a minimal state from the state of nature. Clients freely consent to give up their right to self defense to protective associations. Nevertheless, when independents are forced to give up this right Nozick denies actual consent theory.

Simmons argues, however, that libertarians should accept consensualism and reject minimalism instead. He thinks Nozick is wrong to allow independents' rights to be abridged without consent. As Simmons puts it, "the 'principle of compensation' by which Nozick attempts to justify this final move is probably the *least* libertarian-looking component of...[Nozick's] ...entire book (as well as one of the least independently plausible basic principles defended in Part 1)."<sup>xxvi</sup> What justifies some in taking away

others' rights if those people have not freely consented to be compensated for this deprivation?

Perhaps Nozick could respond that only a minimal state can be legitimate without free consent. He could argue that, since the minimal state only enforces pre-existing rights, it need not secure such consent. At the same time, Nozick could maintain that other, more robust, states would require free consent.

Simmons does not think this is a promising way of defending minimalism and rejecting consensualism. As we have seen, the minimal state not only enforces pre-existing rights, it limits pre-existing rights. The minimal state not only punishes people who violate its dictates without their consent, it limits independents' right to self defense and denies "to others the right of competitive enforcement of those rights."<sup>xxvii</sup> Simmons thinks such rights-limitation should be justified on libertarianism; on a libertarian theory, even the minimal state must secure free consent to be legitimate.

Nozick's move here is to suggest that it is dangerous or rights-violating to let independents enforce their own rights. Nozick believes that if independents enforce rights they will pose a large risk to the dominant protective association's clients. Independents may be partial and lack reliable juridical methods of figuring out when others deserve punishment. This, Nozick thinks, is what makes it okay for the dominant association to prevent independents from enforcing rights or hiring other protective associations.<sup>xxviii</sup>

But, Simmons pushes the point, what if independents use safe methods of rights-enforcement? What about the rights of those independents using good procedures? After all, Nozick says that protective agencies of all sizes and unaffiliated individuals are "on a

par in the nature of their rights to enforce other rights.”<sup>xxxix</sup> How can Nozick restrict the freedom of rights-respecting individuals in this way without their free consent?<sup>xxx</sup>

Simmons says Nozick really only defends the state's monopoly on the use of coercive force with a "...very hesitant and enormously ad hoc speculation that perhaps the right to punish is 'the only [natural] right' that is possessed not individually, but jointly.”<sup>xxxi</sup> This would mean that the state (because of its clients' free consent) would end up (by definition) having a bigger *part* of this collectively held right than its competitors. “Since Nozick himself can barely advance the argument with a straight face, we can... safely disregard it.”<sup>xxxii</sup> So, instead of giving up their contractualist commitments, Simmons concludes, libertarians should give up their minimalism. He thinks libertarians should be actual consent theorists; they must give up the idea that only minimal states can be legitimate. To give expression to their minimalist inclinations, libertarians can then maintain (the empirical proposition) that the more minimal a state is, the more likely it will be to secure free consent.

Of course, this reply might not work. Alternately, libertarians might disagree with Nozick at crucial junctures and defend minimalism in a different way.<sup>xxxiii</sup> Still, Simmons' claim that any monopoly on coercive force violates individual rights poses a broad challenge to many kinds of libertarians; this challenge does not hang on the details of Nozick's theory, in particular.<sup>xxxiv</sup> So, in the absence of a good response to this argument, let us conclude that Simmons is correct: Libertarians should accept actual consent theory.<sup>xxxv</sup> If Simmons is correct and the arguments that follow go through, the conclusion that libertarians should accept some kind of welfare liberalism will follow.<sup>xxxvi</sup>

### III. Why Libertarians Should Be Welfare Liberals

Assuming, then, that libertarians should accept actual consent theory, we will argue that libertarians should accept the following *Commitment Argument*:<sup>xxxvii</sup>

- 1) To be legitimate, states must do what they can to enable their subjects to secure sufficient autonomy to autonomously consent to their rules (henceforth *sufficient autonomy*).
- 2) To secure sufficient autonomy most people (in all states) must be able to secure some minimal amount of food, water, shelter, education, health care, social and emotional goods.
- C) So, states must do what they can to enable most of their subjects to secure some minimal amount of food, water, shelter, education, health care, social and emotional goods.

We will consider each premise in turn.

#### The First Premise

To be legitimate, states must do what they can to enable their subjects to secure sufficient autonomy. Before showing that libertarian actual consent theorists must accept this premise, consider some of its components.

First, what does it mean to say that states must do what they *can* to enable their subjects to secure sufficient autonomy? What sense of *possibility* is at issue here? What is *possible* here is what is achievable in the real world.<sup>xxxviii</sup> A system does not lose legitimacy if it does not enable someone to secure sufficient autonomy if this person is not capable of securing sufficient autonomy.<sup>xxxix</sup> One is capable of securing sufficient autonomy when one could secure sufficient autonomy under some implementable state. People who are permanently comatose are not capable of securing any autonomy at all.

Some of those in comas can secure sufficient autonomy with good medical care, however. A legitimate state must enable these people to secure sufficient autonomy.<sup>xi</sup> Similarly, though children cannot secure any autonomy when they are very young, most children who receive proper care will be able to secure sufficient autonomy as they get older. To be legitimate, states must enable these children to secure sufficient autonomy once they are old enough.<sup>xii</sup>

Second, what does *enabling* someone to secure sufficient autonomy require? The basic idea is that states must do whatever is necessary to ensure that their subjects are *able* to secure sufficient autonomy. When one is *able* to secure sufficient autonomy the only reason one will not secure such autonomy is that one chooses not to do so. So, a state has *enabled* someone to secure sufficient autonomy when either the person has secured such autonomy or the person has chosen not to do so. Because this account of *enabling* plays a large role in the Commitment Argument, it is worth belaboring the point. What is necessary to enable someone to secure sufficient autonomy will vary with the case. It depends on how close the person is to being able to secure such autonomy and what resources are already available to the person. In cold climates, for instance, people may need to be able to secure heat during winter. In the tropics, heat is usually unnecessary. Some people will be able to secure sufficient autonomy as long as they are free from interference. Others will require assistance. Suppose, for instance, one is in a coma from which one could only recover with proper medical care and one is not receiving such care from friends, family, or benefactors. In this case, one's state must provide this care.

Next, when is someone subject to a state? *Subjects* will be used here in a restricted sense only to refer to individuals. So someone is *subject* to a state when the rules of the state apply to them. Thailand's rules apply primarily to those in Thailand.<sup>xlii</sup>

Finally, what is necessary for someone to secure sufficient autonomy? The idea is this: One must be able to secure whatever kind and amount of autonomy is sufficient for one to autonomously consent to one's state. Different actual consent theorists have different views on what this requires. Most can at least agree, however, that one must be able to reason about, make, and carry out some simple plans on the basis of one's beliefs, values, desires, and goals (henceforth: *desires*).<sup>xliii</sup> We will say more about these requirements for autonomy below but the basic idea should do for now.<sup>xliv</sup>

Recall that, on actual consent theory, states are *legitimate* if and only if they secure their subjects' autonomous consent. The reason libertarian actual consent theorists have to accept the thesis that, insofar as possible, people must be able to secure sufficient autonomy for the states to which they are subject to be legitimate is this. *In order for someone to actually autonomously consent to a state that person must be able to do so.* Libertarian actual consent theorists believe that subjects must actually freely consent to their state for their state to be legitimate. So, these libertarians must agree that, insofar as possible, people must *be able* to secure sufficient autonomy to consent to their state's rule for their state to be legitimate.<sup>xlv</sup>

Some libertarians might reject this move suggesting that it points to a problem with the formulation of actual consent theory set out above. They might argue that it is okay to coerce the merely autonomous in ways that do not protect their autonomy but that

are respectful and advance the common good. These libertarians might maintain that this is legitimate since the potentially autonomous lack a natural right to freedom.

