

## *Libertarian Welfare Rights?*<sup>i</sup>

### I. Introduction

This paper argues that libertarians should endorse some welfare rights as human rights. Where, human rights are understood as rights that all states must guarantee to their subjects as a condition of legitimacy. More precisely, it argues that libertarians, because they should be actual consent theorists, must agree to the following condition for state legitimacy: 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. This should be a striking conclusion as most libertarians reject welfarism and positive social and economic rights. They do not think legitimate states must ensure that any of their subjects can secure food, water, shelter, education, health care, social or emotional goods.

This paper will not address every libertarian. Some (e.g. left-) libertarians already accept its conclusion and others are better characterized as anarchists than libertarians. Rather, the libertarians this paper addresses do not already accept its conclusions and believe there should be some kind of (e.g. minimal) state that exercises a monopoly on coercive force over its subjects.<sup>ii</sup> The libertarians this paper addresses also 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>iii</sup>

The paper argues that libertarians who accept this much (henceforth *libertarians*) should accept actual consent theory.<sup>iv</sup> They should agree that states are legitimate if and only if they secure their subjects' autonomous consent.<sup>v</sup> This paper then argues that libertarians, because they should be actual consent theorists, should endorse some welfare rights as human rights; 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>

One might not think it is worth arguing in this way that libertarians should accept any kind of welfare rights. 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 nasty 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 nasty 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, coercion is justified if it is necessary to achieve a great good. But few libertarians accept the premise that coercion is necessary to achieve a great good, and the libertarians this paper addresses 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 argue 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 endorse some welfare rights as human rights. Finally, section IV considers further objections to this argument and actual consent theory.

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

Recall that the libertarians we are addressing believe that states 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 it has moral permission to be the only agent making coercive rules and give 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, this paper will not assume 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. 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>xiv</sup> Although this paper 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 coercive force over rights-respecting people if and only if these people have freely consented.<sup>xv</sup>

Actual consent theorists need not think states must get all of their subjects' autonomous consent to every coercive act. Perhaps, as John Simmons suggests, even "the Third Reich was justified in prohibiting rape and punishing rapists."<sup>xvi</sup> Actual consent theorists may think that some acts are impermissible violations of individual rights and these acts can be legitimately prevented by any person or institution even if prevention requires coercion. Actual consent theorists hold, however, that states can legitimately exercise coercive force over rights-respecting subjects if and only if they secure these subjects' autonomous consent. (Actual autonomous consent can include tacit consent if people can realistically avoid tacitly consenting.)

Actual consent theorists need not hold that subjects must autonomously agree to every single part of their state for it to be legitimate. Actual consent theorists might only believe

subjects must autonomously agree to the general principles underlying their state(s). Alternately, actual consent theorists might require only that individuals autonomously agree to the general structure of their state(s), not every subsidiary rule and institution.<sup>xvii</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; coercing anyone without their consent is unacceptable. But, on weaker versions of actual consent theory a state may not need everyone's autonomous consent to be legitimate. States do not need the consent of the permanently comatose, for instance.<sup>xviii</sup>

Finally, actual consent theorists might not think subjects must autonomously consent to their states, if subjects autonomously agree to relinquish their right to consent. It is not clear what, if any, obligations states would have to those who relinquish their ability to autonomously consent. But, whatever obligations states would have in this case, actual consent theorists must at least agree to the following condition for legitimacy: States require their subjects' autonomous consent unless their subjects autonomously relinquish their right to do so.

Actual consent theory can accommodate all of the above qualifications and the arguments below will still go through with slight emendations. So, this paper will leave these qualifications implicit where their importance is minor.

Consider, then, 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>xix</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>xx</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 minimal states that protect basic libertarian rights can be justified. A widely held (right) libertarian proposition, for instance, 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>xxi</sup> Minimal states only protect the basic 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 non-minimal states can be legitimate. Subjects can legitimize non-minimal states by free consent. But if legitimate states must be minimal, 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 states can be legitimate so people cannot legitimize a state that does more than (or fails to) protect basic civil, political, and property rights even by free consent (so consensualism is false). Libertarians must either embrace consensualism or minimalism.<sup>xxii</sup>

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 consensuallist theory of legitimacy. Nozick does not try to show that anarchism is 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 is just 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 consensualism. Rather, he suggests that in an anarchical society, one protective organization will become dominant and that organization can prohibit independents from defending their own rights or hiring others to do so as long as it compensates them for any losses.

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>xxiii</sup> What justifies some in taking away others' rights if those people have not freely consented to be compensated for this deprivation?

Nozick might respond that only a minimal state can be legitimate without free consent. He might argue that, since the minimal state only enforces pre-existing rights, it need not secure such consent. At the same time, Nozick might 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 noted above, 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>xxiv</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>xxv</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>xxvi</sup> How can Nozick restrict the freedom of rights-respecting individuals in this way without their free consent?<sup>xxvii</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>xxviii</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>xxix</sup> Instead of giving up their contractualist commitments, libertarians should give up their minimalism. Libertarians should be actual consent theorists. 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.

