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Libertarian Welfare Rights

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Libertarian Welfare Rights?[i]

An Inquiry into the Coherence of Some Common Libertarian Commitments

I. Introduction

This paper argues that libertarians should endorse some welfare rights understood as rights that all states must guarantee to their subjects as a condition of legitimacy. For, 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 ensure that their rights-respecting subjects secure the basic reasoning and planning capacities they need to consent to their rules. To secure these capacities, most people need some minimal amount of food, water, shelter, education, health care, social and emotional goods. So states have to ensure that these people secure these things (as long as they do not violate others' rights). This should be a striking conclusion as most libertarians notoriously reject welfarism and positive social and economic rights. They do not think legitimate states must ensure that any of their subjects secure food, water, shelter, education, health care, social or emotional goods.

It is, of course, easy to imagine ways that welfare rights can conflict with other libertarian commitments. So, although it is framed as an argument for the conclusion that libertarians should endorse some welfare rights, this paper's import is really that denying the existence of welfare rights will come at a cost for those who hold a bundle of common libertarian commitments. If its argument is valid, libertarians must reject at least one of these commitments to explain why they are not committed to welfare rights (or justify the necessary tradeoffs in cases of conflict).

Because this paper presumes a commitment to a bundle of common libertarian propositions, it does 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 1) do not already accept its conclusions and 2) are not anarchists. They believe there should be (e.g. minimal) states that exercise a monopoly on coercive force over their subjects and these states need not cede territory to any of those who cannot consent to

the exercise of coercive force over them.[ii] These libertarians 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.[iii] This paper provides reason to reject some formulations of this principle below. Since, however, this principle is only necessary to rule out versions of libertarianism on which it is more acceptable to coerce those who are only potentially capable of consent than others, there is no need to specify it precisely here.

Here is a sketch of the *Welfare Rights Argument* this paper will defend:[iv]

1) Libertarians should be actual consent theorists: They should hold that states are legitimate only if they secure their (rights-respecting) subjects' consent to their rules.

2) To be legitimate, states must do what they can to ensure that these subjects secure the basic reasoning and planning capacities the need to consent to their rules.

3) To secure basic these capacities most people (in all states) must secure some minimal amount of food, water, shelter, education, health care, social and emotional goods.

C) So, states must do what they can to ensure that these people secure these things (as long as they do not violate others' rights).

As noted at the outset, welfare rights are rights that all states must guarantee subjects as a condition of legitimacy. So, if the libertarians this paper addresses (henceforth simply *libertarians*) agree that legitimate states must ensure that any of their subjects secure any preconditions of welfare, they believe that there are some welfare rights.

Section II defends the first premise of the Welfare Rights Argument, it suggests that libertarians should endorse actual consent theory;[v] they should agree that states are legitimate only if they secure their rights-respecting subjects' consent.[vi] This section will also address a general worry about this paper's argumentative strategy. Namely, that actual consent theory is

implausible and so libertarians will reject it (or should if they know what is good for them). Sections III and IV defend the second and third premises respectively. Together they suggest that libertarians, because they should be actual consent theorists, should endorse some welfare rights.[vii] Finally, section V considers and responds to objections.

II. The First Premise: Why Libertarians Ought to Accept Actual Consent Theory

Preliminaries

Recall that the libertarians this paper addresses believe that states exercise a monopoly on the use of coercive force within their territory.[viii] A state is *legitimate*[ix] if and only if the state has moral permission to be the only agent making coercive rules and giving coercive commands within its borders.[x] *Legitimacy* here is different from *justified authority*.[xi] A state has *justified authority* if and only if it is legitimate and its subjects have an *obligation* to comply with its rules.[xii] Some rights may carry with them correlative duties.[xiii] 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.

Very roughly, this paper will work with a weak version of actual consent theory on which states are legitimate *only if* they secure their *rights respecting* subjects' consent. At least, it will assume that states must secure their rights respecting subjects' consent if they do not relinquish their right to consent and are capable of securing basic reasoning and planning capacities.[xiv] (On the most demanding account of actual consent theory, states are legitimate *if and only if* they secure all of their subjects' consent.[xv]) Although this paper will leave some of the qualifications in its weak version of consent theory (henceforth simply *actual consent theory*) implicit where their importance is minor, it is worth commenting on a few of them.[xvi]

First, and most importantly, actual consent theorists need not think states must secure the consent of people who are incapable of consent to be legitimate. States do not need the consent of the permanently comatose, for instance.[xvii]

Second, actual consent theorists need not think states must get the consent of individuals who do not respect others' rights. Actual consent theorists may think that some acts are impermissible violations of individual liberty and these acts can be legitimately prevented by any person or institution even if prevention requires coercion. Perhaps, as John Simmons suggests, even "the Third Reich was justified in prohibiting rape and punishing rapists."[xviii]-[xix]

Finally, actual consent theorists need not think rights-respecting subjects must consent to their states, if they freely agree to relinquish their right to consent.[xx] It is not clear what, if any, obligations states have to those who relinquish their right to consent. But, whatever obligations states have in this case, actual consent theorists must at least agree to the following condition for legitimacy: States require their rights-respecting subjects' consent until and unless these subjects freely relinquish their right to do so. After arguing that libertarians should be actual consent theorists, subsequent sections will say more about the basic reasoning and planning capacities necessary for actual consent.