But the idea that it is not acceptable to coerce the potentially autonomous in ways that do not protect their autonomy is implicit in the characterization of libertarianism with which we started. The libertarians we are addressing believe that, to be legitimate, states can only exercise coercive force over rights-respecting individuals to protect those individuals' liberty. Even if these libertarians do not want to say there is a positive duty to enable the merely potentially autonomous to secure autonomy, they cannot say it is acceptable to coerce or control the potentially autonomous merely for others' benefit. The view that states can control the potentially autonomous just to benefit others is radically unintuitive. States do not have license to, for instance, coerce children just to benefit society. At least, the Commitment Argument will address those libertarians who accept the formulation of actual consent theory with which we started; states are legitimate, if and only if they secure their subjects' autonomous consent. These libertarians must agree that, legitimate states' subjects must, insofar as possible, be able to secure sufficient autonomy.

But, we must say more to convince libertarians that *states* must do what they can to enable their subjects to secure sufficient autonomy. Consider an argument for this conclusion. When states subject people who cannot secure sufficient autonomy to coercive rules and do not do whatever is possible to enable these people to secure sufficient autonomy, they act wrongly. This is because such states are not justified in exercising a monopoly on coercive force over those who cannot secure sufficient autonomy. *If states continue to exercise a monopoly on the use of coercive force over*

*their subjects, legitimacy requires that they do whatever they can to enable these people to secure sufficient autonomy.*<sup>xlvi</sup> Insofar as they exist, states do continue to exercise such a monopoly. So, states are obligated to do what they can to enable their subjects to secure sufficient autonomy.

One might object that states that subject people to coercive rules, even wrongly, do not thereby acquire an obligation to do what they can to enable these people to secure sufficient autonomy. Consider an analogy. Suppose someone, let us call her Samantha, who is not capable of autonomous consent agrees to give me a large sum of money. I do not thereby have a duty to do what I can to enable Samantha to secure sufficient autonomy. I merely fail to have a contract with her. Samantha has not, by agreeing to give me a large sum of money, incurred an enforceable debt to me. If I were to try to enforce the agreement on Samantha without securing her autonomous consent, I would act wrongly. But, as long as I do not try to extract any money from her, I have no obligation to her. Similarly, one might suggest, libertarians can deny the legitimacy of actual states. Yet, they can maintain that something like a state or protective organization that only enforced the rights of those who actually autonomously consent could be legitimate. Such protective organizations would not need to enable anyone to consent. Libertarians could argue as follows. The fact that legitimate states must secure all of their subjects' autonomous consent just shows that there should not be states. Rather protective organizations could enforce the rights of those who actually autonomously consent to their rule. They just cannot enforce the rights of those who do not or can not autonomously consent.

This objection fails to appreciate one of two things. First, it may wrongly presuppose that the libertarians we are addressing can give up their commitment to a state. They cannot. Recall that these libertarians are not anarchists.<sup>xlvi</sup> Alternately, the objection may fail to appreciate the nature of states. States do not acquire an obligation to do what they can to enable their subjects to secure sufficient autonomy by subjecting them to coercive rules. Nevertheless, in the actual world, states are obligated to do what they can to enable their subjects to secure sufficient autonomy. This is because states *by their nature* claim a monopoly on the exercise of coercive force. So, states can be legitimate *only if* they do what they can to enable their subjects to secure sufficient autonomy. Insofar as they exist, states continue to exercise a monopoly on the use of coercive force over subjects who are not able to secure sufficient autonomy. The obligation for states to do what they can to enable subjects to secure sufficient autonomy is a remedial obligation; there would be no such obligation were states to cease exercising a monopoly on the use of coercive force. But then there would be no states. A better analogy might illustrate the import of these observations. If Samantha is not autonomous but I take her money I can act legitimately only if I do one of two things. I can get her autonomous consent to give me the money first, which (by supposition) requires doing what I can to enable her to secure sufficient autonomy. Or, I can stop coercing her because she has not autonomously consented to give me anything. If I do not stop coercing her, I must get her autonomous consent, which requires doing what I can to enable her to secure sufficient autonomy. Otherwise, I act illegitimately. States continually exercise a monopoly on coercive force without their subjects' autonomous

consent. To be legitimate, they must, thus, do what they can to enable their subjects to secure sufficient autonomy.<sup>xlviii</sup>

One might worry that this response relies on a false premise. According to the response, states can be legitimate *only if* they do what they can to enable their subjects to secure sufficient autonomy. Perhaps relatives or charities can enable these people to secure sufficient autonomy. Sticking with the analogy, the objection would be this. In order for Samantha to autonomously consent, I need not do what I can to enable her to do so. Perhaps her family or others involved in charitable work can help her instead. I may be able to legitimately enforce the contract without doing what I can to enable Samantha to autonomously consent.

This objection has some truth in it. Others may be able to enable those subject to a state to secure sufficient autonomy. Others may even have primary responsibility for doing so. But the objection misunderstands the nature of *enabling*. Enabling is like being a lender of last resort. So, in some cases, states may not need to do anything to enable someone to secure sufficient autonomy. If a person secures autonomy on his or her own or with the help of friends and benefactors the state need not do a thing to help this person. States need to step into the breach, however, if help is required. It is only if states do this that all of their subjects who are capable of securing sufficient autonomy will do so; so states must do what they can to enable their subjects to secure autonomy. This is the only way states can be legitimate in our imperfect world.<sup>xlix</sup>

Finally, it is worth recalling the assumption made above – that people would not autonomously consent to a state under which they could not secure sufficient autonomy. If this assumption holds then, in the actual world, states must ensure that their subjects

can secure such autonomy. If it does not hold, then this premise and the rest of the Commitment Argument must be qualified. States will only be obligated to ensure that subjects who have not autonomously agreed to relinquish their autonomy can continue to secure sufficient autonomy. Once again, we can leave it to those who think people might freely give up their autonomy to qualify the Commitment Argument appropriately.

### The Second Premise

The final step in defending the Commitment Argument is showing that, to secure sufficient autonomy, most people (in all states) must be able to attain some minimal amount of food, water, shelter, education, health care, social and emotional goods. It will follow that states must do what they can to enable most of their subjects to secure these things. To make this case, consider what autonomy requires on actual consent theory.

There are many versions of actual consent theory. So there are many accounts of the requisite sort of autonomy. Some are more demanding than others. How much we can get out of the Commitment Argument depends on how much libertarian actual consent theorists are willing to accept. Most actual consent theorists can probably agree to at least this much: To secure sufficient autonomy, people must be able to reason about, make, and carry out some simple plans on the basis of their desires. This much is necessary for autonomous consent. Individuals who cannot reason about, make, and carry out some simple plans on the basis of their desires may be unable to resist outside suggestion or be torn apart by inner conflict.<sup>1</sup> If people lack reasoning and planning capacities they cannot make free contracts; they cannot freely agree to be subject to a coercive state. If libertarians accept additional conditions for autonomy as well they will be committed to a

more robust welfare state. As long as libertarians accept this much, however, it will follow that they must accept some kind of welfare liberalism.