Some libertarians, however, try to defend a state having a monopoly on coercive force by distinguishing between different ways the monopoly could come about.<sup>xxx</sup> Nozick even hints at

something like this at some points. Tibor Machan, for instance, says that if a state just comes to have a defacto monopoly that would not violate anyone's rights.

But it is not clear how this response is supposed to go. If the process of creating a defacto monopoly (i.e. a state) requires consent, this response does not challenge the idea that consent is required for legitimacy. If, more plausibly, the process of creating a defacto monopoly does not require consent, it is not clear why the state does not violate individuals' rights. This argument does not explain why it is legitimate for such a state to prohibit some from defending their own rights and others from entering the market in protective force.

Machan suggests, however, that monopolies on force might be no more problematic than business monopolies. Most businesses have at least a limited monopoly on land. Most businesses do not preclude competition in other locations but they do not allow others to set up shop in the exact same location. This does not violate anyone's rights. So, Machan contends, states do not need to secure everyone's consent to exercise force within a limited area. As long as people can go elsewhere if they prefer to purchase protective services from someone else, Machan concludes, a state would not violate anyone's rights.

Although Machan's analogy is compelling, neither stores nor states can prohibit competitors from operating where they like unless their competitors are violating rights in doing so. Most stores have property rights in a particular location. So, they can legitimately prohibit anyone (including their competitors) from operating on their property without consent as long as their competitors can operate somewhere. States, on the other hand, do not have property rights to everything within their borders. Normally, they do not have property rights in the property of those who have not consented to give up their property rights. Nor do states have property in those people who do not consent to the state having those rights. So the libertarian state violates rights when it keeps other rights-respecting agencies and individuals from protecting rights (just like a store would violate rights if it kept competitors from operating on land its competitors own). Saying people can move elsewhere does not answer the objection.

Perhaps libertarians could defend minimalism in a different way.<sup>xxxii</sup> Still Simmons' claim that any monopoly on coercive force violates individual rights does not hang on the details of Nozick's theory, in particular.<sup>xxxiii</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>xxxiiii</sup>

### III. Why Libertarians Should Endorse Some Welfare Rights as Human Rights

Assuming, then, that libertarians should accept actual consent theory, the rest of this paper will argue that libertarians should accept the following *Human Rights Argument*.<sup>xxxv</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 these people to secure some minimal amount of food, water, shelter, education, health care, social and emotional goods.

Before defending this argument, consider how, if it goes through, it commits libertarians to endorsing some welfare rights.

As noted at the outset, human rights are rights that all states must guarantee subjects as a condition of legitimacy. So, if libertarians agree that legitimate states must enable any of their subjects to secure any preconditions of welfare, they believe that there are some welfare rights. So, if the Human Rights Argument goes through, libertarians must endorse some welfare rights. This should be relatively uncontroversial so let us turn to the Human Rights Argument now.

## The First Premise

The first premise of the Human Rights Argument is this: To be legitimate, states must do what they can to enable their subjects to secure sufficient autonomy. 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>xxxv</sup> A state 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>xxxvi</sup> One is capable of securing sufficient autonomy when one could secure sufficient autonomy under some implementable state.<sup>xxxvii</sup> 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>xxxviii</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>xxxix</sup>

Second, what does *enabling* someone to secure sufficient autonomy require? The basic idea is that states must do whatever they can to ensure that their subjects are *able* to secure sufficient autonomy. Very roughly, when one is *able* to secure sufficient autonomy the only *reason one will not become and remain autonomous is that one autonomously relinquishes one's ability to remain autonomous*. Because this account of *enabling* plays a large role in the Human Rights Argument, it is worth pointing out that 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>x1</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: *commitments*).<sup>xli</sup> This paper will say more about these requirements for autonomy below but the basic idea should do for now.<sup>xliii</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.<sup>xliiii</sup> *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, for states to be legitimate, their subjects must, insofar as possible, *be able* to secure sufficient autonomy to consent to their rule.<sup>xliv</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 potentially 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.

Recall, however, that the libertarians this paper addresses believe that, to be legitimate, states can only exercise coercive force over rights-respecting individuals (autonomous or not) 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 potentially autonomous people merely for others' benefit as long as these people respect others' rights. The view that states can coerce these people just to benefit others is radically unintuitive. States do not have license to, for instance, coerce children just to benefit society.

Perhaps libertarians could posit the following counter example to the claim that it is unacceptable to coerce the merely potentially autonomous except to protect those individuals' liberty. Suppose that a society contained only one potentially autonomous person. If everyone else in that society gave up their right to self defense to the dominant protective association, this association could legitimately protect everyone against this person. Libertarians might argue the protective association would have a monopoly on coercive force and qualify as a state. So, libertarians might go on, a legitimate state could come into existence without consent

Some potentially-autonomous people pose a significant threat to others. Anyone, including a dominant protective organization, can defend people against these threats. But, rights-respecting people, autonomous or not, retain their rights. Even if I am currently incapable of using my property, others are not justified in taking it away from me. Similarly, the fact that some potentially-autonomous people cannot use their rights to protect themselves does not justify others in usurping or violating these rights. And it is important not to overlook the fact that some potentially-autonomous people are rights-respecting and can protect themselves or hire others to do so. So the fact that the dominant protective association could legitimately protect everyone against a potentially-autonomous person violating others' rights does not show that this association has a monopoly on coercive force. The proposed counter-example does not show that such a monopoly can be justified. As long as potentially-autonomous people respect others'

rights, they retain the right to protect their own rights and hire other protective associations to do so.

The Legitimacy Argument probably addresses even libertarians who think it is acceptable to coerce (rights-respecting) potentially-autonomous people for others' benefit. Though, the obligations that the Legitimacy Argument can convince these people to accept will, unsurprisingly, be weaker. The argument entails that a state must help the temporarily non-autonomous who would attain autonomy at some time but would do so sooner with that state's assistance. Otherwise, that state will illegitimately coerce these people at the moment when they attain autonomy without the state's help. Exploring this possibility at length will, however, take us too far afield.<sup>xlv</sup>

At least, the Human Rights Argument addresses those libertarians who accept the formulation of actual consent theory set out above; 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, this paper 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 they can 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 people who cannot secure sufficient autonomy. *If states continue to exercise a monopoly on the use of coercive force over their subjects, legitimacy requires that states do whatever they can to enable their subjects 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, libertarians might point out, protective organizations can enforce the rights of those who actually autonomously consent to their rule. They just cannot enforce the rights of those who do not or cannot autonomously consent.

This objection fails to appreciate one of two things. First, it may wrongly presuppose that the libertarians this paper addresses can give up their commitment to a state. They cannot. Recall that these libertarians are not anarchists. They cannot say that in fact there should not be states. Nor can they say states are in principle unjustifiable.<sup>xlvii</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. 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 must 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>

Perhaps some libertarians will prefer to accept anarchy than minimal obligations to the global poor.<sup>l</sup> And, while this paper will provide a few reasons to reject anarchism below, it obviously cannot provide definitive reason to reject the view. Fortunately, however, most moderate libertarians should accept some minimal obligations to the global poor rather than anarchy and this paper is merely trying to extend the consensus on obligations to the global poor. But, even if this paper fails in its primary objective and convinces all libertarians to become anarchists, it will have eliminated one of the main philosophical positions in the literature on global justice.

#### The Second Premise

The final step in defending the Human Rights 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 these 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 the Human Rights Argument yields 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 commitments. This much is necessary for autonomous consent. Individuals who cannot reason about, make, and carry out some simple plans on the basis of their commitments may be unable to resist outside suggestion or be torn apart by inner conflict.<sup>li</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 more robust welfare rights. As long as libertarians accept this much, however, it will follow that they must accept some welfare rights.

To be able to reason on the basis of one's commitments, 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 one to acknowledge the categorical imperative as unconditionally required.<sup>lii</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, one must have some instrumental reasoning ability.

To make some simple plans on the basis of one's commitments 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>liii</sup> Even if one is 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>liv -lv</sup> There are many ways of making sense of this idea. It is possible, for instance, to analyze the ability to make some simple plans on the basis of one's commitments in terms of the ability to make one's motivating commitments generally coherent. Alternately, it is possible to 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 commitments in terms of ordering one's ends perhaps by drawing on John Rawls' work on plans of life.<sup>lvi</sup> It is not necessary to explicate the ability to make some simple plans on the basis of one's commitments further here since these are all standard moves in the literature on autonomy.<sup>lvii</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>lviii</sup> To carry out some simple plans one must be able to carry out those actions necessary to bring these plans to fruition. One must have some freedom from coercion and constraint; one must have some internal control over one’s body. If one cannot carry out some simple plans there is no way that one can freely consent to be subject to a state.<sup>lix</sup>

Consider how autonomy is impaired when one cannot reason about, make, and carry out some simple plans on the basis of one's commitments. Suppose that Tamil becomes ill with malaria. Suppose that she suffers from delusions. When she is delusional, Tamil is unable to reason about, make, and carry out simple plans on the basis of her commitments. 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 commitments are like cars on city streets going this way and that, unconstrained by traffic signals.<sup>lx</sup> Tamil lacks rules with which she can reason about her commitments. 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 commitments. 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 commitments. 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 commitments. Emal has sufficient autonomy to autonomously agree to be subject to a state.<sup>lxi</sup>

Although this paper has not given a systematic defense of the requirements for autonomy necessary for autonomous consent, hopefully it has 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. This rest of this section will 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>lxii</sup> From this, the conclusion of the Human Rights Argument follows easily:<sup>lxiii</sup> States are obligated to do what they can to enable these subjects to attain these things.<sup>lxiv</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 state's ability to fight infection and poor nutrition is linked even more directly to many non-infectious illnesses.<sup>lxv</sup> -<sup>lxvi</sup> Those without basic preventative health care (e.g. immunizations) are at risk for many of these illnesses. And those who cannot secure essential medications (e.g. dehydration salts and antibiotics) are 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>lxvii</sup> The very sick and dead are obviously incapable of securing sufficient autonomy.<sup>lxviii</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>lxix</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>lxx</sup> Bed nets alone could prevent a lot of autonomy undermining illness.<sup>lxxi</sup>