To be able to reason on the basis of one's desires, one must have some instrumental reasoning ability. Some hold much more demanding conceptions of reason on which saying that autonomy requires the ability to reason would be controversial. Kant, for instance, thinks that reason requires each of us to acknowledge the categorical imperative as unconditionally required.<sup>li</sup> Many deny that reason requires acknowledging such an imperative, however. Fortunately, the conception of reasoning at issue here is relatively uncontroversial. Most people can agree that, to autonomously consent, people must have some instrumental reasoning ability.

To make some simple plans on the basis of one's desires one must have some internal freedom. Internal freedom is roughly the capacity to decide “for oneself what is worth doing”; to make “the decisions of a normative agent”; to recognize and respond to value as one sees it.<sup>lii</sup> Even if one can be subject to external constraint, one must be able to form some simple plans that would work if implemented. One must be able to make some simple plans that one could carry through if free from external constraint.<sup>liii-liv</sup> There are many ways of making sense of this idea. One might, for instance, analyze the ability to make some simple plans on the basis of one's desires in terms of the ability to make one's motivating desires generally coherent. Alternately, one might give a decision-theoretic analysis of planning in terms of a consistent preference ordering. Yet another option is to cash out the ability to make some simple plans on the basis of one's desires in terms of ordering one's ends perhaps by drawing on John Rawls' work on plans of life.<sup>lv</sup> It is not necessary to explicate the ability to make some simple plans on one's desires further here

since these are all standard moves in the literature on autonomy.<sup>lvi</sup> It should be clear, in any case, that if one cannot make some simple plans, one's decisions may be shortsighted or contradictory. One will not be able to act consistently. So, one will not be able to feely consent to a state.

Finally, to carry out some simple plans, one needs some external as well as internal freedom. External freedom is roughly freedom from interference to pursue a “worthwhile life.”<sup>lvii</sup> To carry out simple plans one must be able to carry out those actions necessary to bring some simple plans to fruition To carry out some simple plans one must have some freedom from coercion and constraint; one must have some internal control over one’s body. If one cannot carry out simple plans there is no way that one can freely consent to be subject to a state.<sup>lviii</sup>

Consider how autonomy is impaired when one cannot reason about, make, and carry out some simple plans on the basis of one's desires. Suppose that Tamil becomes ill with malaria. Suppose that she suffers from delusions. When she is delusional, we can suppose that Tamil is unable to reason about, make, and carry out simple plans on the basis of her desires. Because she is not able to reason well enough or form simple plans, her decisions will not be sensible. Tamil might ask for water one moment and then refuse to drink the next. She might ask to speak to her children and then forget what she wanted to say to them. Tamil's desires are like cars on city streets going this way and that, unconstrained by traffic signals.<sup>lix</sup> Tamil lacks rules with which she can reason about her desires. She lacks the capacity to choose between them. She is not able to reason about, make, and carry out some simple plans on the basis of her desires. She does not have sufficient autonomy to autonomously agree to be subject to a state.

Contrast the case of Tamil with the case of Emal. Suppose Emal is a devout Muslim. He wants to live his whole life according to his faith. Occasionally he wants to drink with the other young men who live in his neighborhood. He is, however, able to reason about, make, and carry out some simple plans on the basis of his competing desires. Emal might autonomously decide, for instance, that his desire to be a good Muslim is much stronger than his desire to drink and, thus, never drink at all. He is able to reason about, make, and carry out some simple plans on the basis of his desires. Emal has sufficient autonomy to autonomously agree to be subject to a state.<sup>lx</sup>

Although we have not given a systematic defense of the requirements for autonomy necessary for autonomous consent, hopefully we have done enough to explicate and motivate them. To autonomously agree to a state, one must be able to reason about, make, and carry out simple plans. We will now argue that, to secure sufficient autonomy, most people (in all states) must at least be able to attain some minimal amount of food, water, shelter, education, health care, social and emotional goods.<sup>lxi</sup> From this, the conclusion of the Commitment Argument follows easily:<sup>lxii</sup> States are obligated to do what they can to enable most of their subjects to attain these things.<sup>lxiii</sup>

Consider, first, how those who lack basic food, water, and health care are likely to suffer from autonomy undermining disabilities. Malnutrition inhibits one's immune system's ability to fight infection and poor nutrition is linked even more directly to many non-infectious illnesses.<sup>lxiv-lxv</sup> Those without basic preventative health care (e.g. immunizations) are most at risk for many of these illnesses. And those who cannot secure essential medications (e.g. dehydration salts and antibiotics) are most likely to be disabled by these diseases. Often the diseases those who lack basic food, water, and

health care acquire result in severe disabilities, sometimes they result in death.<sup>lxxvi</sup> The very sick and dead are obviously incapable of securing sufficient autonomy.<sup>lxxvii</sup> .

Similarly, if people lack adequate shelter they are likely to suffer from autonomy undermining disabilities. Those without adequate shelter may be exposed to environmental hazards including disasters, pollutants, parasites, and bacteria (e.g. in flood water or unsanitary living conditions).<sup>lxxviii</sup> These “hazards are responsible for about a quarter of the total burden of disease worldwide, and nearly 35% in regions such as sub-Saharan Africa.”<sup>lxxix</sup> Bed nets alone could prevent a lot of autonomy undermining illness.<sup>lxx</sup>

Less obviously, those without basic education, emotional and social goods may suffer from autonomy undermining disabilities.<sup>lxxxi</sup> Basic education, emotional, and social goods are often necessary for securing decent living conditions, health care, livelihood opportunities, and earning power.<sup>lxxxii</sup> Those who lack (formal or informal) elementary education may not develop or maintain the reasoning and planning skills they need to secure sufficient autonomy.<sup>lxxxiii</sup> Those who lack basic emotional and social goods are at high risk for mental and physical illness, suicide, and early death from other causes.<sup>lxxxiv</sup> “Fear, insecurity, dependency, depression, anxiety, intranquility, shame, hopelessness, isolation and powerlessness... such experiential elements of a bad life...[often impact] ....agency”<sup>lxxv</sup> Most people must be able to secure basic education, emotional, and social goods to secure sufficient autonomy.<sup>lxxvi</sup>

On the conditions for autonomy defended above, individuals can secure sufficient autonomy as long as their minds do not become clouded and they have some room for free action. Some people are able to secure sufficient autonomy without being able to

obtain very much food, water, shelter, education, health care, social or emotional goods. But severe deprivation will undermine most people's ability to reason about, make, and carry out simple plans on the basis of their desires.<sup>lxxvii</sup> Most people (in all states) need at least some food, water, shelter, education, health care, social and emotional goods to secure sufficient autonomy. As Nietzsche said, "the belly is the reason why man does not so readily take himself for a God."<sup>lxxviii</sup>

The conclusion of the Commitment Argument follows. Libertarians must agree that states have to do what they can to enable most of their subjects to secure some minimal amount of food, water, shelter, education, health care, social and emotional goods. Libertarians should be welfare liberals of a sort. Before considering objections to the Commitment Argument, it is worth pointing out some of its consequences. The kind of welfare state libertarians must accept is only as thick as the conception of autonomy that they endorse. If libertarians only accept the minimal conception of autonomy relied upon here, the welfare state they must adopt would be very minimal indeed. It need not, for instance, help those who can secure sufficient autonomy on their own, nor need it help those who cannot secure such autonomy at all. The welfare state libertarians must accept is also as radical as the non-aggression and actual consent principles they adopt. If states must literally avoid coercing all rights respecting individuals without their consent, states must literally do all they can to enable their subjects to secure sufficient autonomy.<sup>lxxix</sup> Still, the fact that libertarians should be any kind of welfare liberals is as significant as it is shocking. If all states had such welfare systems, many of the 18 million people who die every year of easily preventable poverty related causes might survive.<sup>lxxx</sup>

#### IV. Objections

There are many ways one might object to the Commitment Argument or the general argumentative strategy of this paper. First, one might object that states cannot be obligated to fix problems they did not create. Second, one might object that the conception of autonomy at issue in the Commitment Argument is too demanding for libertarian actual consent theorists to accept. Third, one might worry that this paper overlooks the libertarian's prized distinction between liberty and autonomy. Finally, one might object that actual consent theory is wildly implausible and so this paper's argumentative strategy is not interesting or worthwhile. This section will consider each of these objections in turn. In doing so, it will say a few words in defense of actual consent theory.