Less obviously, those without basic education, emotional and social goods may suffer from autonomy undermining disabilities.<sup>lxxii</sup> Basic education, emotional, and social goods are often necessary for securing decent living conditions, health care, livelihood opportunities, and earning power.<sup>lxxiii</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>lxxiv</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>lxxv</sup> “Fear, insecurity, dependency, depression, anxiety, intranquility, shame, hopelessness, isolation and powerlessness... such experiential elements of a bad life...[often impact] ....agency.”<sup>lxxvi</sup> Most people must be able to secure basic education, emotional, and social goods to secure sufficient autonomy.<sup>lxxvii</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 commitments.<sup>lxxviii</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>lxxix</sup>

The conclusion of the Human Rights 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 endorse some welfare rights.

Before considering objections to the Human Rights Argument, it is worth pointing out some of its consequences. The human rights libertarians must accept will only be as robust as the conception of autonomy that they endorse. If libertarians only accept the minimal conception of autonomy relied upon here, the human rights they must endorse will be very minimal indeed. Libertarians might only agree that states have to ensure that their subjects *can* secure autonomy. Libertarians might deny that states must ensure that their subjects actually obtain autonomy. They might even deny that states must enable their subjects to survive diseases that do not threaten subjects’ autonomy.

The human rights libertarians must accept are also as radical as the non-aggression and actual consent principles libertarians adopt. If states must literally avoid coercing all (rights-respecting) individuals without their consent, states must literally do all they can to enable their (rights-respecting) subjects to secure sufficient autonomy. States will have to provide extremely expensive health care for those who cannot otherwise secure this care but need it to secure autonomy.<sup>lxxx</sup> States must ensure that even completely irresponsible free riders can secure autonomy until these people freely consent or give up their right to do so. If these people never freely consent or relinquish their right to do so, their states must enable them to secure autonomy throughout their lives. Furthermore, states must do whatever they can to enable these people to secure sufficient autonomy, even if doing so takes an extraordinary amount of resources or requires violating others' rights. It may just turn out, for instance, that the only way to secure the necessary resources is via coercive taxation or, worse yet, terrible violence.

This last point exposes another potential problem for libertarians. If 1) ensuring that everyone can secure sufficient autonomy requires coercing others and 2) libertarians will not accept tradeoffs between meeting different conditions for legitimacy, the libertarian's position is simply incoherent.<sup>lxxxi</sup>

Presumably there will be some way of rescuing libertarianism from incoherence. So, libertarians have to endorse welfare right to things like food, water, and shelter. This paper has not, however, tried to argue for a particular way of enabling people to secure these things. For all it has said, charity might do it. Still, modulo some minimal empirical assumptions the fact that libertarians should endorse any kind of welfare rights is as significant as it is shocking. If charitable donations, for instance, literally enabled everyone to secure sufficient autonomy, this paper's point might be merely theoretical. It would show that libertarians are committed to establishing welfare states if necessary, but in fact no such states would be required. But it is hard to deny that there are *some things* states could do to enable more people to secure this autonomy. After all, millions of people lose autonomy every year because they suffer from easily

preventable poverty related illnesses.<sup>lxxxii</sup> Hundreds of millions suffer but do not die from autonomy undermining diseases like malaria.<sup>lxxxiii</sup> Many of these people could live autonomous lives if their states helped them secure basic food, water, shelter, medical care and so forth.<sup>lxxxiv</sup> So, despite its minimalism, the Human Rights Argument is incredibly important.

#### IV. Objections

Perhaps critics could suggest that the Human Rights Argument shows too much. If it is correct, not only is it impossible for hundreds of millions of people to freely consent to a state, hundreds of millions of people cannot agree to any contracts whatsoever. So, the argument has unacceptably radical implications. It implies that hundreds of millions of people cannot freely marry, sell their wares, or even purchase things on the market.

The Human Rights Argument implies that hundreds of millions of people are unable to freely enter into free contracts. This conclusion is, however, correct. When people *cannot even reason or plan* they cannot freely enter into contracts. Nevertheless, most of those who currently lack autonomy are ill. They have had the relevant conditions for autonomy in the past and will have them again in the future (often with states' assistance). It is only *when* people are unable to reason and plan -- when they are delirious, for instance -- that they cannot enter into the relevant contracts. Those who freely enter into a contract sometimes remain bound by its terms even if they subsequently lose their autonomy. Those who freely marry and then suffer from malaria-induced delusions, for instance, are not suddenly divorced. Furthermore, if people who currently lack autonomy secure autonomy in the future, they can enter into all sorts of valid contracts. Most of those who recover from malaria can freely marry, for instance. Finally, the Human Rights Argument does not say anything about how we should treat contracts that are not legitimate. There may, for instance, be good reasons to honor some of them. So the Human Rights Argument's implications regarding all sorts of contracts are perfectly intuitive.