One objection to the Commitment Argument is that it implies that states can be obligated to fix problems they did not create. A state may not be responsible for the fact that some people are not able to secure sufficient autonomy. Cancer, for instance, can undermine individuals' autonomy even if states make their subjects better off with respect to the very conditions for autonomy at issue than they would otherwise be. Certainly, a state need not enable someone to secure sufficient autonomy if the state has not undermined but has, rather, improved that person's ability to secure sufficient autonomy.

Although this may initially sound convincing, the objection does not provide a reason why states are not obligated to help those whose autonomy they have not undermined. So, the objection amounts to little more than an incredulous stare. Recall the contract analogy. Samantha is incapable of autonomous consent. So, she has not, by agreeing to give me a large sum of money, incurred an enforceable debt to me. I can only

act legitimately if I do one of two things. I can either get her autonomous consent to give me the money, which (by supposition) requires doing what I can to enable her to secure sufficient autonomy, or I can stop coercing her. If I do not stop coercing her, I must get her autonomous consent, which requires doing what I can to enable her to secure sufficient autonomy. Otherwise, I act illegitimately. Similarly, states continually subject people to coercive rules. To be legitimate, they must, thus, do what they can to enable their subjects to secure sufficient autonomy. Recall that the libertarians we are addressing are not anarchists. So, they must agree that, in the actual world, states have positive (remedial) obligations to enable their subjects to secure those things that enable them to autonomously consent. Unless the objector can say more here, we can suppose that the above objection does not go through.

Another objection to the Commitment Argument is that the conception of autonomy at issue in the argument is too demanding for libertarians to accept. Libertarians might generally take consent at face value. They might hold that consent is free if it is not coerced. One need only be free from external constraint to freely consent on a libertarian theory. Autonomy is not required.

This objection has some force, but it cannot be entirely correct. The idea that free consent does not require some reasoning and planning ability is radically unintuitive. Any contract made with a person who cannot reason or plan is void. Both the case of Tamil and Samantha illustrate the general point. Tamil cannot make important decisions for herself because she is delirious. Just as Oxfam would not be justified in forcing Tamil to give her life savings to the poor if she deliriously agrees to do so, a state cannot legitimately force Tamil to abide by its rules if she deliriously agrees to do so. She lacks

the autonomy necessary for free agreement. Likewise, Samantha cannot be held to a contract because she lacks the ability to reason about, make, and carry out even the simplest plans on the basis of her desires. If Samantha agrees to be subject to a state, the contract is void; she has not freely agreed. Furthermore, if libertarians think the uncoerced consent of non-autonomous people is free, they will have to agree that very young children can freely consent. So, if a child consented without coercion to anything adults might freely consent to, it would be acceptable to hold the child to the contract. I leave the lurid details to the reader's imagination.<sup>lxxxix</sup> A better (although perhaps not sufficiently good) view is this: Coercive force can only be used against non-autonomous people, including children, if it advances their autonomy.<sup>lxxxii</sup>

Yet another objection is that this paper overlooks the distinction between liberty and autonomy. Libertarians only believe states have an obligation to respect individuals' liberty. They do not believe states must help people secure autonomy.

Like the first objection, this objection rejects the conclusion of the Commitment Argument without rejecting any of its premises. As I see it, the relevant part of the argument was roughly this. Because libertarians embrace either minimalism or consensualism, and minimalism violates individuals' rights, they must accept consensualism. That is, for a state to be legitimate it must secure its subjects' (actual) autonomous consent. For people to autonomously consent to a state they must be able to do so. If states coerce someone without securing their consent they act illegitimately. States do (because they are states) coerce their subjects without securing their consent. The only way for such states to be legitimate is for them enable those of their subjects to secure sufficient autonomy. In other words, to be legitimate states must enable their

subjects to secure sufficient autonomy. If someone requires assistance from the state to secure sufficient autonomy, the state must not just refrain from interfering with that person's liberty but help that person secure this autonomy. That is why the Commitment Argument is interesting. If it is correct, libertarians (surprisingly!) must agree that states have to enable people who cannot secure autonomy in any other way to secure such autonomy.

Finally, one might worry about this paper's general approach. Who cares, one might wonder, if libertarian actual consent theorists have to accept the Commitment Argument. Actual consent theories are implausible. Few who have considered consent theory have defended actual consent since Locke. If libertarians must accept actual consent theory, that is at most a reductio of libertarianism and, one might maintain, libertarianism was an implausible theory to begin with. So why bother arguing, as we have, that libertarian actual consent theorists must be welfare liberals?

One reason this objection does not go through is that actual consent theory is not that crazy. Or, so the rest of this paper will argue. If this is right and the Commitment Argument goes through, libertarians should accept some version of welfare liberalism. So, libertarianism may also be more plausible than one might initially think. Even if libertarianism remains implausible, however, libertarianism is gaining adherents and many people in the world cannot secure even the most minimal food, water, shelter, and so forth. So, even non-libertarians should be happy if this paper can convince libertarians that states have to help some of these people. Finally, it is important not to overlook this paper's philosophical virtues. It is incredible that libertarians should accept any welfare state. After all, libertarians notoriously reject welfarism.<sup>lxxxiii</sup>

This paper cannot take on the burden of completely defending actual consent theory. For present purposes, we could probably just assume that it is defensible.<sup>lxxxiv</sup> Nevertheless, actual consent theory has gotten short shrift in contemporary political philosophy. So, it is worth saying a few words on its behalf here. If we can show that actual consent theory is not crazy and may be defensible, we can rest content.

Actual consent theory can be motivated through examples. Suppose that the Philippines forced miners to work for the state. Actual consent theory provides a particularly compelling explanation for why this imperils the Philippine's legitimacy: The Philippines can force miners to work for the state if and only if they autonomously agree to do so. States cannot force people to do things they do not autonomously agree to do.<sup>lxxxv</sup>

Actual consent theory also has the advantage of being able to account for several key values in liberal theory – liberty, equality, and autonomy. As Allen Buchanan notes:

The theory of consent flowered at a time when two key liberal notions were coming into their own: the idea that liberty is the proper condition of human beings and the idea of the fundamental moral equality of persons. If we are all equal, what can justify... [a state] ...making, applying, and enforcing rules on us? How can the justified wielding of political power be squared with the fundamental equality of persons? And if liberty is our proper condition, how can the use of coercion... be justified?<sup>lxxxvi</sup>

One plausible answer to the first two questions about equality is that those who are coerced have freely consented to being coerced. The answer to the last question about liberty is that “we best preserve our liberty by the free choice of consenting to a political

power to enforce a regime of individual rights. Even better, actual consent theory reconciles power with equality and liberty in a way that respects autonomy.<sup>lxxxvii</sup> A state is justified in exercising a monopoly on coercive force over rights-respecting individuals, even for their own good, only if these individuals autonomously consent.

Furthermore, if actual consent theory is defensible, it would have some significant theoretical advantages. For instance, autonomous consent not only provides a plausible condition for legitimacy, it also provides a plausible basis for justified authority. Recall that a state has justified authority if and only if it is legitimate and individuals have a moral duty to comply with its rules.<sup>lxxxviii</sup> Autonomous consent to a state may legitimize and generate correlative obligations to obey the state. Actual consent theory may yield a simple, unified, theory of legitimacy and justified authority.

Nevertheless, there are several well known problems for actual consent theory. As we noted above, one might argue that some people will not freely consent to *any* state.<sup>lxxxix</sup> Some, for good or bad reasons, would never autonomously agree to be coerced.

Even if this is right, however, this objection is not conclusive. There are two reasons beyond those mentioned in the introduction to this paper that we should not reject actual consent theory even if it is impossible to secure everyone's free consent. First, actual consent theorists may believe that states can be more or less legitimate. If so, actual consent theorists can specify that the more autonomous consent a state can secure the more legitimate that state will be. If this move works, this objection just amounts to the claim that states cannot be perfectly legitimate. Second, this objection cannot get any hold on a consent theorist who says that it is only *insofar as realistically possible* that states must secure individuals' free consent to be legitimate. The thought is that if an

individual would not autonomously agree to any implementable state, actual states will not be less legitimate for failing to secure that individual's free consent. At least, the consent theorist can say this when some state is necessary to ensure important social goods. Of course, the consent theorist would need to defend these constraints (e.g., she would need to say a lot about what constitutes realistic possibility and what counts as an important social good). But, if this move is defensible, then the objection that some will not consent to any state will have no hold at all on actual consent theorists. And, the claim that states must only secure the consent of those who could realistically agree can be made consistent with the Commitment Argument. One need only interpret the premise that states are obligated to do *what they can* to enable their subjects to secure sufficient autonomy a bit more narrowly than we did above.

One might object that this reply misses the main point. One might argue that autonomous consent is not necessary for legitimacy because it is not valuable at all. People may refuse consent for bad reasons. Dissenters, for instance, may just want to free ride on the good will of others or believe that the Nazi party should be put into power. If a state cannot secure autonomous consent because its subjects have irrational or immoral preferences this does not undercut that state's legitimacy.

Although there may be something to this objection, there is also reason to worry about it. The example of the Philippines forcing its miners to work was meant to illustrate the competing intuition. But we can say more; we can support the example with an analogy. Most people would not think it is okay for an individual to coerce miners into working if the miners have not agreed to do so (at least as long as the miners are not violating anyone else's rights by refusing to work). For someone who is deeply

concerned about individual freedom, it seems to matter little, if at all, whether the miners are irrational, mean, or deluded as long as they are not violating others' rights. One might maintain that it is just as bad, if not worse, for a state to claim a *monopoly* on the use of coercive force over rights-respecting people without their autonomous consent. It is not okay to coerce rights-respecting people without their autonomous consent even if they are selfish, irrational, Nazi supporters.

Now, those who are concerned about more than individual freedom may remain unconvinced. They may think that autonomous consent is always required to legitimize states. Those who are concerned about more than individual freedom might argue that if coercion is necessary to achieve a great good, it is justified. If, for instance, the Philippines had to force its mean, deluded miners to work to prevent an international war, that would be justifiable.

Although some libertarians may not be able to accept this, there is something compelling about this objection. At least non-libertarian actual consent theorists can accept the claim that, all things considered, it may be better to have peace and coercion than war. There is a conflict between different values in the example.<sup>xc</sup> This kind of actual consent theorist can maintain, however, that the example leaves the arguments for actual consent theory intact. The example only shows that, sometimes, the best that a state can be is imperfectly legitimate. Sometimes a state's being imperfectly legitimate is better than the alternative. The important point for the actual consent theorist is just that free individual consent, including the autonomous consent of the most disagreeable miners, is necessary to fully legitimize the state.<sup>xc1</sup>

Although this does not constitute a definitive defense of actual consent theory, it should be clear that actual consent theory is not completely implausible. Even if libertarians must accept actual consent theory, libertarianism may be defensible. Hence, the Commitment Argument is not implausible just because it addresses libertarian actual consent theorists.

## V. Conclusion

This paper has argued that libertarians because they should be consent theorists should embrace some sort of welfare state; contrary to popular belief, they should agree that states must do what they can to enable most of their subjects to secure some minimal amount of food, water, shelter, education, health care, social and emotional goods. Libertarians should be welfare liberals. This is a shocking conclusion in light of the fact that libertarians vehemently reject welfarism.<sup>xcii</sup> It is also an important conclusion in a world where libertarianism is gaining adherents and many of those subject to states cannot secure even the most minimal food, water, shelter, and so forth. Finally, that actual consent theorists should endorse some kind of welfare state is an interesting conclusion in its own right if, as this paper has argued, actual consent theory is not that crazy.

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i The author would like to thank Thomas Christiano, Gillian Brock, Michael Gill, Jerry Gaus, Allen Buchanan, David Reidy, John Simmons, James Sterba, Rachana Kamtekar, Thomas Hill, Pilvi Toppinen, Alex London, Ben Fraser, Adam Cureton, Rick Furtak, J. Neil Bearden, Sally Scholtz, David Copp, Thomas Pogge, Bill Oberdick, Chris Brown, Jason Matteson, Will Braynen, Matt Zwolinski, Annie Baril, and participants on the blog Public reason for helpful comments, suggestions, and encouragement. She would also like to thank audiences at the University of North Carolina, Duke, the University of Washington, the University of Arizona, the University of Chicago Loyola, John Hopkins University, the University of Colorado, the University of Alberta, the University of North Florida, the American Philosophical Association, The 32nd Conference on Value Inquiry, the University of Northern Arizona, Carnegie Mellon University and Leeds University at which one or another predecessor to this paper was presented. She apologizes to

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anyone she has so carelessly forgotten to mention. Finally, she is terribly grateful for the support she received from the American Association of University Women and the Earhart Foundation during the course of the project.

ii There may be some exceptions to this formulation of this libertarian principle. It may be acceptable, for instance, to use coercive force against someone if that person autonomously consents (though this may not qualify as coercion). Most libertarians probably accept something like this, though, because they accept a non-aggression principle. Most libertarians believe that each person should be free to do what they like as long as doing so is compatible with others having similar freedom.

iii These libertarians cannot say that in fact there should not be states. Nor can they say states are in principle unjustifiable. We can reserve the term anarcho-capitalists for anarchists who are committed to libertarian rights in a state of nature.

iv John Simmons, "Consent Theory for Libertarians," *Social Philosophy and Policy* 22, no. 1 (2005), 331.

v We will qualify this formulation of actual consent theory below. We will also argue that (libertarians should agree that) people must have some positive as well as negative freedom to freely consent. People must be able to reason and plan as well as be free from external constraint for their contracts to be valid. This is what justifies referring to this kind of freedom as autonomy. For critique of actual consent theory see: Allen Buchanan. 2004. *Justice, Legitimacy, and Self-determination: Moral Foundations for International Law*. Oxford University Press: Oxford. On autonomy see: Joseph Raz. 1998. *The Morality of Freedom*. Clarendon Press: Oxford. Also see: Michael Bratman. 2005. "Planning Agency, Autonomous Agency." *New Essays on Personal Autonomy and its Role in Contemporary Moral Philosophy*. James Stacy Taylor ed. Cambridge University Press: Cambridge.