Critics might object, instead, that the Human Rights Argument 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 such 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. Even though states are not responsible for the fact that some of their subjects lack autonomy, they are responsible for coercing these people. Unless the objector can say more, 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 this paper addresses 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, the above objection will not go through.

Perhaps one could argue that the conception of autonomy at issue in the Human Rights 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. Perhaps people only have to be free from external constraint to freely consent on a libertarian theory. Autonomy may not be necessary.

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 would not be justified in forcing 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 commitments. 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 potentially-autonomous people is free, they will have to agree that the uncoerced consent of even very young children is free. I leave the lurid consequences of accepting this proposition to the reader's imagination.<sup>lxxxv</sup> A better (although perhaps not sufficiently good) view is this: Coercive force can only be used against rights-respecting potentially-autonomous people, including children, if it advances their autonomy. It would be better yet to say that coercive force can only be used against potentially-autonomous people to advance their interests, though libertarians might not be able to accept this proposition.<sup>lxxxvi</sup>

One could argue that states simply cannot coerce the merely potentially autonomous because coercion must engage the will of the coerced. Coercion usually engages the will of the coerced by reducing his or her options -- restricting, but relying upon, autonomous choice. That is what distinguishes coercion from mere force. So perhaps states do not need to secure these people's consent to exercise a monopoly on coercive force over them.

This is implausible. Recall that the libertarians this paper addresses believe that legitimate states can only exercise coercive force over rights-respecting people to protect their liberty. The best explanation for why these libertarians believe this is that they think it is impermissible to violate peoples' rights for any other reason. Depriving people of their right to

self-defense is a rights violation whether it requires coercion or just mere force. So as long as Samantha violates no one's rights it does not matter if she can exercise her own rights, no one can violate her rights. The intuition is this: Each of us deserves respect even if we are not autonomous.<sup>lxxxvii</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 Human Rights Argument without rejecting any of its premises. 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' autonomous consent. For people to autonomously consent to a state they must be able to do so. If states coerce their subjects without securing their consent, they act illegitimately. States do (because they are states) coerce their subjects. The only way for a state to be legitimate is for it to do what it can to enable its subjects to secure sufficient autonomy. If someone requires assistance from a state to secure sufficient autonomy, that state must not just refrain from interfering with that person's liberty but help that person secure this autonomy. That is why the Human Rights Argument is interesting. If it is correct, libertarians (surprisingly!) must agree that states have to help people who cannot secure sufficient autonomy in any other way secure such autonomy.

Perhaps libertarians could argue that only hypothetical consent is necessary for legitimacy as long as people have a formal right to exit from their states. At least when someone is unable to actually consent, their hypothetical consent may suffice to legitimize a state. If someone in a coma needs surgery we do not think it is always illegitimate to operate without consent. As long as the person would consent if able, it is acceptable to operate. Similarly, we do not ask children to consent to essential medical procedures. We think they would agree were they

able. So, the libertarian might say that it is okay to prevent Samantha from exercising her right to self defense even if she cannot freely give up her right to do so, especially if she has the right to exit her state. For, if she could freely abrogate this right, she might do so or at least it might be in her interest to do so.

But these are dangerous counter-factuals that libertarians, because they are deeply committed to individual rights, should be reticent to accept. Just as Nozick says it does not matter how a distribution *\*could\** have arisen, it matters how it *\*does\** arise, libertarians should say it does not matter whether Samantha *\*would\** give up her rights, it matters whether she *\*does\** give them up. Libertarians should agree that merely maintaining for people a right to exit from a reasonable regime will not do.<sup>lxxxviii</sup> 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.

A different worry is that libertarians do not really reject this conclusion, so the paper does not address real libertarians. Rather, libertarians seem to be most opposed to egalitarianism. They believe that most attempts to justify welfare policies are attempts to defend the vested interests of the middle class, not the poor.

First, it is worth reiterating that the Human Rights Argument does not address everyone who calls themselves a libertarian. Thomas Friedman, for instance, is happy to accept some kind of welfare state, and many who think of themselves as libertarians are more moderate than Friedman. Some would even think Adam Smith and Friedrich Hayek were libertarians. But the Human Rights Argument addresses libertarians who deny its conclusion and accept the bundle of propositions set out at the start. These libertarians agree that states exercise a monopoly on force over their subjects, are not anarchists, and think that legitimate states can only exercise coercive force over rights-respecting people to protect their liberty. There are some such libertarians. Amongst philosophers, Robert Nozick is the paradigmatic libertarian. He accepted the relevant propositions. But the Human Rights Argument might also address, if not convince, libertarians

like Tibor Machan and Eric Mack. That said, the Human Rights Argument is not intended to defend vested interests or egalitarianism. It only tries to show that libertarians should agree that states must enable some of their subjects to secure food, water, shelter and so forth.