vi Some authors have argued for a similar conclusion. James Sterba, for instance, suggests that natural rights and consequentialist libertarians should be welfare liberals. He suggests that a minimal state, by enforcing property rights, prevents people from meeting their basic needs. Since individuals have a right to liberty, he says, there is a conflict of rights. The rich have a right to their property, the poor a right to take what they need from the rich. People must be able to do what morality requires (as the ought-implies-can principle directs). And the rich can but the poor cannot refrain from exercising their rights. So the minimal state must provide the poor with what they need if it is to be justified in protecting the property rights of the rich. Although Sterba's argument may address all libertarians, is not intended to address libertarians who accept actual consent theory. So, it is worth considering an argument for the conclusion that libertarians who accept actual consent theory are committed to a non-minimal state. Furthermore, this paper's argument will not rely on their being a conflict of liberties or the ought-implies-can principle. For Sterba's argument see: James Sterba, *The Triumph of Practice Over Theory in Ethics* (Oxford: Oxford University Press, 2005). For other arguments intended to encourage libertarians to embrace welfarism see: Thomas Pogge. 2001. "Eradicating Systemic Poverty: Brief for a Global Resources Dividend," *Journal of Human Development*. 2(1): 59-77. Also see: Author. Reference withheld.

vii Roderick Long and Tibor Machan, *Anarchism/Minarchism: Is a Government Part of a Free Country?* (London: Ashgate Press, 2008).

viii This can be weakened a bit to take into account the fact that states do not always succeed in exercising a monopoly on coercive force within their borders, but I set the relevant qualifications aside here.

ix Legitimacy, as we will use the term, comes in degrees. Some people believe legitimacy is an all or none affair. This is not a substantive disagreement. Those who hold a binary theory of legitimacy can specify that a state is legitimate in the binary sense if it surpasses a threshold of legitimacy in the degree sense. Understanding *legitimacy* as a degree term, allows one to specify different thresholds on legitimacy for different purposes. In what follows, one need only suppose that imperfectly legitimate systems must be reformed. For an example of a binary theory see: Allen Buchanan, *Justice, Legitimacy, and Self-determination: Moral Foundations for International Law* (Oxford: Oxford University Press, 2004). For discussion of the degree conception of legitimacy see: John Simmons, *Moral Principles and Political Obligations* (New Jersey: Princeton University Press, 1979).

x Robert Landenson, "In Defense of a Hobbesian Conception of Law," *Philosophy and Public Affairs* 9, no. 2 (1980), 134-59.

xi See: Thomas Christiano, "Political Authority," *Stanford Encyclopedia of Philosophy* (2004) Available: <<http://plato.stanford.edu/entries/authority/>>.

xii Ibid.

xiii John Simmons, *Moral Principles and Political Obligations* (New Jersey: Princeton University Press, 1979).

xiv Presumably, states must secure the consent of people in every generation.

xv I believe there is a relatively straight-forward argument from libertarian principles to the conclusion that states should be legitimate. Namely, since individuals have a natural right to freedom, others (including states) must be justified in exercising coercive force over them. For details, see Author, reference withheld.

xvi See: Thomas Christiano, "Political Authority," *Stanford Encyclopedia of Philosophy* (2004) Available: <<http://plato.stanford.edu/entries/authority/>>.

xvii John Simmons, "Justification and Legitimacy," *Ethics* 109, no. 4 (1999), 770.

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xviii The interested reader may refer to Kant and Rawls' discussions that are relevant to this issue: See Immanuel Kant, *On the Common Saying: What is True in Theory Does Not Work in Practice* (Cambridge: Cambridge University Press, 1970). Alternately, see John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993).

xix It is not clear to me what one should say on this point. States should not be blameworthy for not securing all of their subjects' autonomous consent if there is nothing they could have done to secure this consent, but states may still be imperfectly legitimate if they exercise coercive force over those who have not autonomously consented.

xx More work is necessary to finesse this point.

xxi If people autonomously consent to a state then the state must adhere to its part of the bargain, it is not clear what, if any, obligations states would have to those who relinquish their ability to autonomously consent. We can suppose that autonomous consent can include tacit consent if people can realistically avoid tacitly consenting.

xxii If one prefers this understanding of the Commitment Argument, its conclusion should also embody this qualification.

xxiii John Simmons, "Consent Theory for Libertarians" *Social Philosophy and Policy* 22, no. 1 (2005), 332.

xxiv Robert Nozick, *Anarchy State and Utopia* (New York: Basic Books, 1974), 58; 283; 331. Cited in *ibid*: 336.

xxv David Boaz, *Libertarianism: A Primer* (New York: Free Press, 1997), 127. Cited in *ibid*: 333.

xxvi *Ibid*: 335.

xxvii *Ibid*: 337.

xxviii A different argument for a state is that one is justified if it is rationally required. The alternative, anarchy, is a war of all against all. So, a state is justified. There are two things to say in reply. 1. Why does a state being rationally required justify it in exercising coercive force over those who do not agree or do not think that it is justified in exercising such force over them? 2. It is not clear that a state is rationally required. Anarchy may not lead to a war of all against all, presumably private protective organizations of various sizes would be allowed and some anarchists imagine something like states just subject to overlapping jurisdictions with the ability to monitor each others' activities. Furthermore, actual anarchies have not always resulted in war and some states are certainly worse than some anarchies. At best, states will be rationally required only for those people who would do better under those states than under the alternative anarchies. For relevant case studies and evidence see: Roderick Long and Tibor Machan, *Anarchism/Minarchism: Is a Government Part of a Free Country?* (London: Ashgate Press, 2008).

xxix Robert Nozick, *Anarchy State and Utopia* (New York: Basic Books, 1974), 134.

xxx Nozick's attempt to limit the compensation principle's application to those times when significant benefits can be secured by rights violations and others have a right to prevent people from exercising their rights does not address the key problem. Rights are still being violated.

xxxi John Simmons, "Consent Theory for Libertarians" *Social Philosophy and Policy* 22, no. 1 (2005), 338.

xxxii *Ibid*: 338.

xxxiii Libertarians might argue, here, that any individual or protective organization other than a state will not have safe methods of enforcing rights. They might think that safe methods must be ones everyone agrees are safe but that no individual's methods will secure such agreement. Locke, for instance, may have held some such view. This argument raises a few worries, however. First, why would a state be more likely to use methods everyone agrees are safe than individuals? If a state does not use such methods then it is hard to see how the state's methods of rights enforcement are better justified than independents' methods. Second, why does lack of convergence on what constitutes a safe method mean that the method is not safe? Just because some people cannot recognize safe methods of rights enforcement does not mean that such methods are not safe. See, however: John Locke, *Two Treatises of Government*, ed. Thomas Hollis (London: Laslett, 1764).

xxxiv For other versions of Simmons' arguments see: Roderick Long and Tibor Machan, *Anarchism/Minarchism: Is a Government Part of a Free Country?* (London: Ashgate Press, 2008).

xxxv Tibor Machan offers the only response to this argument I have seen. He says that if people just bought the protective services from the best agency around and it came to have a monopoly on force, no one's rights would be violated. Roderick Long and others respond that it is still illegitimate to prohibit others from entering the market. But Machan suggests that this is no more problematic than allowing a state to set up shop in a certain area as long as people can shop elsewhere. I do not think that libertarians can allow stores to have monopolies on sales in a particular area without justification. So even if states had open borders, saying that people can move elsewhere does not seem like a good response. For these arguments see: *ibid*.

xxxvi Although we will assume that autonomous consent is necessary and sufficient for legitimacy, this paper's conclusion will follow if libertarians only agree that autonomous consent is a necessary condition for legitimacy.

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xxxvii The argument we are defending does not show that the welfare state libertarians should accept is responsible for helping those who are incapable of autonomy. Another argument might have this consequence, however.

xxxviii As is common in political philosophy, this paper considers only policies that could be implemented in the real world for (and by) real people in the foreseeable future.

xxxix Presumably some ways of securing autonomous consent (e.g. coercing third parties) will be ruled out by other conditions for legitimacy actual consent theorists endorse. Still, it follows from actual consent theory and the nature of states that full legitimacy requires a state to do whatever is possible to enable its subjects to autonomously consent to its rule.

xl If we simply lack the resources to enable everyone who has the potential to secure sufficient autonomy to do so, then further restrictions will be necessary. I discuss these issues elsewhere. See: Author, reference withheld.

xli Assuming, that is, that these children are subject to states.

xlii The rules regulating immigration raise questions here. Does a Thai rule prohibiting immigration apply to the same people as a Thai traffic law? For now, we can suppose that immigration laws only apply to those who are not Thai when they reach or reside within that state's boundaries. Were non-citizens to enter the state's territory they would be ejected. Presumably, however, libertarians should care about all those the state coerces, even non-citizens. This is why they cannot reply to the following argument by defining subjects just as those who can autonomously consent to a state.

xliii Joseph Raz considers harder questions about what autonomy requires in *The Morality of Freedom*. He considers the case of a man trapped in a pit with enough food and water to survive. The man is precluded from doing anything besides choosing when to meet his basic needs. It would be reasonable to think that with such constrained options such a person is not autonomous, but even this much is not required for the Commitment Autonomy to succeed. See: Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1998).

xliv Autonomy probably comes in degrees. One needs to be able to secure whatever amount of reasoning and planning ability one needs to autonomously consent to a state. To make this idea precise, however, we might draw a threshold on the autonomy using the notion of competence. For some relevant work see: Allen Buchanan and Dan Brock, *Deciding for Others*. (Cambridge: Cambridge University Press, 1990). Although one need not be perfectly rational to be competent, adaptive preferences might, for instance, undermine competency.

xlv The Commitment Argument might apply even to libertarians who do not accept actual consent theory as long as they think some kind of autonomous consent is necessary.

xlvi I assume here and in what follows that at least some of these subjects respect others' rights.

xlvii Recall that these libertarians are not anarchists in any sense. They cannot say that in fact there should not be states. Nor can they say states are in principle unjustifiable. This last point explains why libertarians cannot get out of the Commitment Argument by saying states need not exercise a monopoly on coercive force.

xlviii One might worry that libertarianism will not remain distinctive if it requires a welfare state. As we will see, however, most libertarian actual consent theorist will only accept a much more minimal and radical welfare state than most welfare liberals accept. The Commitment Argument only shows that states must ensure that their subjects can secure autonomy, not that they actually secure autonomy. It does not even show that states must enable their subjects to survive diseases that do not threaten their autonomy. But since there are many people in the world who cannot secure autonomy and most life threatening diseases do undermine autonomy, the Commitment Argument is still important.

xlvi The Commitment Argument must be qualified in several ways which will be discussed in the final section of this paper.

l Martha Nussbaum, *Women and Human Development: The Capabilities Approach* (Cambridge: Cambridge University Press, 2000).

li See: Thomas E. Hill Jr. "The Kantian Conception of Autonomy," in *The Inner Citadel: Essays on Autonomy*, ed. John Christman (Oxford: Oxford University Press, 1989). Also see: Onora O'Neill, *Faces of Hunger: An Essay on Poverty, Justice and Development* (London: Allen and Unwin, 1986).

lii James Griffin, *Human Rights: The Incomplete Idea*. Working Draft (Oxford: Corpus Christi College, 2006).

liii John Rawls, *A Theory of Justice* (Cambridge: Belknap Press, 1971).

liv On this see: Michael Bratman, "Planning Agency, Autonomous Agency," in *New Essays on Personal Autonomy and its Role in Contemporary Moral Philosophy*, ed. James Stacy Taylor (Cambridge: Cambridge University Press, 2005).

lv John Rawls, *A Theory of Justice* (Cambridge: Belknap Press, 1971).

lvi See, for instance.: Michael Bratman, "Planning Agency, Autonomous Agency," in *New Essays on Personal Autonomy and its Role in Contemporary Moral Philosophy*, ed. James Stacy Taylor (Cambridge: Cambridge University Press, 2005).

lvii Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1998).

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lviii The importance of the qualifier *some* is just this: One need not be able to carry out every simple plan that one might want to carry out to have this component of autonomy. Still, the ability to carry out some simple plans (and, in particular, those plans that will allow one to consent to a state) is a necessary component of the kind of autonomy at issue in the Commitment Argument.

lix Joel Feinberg, *Social Philosophy* (New Jersey: Prentice-Hall Inc., 1973).

lx The conditions for autonomy I have set out do not prevent one from acting from poor reasons (e.g. wishful thinking). If one thinks this is not compatible with autonomy, additional criteria for autonomy will be necessary to rule out this possibility.

lxi In defense of an autonomy-based conception of needs see: Gillian Brock, *Necessary Goods: Our Responsibilities to Meet Others' Needs* (New York: Roman and Littlefield Publishers Inc., 1998).

lxii This is not to say that it is only valuable for people to be able to attain some minimal amount of food, water, shelter, education, health care, social and emotional goods because doing so enables them to secure sufficient autonomy. Attaining these things may be valuable for many reasons. The important point is that, in the actual world, doing so is necessary for most people (in all states) to secure sufficient autonomy.

lxiii As with autonomy, what is sufficient to enable subjects to secure these things will vary, but the basic idea is that the state must do whatever it can to ensure that the only reason for one not to actually secure these things is that one has chosen not to do so.

lxiv Scurvy results from a lack of vitamin C, beri-beri from a lack of thiamine, pellagra from niacin deficiency, and macrocytic and microcytic anemia from folic acid and iron deficiencies, for instance. There is also a lot of evidence that decent nourishment is important for good cognitive functioning. Children's mental functioning can even be impaired if their mothers do not receive proper nourishment during pregnancy. See: Howard Leathers and Phillips Foster, *The World Food Problem: Tackling the Causes of Undernutrition in the Third World* (Colorado: Lynne Rienner Publishers, 2004).

lxv Keratomalacia which results from vitamin A deficiency, kwashiorkor which results from protein deficiency, and iodine deficiencies can all lead to severe disabilities and death. See: *Ibid.*

lxvi *Ibid.*

lxvii The feedback loop between malnutrition and illness also goes in the other direction – illness can promote dietary deficiencies just as dietary deficiencies can promote illness. *Ibid.*

lxviii *Those who must live in unsanitary conditions are likely to contract diseases like dysentery, tetanus, typhoid, cholera, or hepatitis. Red Cross, "American Red Cross Urges Public Health Precautions," (Washington D.C.: Red Cross, 2007). Available at: <[http://www.redcross.org/pressrelease/0,1077,0\\_172\\_4554,00.htm](http://www.redcross.org/pressrelease/0,1077,0_172_4554,00.htm)>.*

lxix World Health Organization, "10 Facts on Preventing Disease Through Healthy Environments," (Geneva: World Health Organization, 2007). Available at: <[http://www.who.int/features/factfiles/environmental\\_health/en/index.html](http://www.who.int/features/factfiles/environmental_health/en/index.html)>.

lxx Bed nets can prevent many cases of dengue fever and malaria, for instance. Center for Disease Control and Prevention, "Vector Control," (Atlanta: Center for Disease Control and Prevention, 2007). Available at: <[http://www.cdc.gov/malaria/control\\_prevention/vector\\_control.htm](http://www.cdc.gov/malaria/control_prevention/vector_control.htm)>.

lxxi See: Michael Woolcock, "The Place of Social Capital in Understanding Social and Economic Outcomes," *Isuma*, 2, no. 1 (2001). Available at: <[http://www.isuma.net/v02n01/woolcock/woolcock\\_e.shtml](http://www.isuma.net/v02n01/woolcock/woolcock_e.shtml)>. Also see: Rodger Doyle, "Calculus of Happiness: Assessing Subjective Well-being Across Societies," *By the Numbers*. Scientific American. November 2002.

lxxii Michael Marmot, *Status Syndrome: How your Social Standing Directly Affects your Health and Life Expectancy* (London: Bloomsbury, 2004).

lxxiii Stress may contribute to a host of autonomy-undermining mental disorders. Stress can, for instance, cause panic attacks and depression..