Finally, one might worry about this paper's general approach. Does this paper really provide an argument that libertarians must accept some welfare rights as human rights? One might argue that human rights are supposed to provide universal protections against standard threats to individuals' important interests or autonomy.<sup>lxxxix</sup> The rights this paper has argued that libertarians must accept are not universal. It has only argued that states must protect the rights of their members; they may have no obligations to outsiders. Nor do the rights this paper has argued that libertarians must accept always protect against standard threats to individuals' important interests or autonomy. Those who cannot secure autonomy do not even have a right to food on this account.

Although there is something to this objection, it overstates its point. The kind of rights this paper has argued libertarians must accept are a bit odd. But not everyone believes that human rights must protect important interests only against standard threats. Joseph Raz, for instance, does not qualify his claim that rights protect individuals' important interests in this way.<sup>xc</sup> Furthermore, it is not clear in what sense a good account of rights must be universal. Not everyone has the rights listed in the declarations on the rights of women and the child, for instance. Still the objector would probably point out that the rights this paper has argued libertarians must accept are troublesomely minimal. And I wholeheartedly concur. It is just that I do not know how to argue that libertarians must accept more than this. Perhaps there is an argument that libertarians should accept a more robust conception of human rights, but it does not stretch the notion of rights too much to say that the Human Rights Argument shows that libertarians must accept *some* welfare rights as human rights. And, even if one does not like this way of putting the point, the conclusion this paper has argued libertarians must accept is

significant. Many people cannot even secure the basic food, water, and so forth states have to enable most of their members to secure.

Another worry about this paper's approach is this: Who cares, one might wonder, if libertarian actual consent theorists have to accept the Human Rights 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 this paper has, that libertarian actual consent theorists must endorse some welfare rights?

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 Human Rights Argument succeeds, libertarians should endorse some welfare rights as human rights. 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 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 rights. After all, libertarians notoriously reject these rights.

This paper cannot take on the burden of completely defending actual consent theory. Its conclusion would follow even if this paper just assumed actual consent theory is defensible.<sup>xci</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.

Actual consent theory can be motivated through examples. Suppose that the Philippines forced miners to work for the state. While there are many other accounts that can explain why this is illegitimate, actual consent theory provides a particularly compelling and *simple* 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>xcii</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>xciii</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>xciv</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 has some significant theoretical advantages. 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>xcv</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. If a state cannot secure its subjects’ consent because its subjects have selfish, bigoted, or irrational preferences, many argue that this does not undercut that state's legitimacy. As the introduction to this paper noted, some people will not freely consent to *any* state.<sup>xcvi</sup> Some, for good or bad reasons, would never autonomously agree to be coerced.

This objection is not conclusive, however. There are two reasons beyond those mentioned above that one 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 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. Although this move will probably not appeal to libertarians, it may be plausible when some state is necessary to ensure important social goods. 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). 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. The claim that states must only secure the consent of those who could realistically agree can be made consistent with the Human Rights 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 this paper 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 nasty preferences perhaps this does not undercut that state's legitimacy.

Although there may be something to this objection, there is also reason to worry about this idea. Why should states be able to coerce even the selfish, bigoted, or irrational as long as they are not violating others' rights? Though any person or institution may have the right to

punish those violating others' rights, why should these states be able to coerce rights-respecting people without their autonomous consent? The example of the Philippines forcing its miners to work was meant to illustrate the competing intuition. But an analogy might also support the point. 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 not 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. (Note that this point also tells against anarchism.)<sup>xcvii</sup>

Although some libertarians may not be able to accept this, there is something compelling about it. At least actual consent theorists who are not inclined toward libertarianism or anarchism can accept the claim that, all things considered, it may be better to have peace and coercion than war.<sup>xcviii</sup> There is a conflict between different values in the example.<sup>xcix</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>c</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. The fact that this paper starts by arguing that libertarians are committed to actual consent theory is not a good objection to this paper's argumentative strategy.<sup>ci</sup>

## V. Conclusion

This paper has argued that libertarians, because they should be consent theorists, should endorse some welfare rights as human rights. For, this paper argued that, contrary to popular belief, libertarians should agree with the following conclusion: 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. Hopefully another argument can show that libertarians should accept a more robust conception of welfare rights, but even this is a shocking conclusion in light of the fact that libertarians vehemently reject positive rights. 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.

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ii We can reserve the term *anarcho-capitalists* for anarchists who are only committed to libertarian rights in a state of nature. Roderick Long and Tibor Machan, *Anarchism/Minarchism: Is a Government Part of a Free Country?* (London: Ashgate Press, 2008).

ii I deliberately leave this principle vague. I take it that most libertarians do not think it is acceptable to exercise coercive force over rights-respecting individuals to protect others' liberty. Most libertarians accept a non-aggression principle on which each person should be free to do what they like as long as doing so is compatible with others having similar freedom. Some, however, just believe that we should minimize rights violations. If some of what I say below is correct, libertarians may have to accept something like the later view. I am concerned here, however, to rule out the view that it is more acceptable to coerce the potentially autonomous for others' benefit than it is to coerce the fully autonomous for others' benefit. So, if a libertarian does think it is acceptable to exercise coercive force over some individuals to protect others' liberty, I will suppose that they do not think it is any more acceptable to coerce potentially autonomous people for others' benefit than it is to coerce the fully autonomous for others' benefit. Even understood as prohibiting all coercive force against a rights-respecting individual that does not protect that individual's liberty, however, it must also be permissible on the proposed libertarian principle to use coercive force against someone if that person autonomously consents (if, that is, such force qualifies as coercion). Such coercion may be understood as protecting that individual's liberty.