Psychological disorders can reduce the ability of one's immune system to fight infection. See: David B. Beaton, "Effects of Stress and Psychological Disorders on the Immune System," Rochester Institute of Technology Working Paper (New York: Rochester Institute of Technology, 2003). The causal evidence suggests that perception of low social standing may increase stress which reduces immune functioning and can harm health in other ways as well. Rodger Doyle, "Calculus of Happiness: Assessing Subjective Well-being Across Societies," *By the Numbers*. Scientific American. November 2002.

Also see: Michael Marmot, *Status Syndrome: How your Social Standing Directly Affects your Health and Life Expectancy* (London: Bloomsbury, 2004).

lxxiv See: Michelle Cullen and Harvey Whiteford, "Inter-relations of Social Capital with Health and Mental Health," Mental Health and Special Programs Branch Commonwealth Department of Health and Aged Care Discussion Paper (Canberra: Commonwealth Department of Health and Aged Care, 2001). See also: Michael Woolcock, "The Place of Social Capital in Understanding Social and Economic Outcomes," *Isuma*, 2, no. 1 (2001).

Available at: <[http://www.isuma.net/v02n01/woolcock/woolcock\\_e.shtml](http://www.isuma.net/v02n01/woolcock/woolcock_e.shtml)>. Finally, see: Christopher G. Hudson, "Socioeconomic Status and Mental Illness: Tests of the Social Causation and Selection Hypotheses," *American Journal of Orthopsychiatry* 75, no. 1 (2005), 3–18.

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lxxv Those who lack self-esteem are more likely to develop some devastating psychological problems. Karen Brock, “‘Its Not Only Wealth that Matters it’s Peace of Mind Too’: Review of Participatory Work on Poverty and Illbeing,” (Birmingham: Institute of Development Studies, 1999).

lxxvi It is worth noting that states might not need to enable some people to obtain an education sufficient to secure a decent job if they provide these people with other things that enable them to secure sufficient autonomy e.g. food stamps and free health care. In our world, however, most people will have to secure this much education to secure sufficient autonomy.

lxxvii Onora O’Neill, *Bounds of Justice* (Cambridge: Cambridge University Press, 2000).

lxxviii Fredrich Nietzsche, *Beyond Good and Evil*, trans. Hellen Zimmern (New York: Prometheus Books, 1989), 96.

lxxix Helping some people secure sufficient autonomy may be required even if it is very expensive. Though, as noted above, ways of securing autonomous consent that require coercion may be ruled out by other conditions for legitimacy libertarians endorse. Still, it follows from actual consent theory and the nature of states that full legitimacy requires a state to do whatever is possible to enable its subjects to autonomously consent to its rule. So, libertarians may have to specify a way of making tradeoffs between mutually incompatible conditions for legitimacy. James Sterba’s argument may come into play here. See ft. nt. vi for details.

lxxx Many who are not poor also suffer from autonomy undermining disabilities – e.g. some of those who have cancer due to smoking. Although it is probably impossible for a state to be fully legitimate and enable all those who can secure sufficient autonomy to do so, states can be more or less legitimate. So, states should probably implement anti-smoking programs, for instance. They may not, however, need to prevent people from participating in all risky activities. There may be other reasons to allow people to take on some risks (e.g. they have autonomously chosen to do so).

lxxxi At least this is so assuming that the full range of libertarian contracts are permissible for adults and that the libertarian cannot provide a different reason why children could not freely consent to anything to which adults could freely consent.

lxxxii It would be better yet to say that coercive force can only be used against the non-autonomous to advance their interests. Libertarians, however, might not be able to accept this way of formulating the relevant constraint. Presumably, though, neither way of formulating the constraint commits one to the view that abortion is impermissible if fetuses are not persons.

lxxxiii This paper may, however, bring to the fore some other tensions within libertarianism. If enabling people to secure sufficient autonomy requires coercion then no state may be fully legitimate on libertarianism. See: James Sterba, *The Triumph of Practice Over Theory in Ethics* (Oxford: Oxford University Press, 2005).

lxxxiv For further defense of actual consent theory see: John Simmon, *Moral Principles and Political Obligations* (New York: Princeton University Press, 1979). Also see: John Simmons, *Moral Principles and Political Obligations* (New Jersey: Princeton University Press, 1979). For further references, see: John Simmons, “Justification and Legitimacy,” *Ethics* 109, no.4 (1999), 770. Finally see: Harry Beran, *The Consent Theory of Political Obligation* (New York: Coom Helm, 1987).

lxxxv Obviously, other theories of legitimacy can account for the fact that the Philippines should not (generally) coerce its miners. The intuition that consent is required is strongest in these kinds of cases, however.

lxxxvi Allen Buchanan, *Justice, Legitimacy, and Self-determination: Moral Foundations for International Law* (Oxford: Oxford University Press, 2004), 241-2.

lxxxvii *Ibid.* Page 242.

lxxxviii *Ibid.* Page 237.

lxxxix Allen Buchanan does not think it is even feasible to try to ask everyone whether or not they consent to the state.

xc There may even be a conflict between different conditions for legitimacy.

xci Thomas Christiano raises another objection to actual consent theory. He notes that any consent procedure that is supposed to legitimize states will itself be controversial. There are many theories about what kind of consent procedure is necessary. So Christiano argues that, to be legitimate, the consent procedure itself must secure individuals’ autonomous consent. A regress looms. He says it is not okay to prohibit people from doing whatever series of actions constitute free consent (on pain of legitimizing the state and ending up obligated to obey its dictates). This is an illegitimate restriction of individuals’ freedom unless they freely consent to the restriction. If individuals cannot be subject to others’ commands without justification then people cannot be obligated to abide by the results of a consent procedure they have not chosen. This, Christiano concludes, means that the process by which a consent procedure is chosen must itself secure autonomous consent. But why must all institutionalized consent mechanisms be ones everyone autonomously agrees upon. Some things that restrict individual liberty do not raise questions of legitimacy. For instance, a consent mechanism that specifies that you must pledge allegiance to the state on the fifth Tuesday of a month at noon in a court of law will not unduly restrict most individuals’

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freedom. The act from which people are restricted is not one which most would otherwise do. There are probably much more grievous interferences with individual liberty for less good purposes that we do not think need to be legitimized. Certainly, others even (and perhaps especially) in an anarchical society will restrict one's freedom in a variety of ways without these restrictions constituting the kind of coercion that requires legitimation. Christiano's objection only shows that we need to be careful in designing consent mechanisms so that they do not interfere with individuals' liberty much, if at all. This will not only help ensure that the interference need not be legitimized but is likely to make autonomous agreement to the state embodying the procedure easier to secure. Libertarians should agree on this point as some kind of binding consent procedure is necessary to legitimize all kinds of contracts.

xcii If this requires illegitimate taxation then this paper's argument can play a role in an argument for the stronger conclusion that libertarianism is incoherent or self-defeating. Libertarians are not anarchists yet they could be committed to the proposition that no state is legitimate.