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

ii 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, *Justice, Legitimacy, and Self-determination: Moral Foundations for International Law*. (Oxford: Oxford University Press, 2004). On autonomy see: Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1998). Also

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

ii 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 inst someone if that person autonomously consents (if, that is, such force qualifies as coercion). Such coercion may be understood as protecting that individual's liberty.

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

ii 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, *Justice, Legitimacy, and Self-determination: Moral Foundations for International Law*. (Oxford: Oxford University Press, 2004). On autonomy see: Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1998). Also see: Michael Bratman, "Planning Agency, Autonomous Agency." *New Essays on Personal Autonomy and its Role in Contemporary Moral Philosophy*. James Stacy Taylor ed. (Cambridge: Cambridge University Press, 2005).

ii 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 there 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: Nicole Hassoun, "Shrinking Distance." *New Waves in Ethics*. Vincent Hendricks and Duncan Pritchard eds. (London: Palgrave and Macmillian, forthcoming).

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

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- ii 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.
- ii Legitimacy, as this paper uses 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 states 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).
- ii Robert Landenson, "In Defense of a Hobbesian Conception of Law," *Philosophy and Public Affairs* 9, no. 2 (1980), 134-59.
- ii See: Thomas Christiano, "Political Authority," *Stanford Encyclopedia of Philosophy* (2004) Available: <<http://plato.stanford.edu/entries/authority/>>.
- ii Ibid.
- ii John Simmons, *Moral Principles and Political Obligations* (New Jersey: Princeton University Press, 1979).
- ii I believe there is a relatively straight-forward argument from libertarian principles to the conclusion that states must 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.
- ii See: Thomas Christiano, "Political Authority," *Stanford Encyclopedia of Philosophy* (2004) Available: <<http://plato.stanford.edu/entries/authority/>>.
- ii John Simmons, "Justification and Legitimacy," *Ethics* 109, no. 4 (1999), 770.
- ii 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).
- ii Alternately, one might say that 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 such states may still be imperfectly legitimate if they exercise coercive force over those who have not autonomously consented.
- ii John Simmons, "Consent Theory for Libertarians" *Social Philosophy and Policy* 22, no. 1 (2005), 332.
- ii Robert Nozick, *Anarchy State and Utopia* (New York: Basic Books, 1974), 58; 283; 331. Cited in *ibid*: 336.
- ii David Boaz, *Libertarianism: A Primer* (New York: Free Press, 1997), 127. Cited in *ibid*: 333.
- ii Even if libertarians follow Nozick in adopting a weaker version of minimalism on which only minimal states can be legitimate without consent, they must deny actual consent theory. For, consent is not necessary for

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legitimacy on minimalism. Furthermore, this paper will argue that even this version of minimalism violates libertarian rights.

ii Ibid: 335.

ii Ibid: 337.

ii A different argument for a state is this: A state 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).

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

ii 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.

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

ii Ibid: 338.

ii See, for instance: Tibor Machan, "Reconciling Anarchism and Minarchism." *Anarchism/Minarchism: Is a Government Part of a Free Country?* Roderick T. Long and Tibor R. Machan eds. (London: Ashgate Press, 2008),

ii 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).

ii 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). I owe thanks to Will Braynen for suggesting this objection.

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- ii On our initial formulation of actual consent theory, autonomous consent is necessary and sufficient for legitimacy. As should become clear below, however, this paper's conclusion will follow as long as libertarians agree that autonomous consent is a necessary condition for legitimacy.
- ii The Human Rights Argument cannot convince libertarians that those incapable of autonomy have any welfare rights. Another argument might have this consequence, however.
- ii 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.
- ii 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 it can to enable its subjects to autonomously consent to its rule. See discussion that follows.
- ii 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: Nicole Hassoun, "Meeting Need," *Utilitas*, 21, 3 (2009).
- ii Assuming, that is, that these children are subject to states.
- ii 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 just defining subjects as those who can autonomously consent to a state.
- ii 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 Human Rights Argument to succeed. See: Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1998).
- ii 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.
- ii Recall that saying states should be as legitimate as possible is saying that they should be made to pass a threshold on legitimacy – the highest feasible threshold. Let us suppose we can rank possible states by degrees of legitimacy from 1 to 100 -- where 100 is the highest possible degree of legitimacy. Saying that states should be made legitimate to degree 100 does not commit the libertarian to saying that when a state is at a degree of legitimacy less than 100, say degree 50, it should be made more legitimate to some other degree of legitimacy

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less than 100, say degree 99. Libertarians can say the fact that a state that is legitimate to degree 99 is better than one that is legitimate to degree 50 without agreeing that we should make states that are legitimate to degree 50 legitimate to degree 99 even if we can do so. Hence, nothing we have said so far prevents libertarians from maintaining an absolute conception of rights on which rights-respecting individuals cannot be coerced except to protect those individuals' rights. I owe thanks to Michael Humer for extensive discussion on this point.

ii The Human Rights 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.

ii I owe thanks to Michael Otsuka and Jan Narveson for discussion of this point.

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

ii 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 Human Rights Argument by saying states need not exercise a monopoly on coercive force. See discussion in text.

ii One might worry that libertarianism will not remain distinctive if it endorses welfare rights. As we will see, however, most libertarian actual consent theorist will only accept much more minimal and radical welfare rights than most welfare liberals accept.

ii The Human Rights Argument must be qualified in several ways which the final section of this paper will discuss.

ii Libertarians might feel forced to accept anarchy if they think coercion without consent is unjustifiable and consent is impossible. They might try to argue that, even if states provide people with the conditions for autonomy they cannot secure their subjects' consent. But, recall that we are only considering obligations to those who could consent to some implementable institutional system. Furthermore, subsequent sections will suggest that the most plausible versions of actual consent theory do not always require everyone's consent.

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

ii 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).

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

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

ii 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).

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

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ii 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).

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

ii 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 Human Rights Argument.

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

ii 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.

ii 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).

ii 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.

ii 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 their subjects do not actually secure these things is that they have chosen not to do so.

ii 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).

ii 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.*

ii *Ibid.*

ii 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.*

ii 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)>.

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ii 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)>.

ii 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)>.

ii 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.

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

ii 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).

ii 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.

ii 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).

ii 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.

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

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- ii Fredrich Nietzsche, *Beyond Good and Evil*, trans. Hellen Zimmern (New York: Prometheus Books, 1989), 96.
- ii 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 it can 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. vii for details and discussion in text.
- ii If ensuring that everyone can secure sufficient autonomy requires coercing others, libertarians must reject at least one version of the libertarian principle with which this paper started. Libertarians cannot maintain that, to be legitimate, states can only exercise coercive force over a rights-respecting individual to protect that individual's liberty. (Though they can accept something similar that allows states to coerce some to protect others' liberty).
- ii World Health Organization (WHO). 2004b. "World Health Report 2004." World Health Organization: Geneva.
- ii World Health Organization. 2003. "Malaria is Alive and Well and Killing More Than 3000 African Children Every Day." World Health Organization: Geneva. Available at:  
<<http://www.who.int/mediacentre/news/releases/2003/pr33/en/>>.
- ii For evidence to this effect see: Nicole Hassoun, "Free Trade, Poverty, and Inequality," *The Journal of Moral Philosophy*, (forthcoming). Nicole Hassoun, "Free Trade, Poverty, and the Environment," *Public Affairs Quarterly*, 22, 4, (2008b): 353-380. 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).
- ii At least the consequences will be unacceptable if there is no other ground for prohibiting children from engaging in the full range of libertarian contracts that are permissible for adults.
- ii Presumably, neither way of formulating the constraint commits one to saying abortion is immoral if fetuses are not persons.
- ii If one wants to say that only autonomous people have a right to self-defense, one would have to say that if someone suddenly loses his or her autonomy their rights suddenly disappear.
- ii If the exit must be more than merely formal people will probably have to be able to secure some autonomy to be free to leave.
- ii Allen Buchanan, *Justice, Legitimacy, and Self-determination: Moral Foundations for International Law* (Oxford: Oxford University Press, 2004). James Griffin, *Human Rights: The Incomplete Idea*. Working Draft (Oxford: Corpus Christi College, 2006).
- ii Joseph Raz., *The Morality of Freedom*. (Oxford: Clarendon Press, 1998).

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ii For further defense of actual consent theory see: John Simmon, *Moral Principles and Political Obligations* (New York: 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).

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

ii Ibid. Page 242.

ii Ibid. Page 237.

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

ii Perhaps even anarchists should modify their view to take this kind of objection into account. Perhaps they should just say that states can never be fully legitimate but should be as legitimate as possible. If anarchists accept this proposition, the distinction between libertarianism and anarchism might collapse, but the Human Rights Argument would show that both libertarians and anarchists should endorse some welfare rights.

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

ii 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 a 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. A consent mechanism that specifies that you must pledge allegiance to a state on the fifth Tuesday of a month at noon in a private court of law, for instance, will not unduly restrict most individuals' freedom if these people do not have a right to enter the court without abiding by its rules. Christiano's objection only shows that we need to be careful in designing consent mechanisms so that they do not illegitimately interfere with individuals' liberty. The agent enforcing the consent mechanism must not exercise a monopoly on coercive force, for instance. Care in designing the mechanism will not only help ensure that the interference need not be legitimized by consent but is likely to make autonomous agreement to a state easier to secure. Libertarians should agree on this point as some kind of binding consent procedure is necessary to legitimize all kinds of contracts.

ii The fact that actual consent theorists should endorse some welfare rights as human rights is an interesting conclusion in its own right if actual consent theory is plausible.