This section will motivate the weak version of actual consent theory at issue below, here it will suffice to highlight the basic intuition underlying this theory: Just as the Sierra Club is justified in making people pay dues only if they have freely consented, states are justified in exercising a monopoly on coercive force over their rights-respecting subjects only if they have freely consented.[xxi]

Defense of the First Premise

Several authors have defended this paper's first premise arguing that libertarians of many stripes should be actual consent theorists.[xxii] In his paper "Consent Theory for Libertarians," for instance, John Simmons gives a particularly compelling version of this argument. While Simmons' article talks about political obligation as well as legitimacy, his argument establishes that libertarians must accept an actual consent theory of political legitimacy as this paper uses the term. Simmons starts by suggesting that there is a deep tension within libertarianism. For, he says

there are two major strands in libertarian thought that lead naturally to two different, incompatible, accounts of legitimacy -- consensualism and minimalism.[xxiii]

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.[xxiv] Naturally, one would think, if people have an almost unlimited right of contract, they can consent to a state having a monopoly on the exercise of coercive force over them. Furthermore, since the contracts libertarians defend are usually enforceable, if someone does 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."[xxv] 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 consenting to it, then people can legitimize a non-minimal state by 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.

One might initially think that libertarians would want to deny consensualism rather than minimalism. After all, the paradigmatic libertarian, Robert Nozick, does not embrace a consensualist theory of legitimacy. Nozick does not try to make the case that anarchism is unjustified by appeal to actual consent theory. Though, on Nozick's theory, 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 rejects consensualism. Rather, he suggests that in an anarchical society, the dominant protective 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)."[xxvi] What justifies some in taking away others' rights even with compensation if those people have not freely consented to be compensated for this deprivation?

Nozick allows that consent can justify non-minimal states. He insists only that minimal states do not require free consent for legitimacy. For, he believes the minimal states only enforce pre-existing rights. At the same time, Nozick might maintain that other, more robust, states would require free consent.

Simmons does not think this move works. 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."[xxvii] 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.[xxviii]

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."[xxix] How can Nozick restrict the freedom of rights-respecting individuals in this way without their free consent?[xxx]

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."[xxxi] 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."[xxxii] Instead of giving up their contractualist commitments, libertarians should give up their commitment to the idea that a minimal state can be justified without consent. 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.[xxxiii]

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 it may be acceptable to operate as long as the person would

consent, if able. Similarly, we do not ask children to consent to essential medical procedures. We think they would agree were they able.

But these are dangerous counter-factuals that libertarians, because they are deeply committed to individual liberty, should be reluctant 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 one *would* give up one's rights, it matters whether one *does* give them up. Libertarians should agree that merely maintaining for people a right to exit from a reasonable regime will not do.[xxxiv] States must do what they can to ensure that their rights-respecting subjects secure basic reasoning and planning capacities.

Perhaps libertarians could defend the idea that a minimal state does not require consent in a different way.[xxxv] Still Simmons' claim that any monopoly on coercive force violates individual rights does not hang on the details of Nozick's theory, in particular.[xxxvi] So, in the absence of a good response to this argument, let us conclude that Simmons is correct: Libertarians should accept actual consent theory.

Defense of Actual Consent Theory (and This Paper's Argumentative Strategy)

Some might worry, however, about relying on Simmons' argument in trying to show that libertarians should accept some welfare rights. Who cares, one might wonder, if libertarian actual consent theorists have to accept the Welfare 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 will do, 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 section will argue. If this is right and the rest of the Welfare Rights Argument succeeds, libertarians should endorse some welfare 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 would be incredible if this paper can show 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.[xxxvii] 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 its miners to work for the state. While there are many other accounts that can explain why this imperils the Philippine's legitimacy, actual consent theory provides a particularly compelling and *simple* explanation: The Philippines can force miners to work for the state only if they consent to do so. States cannot force people to do things they do not consent to do.[xxxviii] Though there may be many answers to the following question, the intuition underlying actual consent theory gives it force: What gives any person or institution a right to coerce others without their consent?

Actual consent theory also has the advantage of being able to account for several key values in liberal theory including liberty and equality. 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?[xxxix]

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."[xl] A state is justified in exercising a monopoly on coercive force over rights-respecting individuals, even for their own good, only if these individuals freely consent.

Furthermore, if actual consent theory is defensible, it would have some significant theoretical advantages. 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.[xli] 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. For instance, some people will not freely consent to *any* state.[xlii] Some, for good or bad reasons, would never consent to be coerced. 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 consent because its subjects have irrational or nasty preferences, perhaps that does not undercut that state's legitimacy.

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 they 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 consent? Though any person or institution may have the right to punish those violating others' rights, why should states be able to coerce rights-respecting people without their 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 consent. It is not okay to coerce rights-respecting people without their 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 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.)[xliii]

There is something plausible about the idea that, coercion is justified if it is necessary to achieve a great good.[xliv] And actual consent theorists who are not inclined toward libertarianism or anarchism might accept the claim that, all things considered, it is better to have peace and coercion than war. There is a conflict between different values in the example. The example only shows that, sometimes, the best that a state can be is imperfectly legitimate. 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, as we have seen, there are good reasons to believe libertarians of many stripes should be actual consent theorists.[xlv] So, there is no immediate reason to reject this paper's argumentative strategy.[xlvi]

III. The Second Premise: Why Actual Consent Requires Some Basic Reasoning and Planning Capacities

Assuming, then, that libertarians should accept actual consent theory, this section will defend the second premise of the Welfare Rights Argument: To be legitimate, states must do what they can to ensure that their rights-respecting subjects secure basic reasoning and planning capacities. The next sub-section will consider some of its components.

Cashing out the Second Premise

First, what does it mean to say that states must do what they *can* to ensure that their rights-respecting subjects secure basic reasoning and planning capacities? What sense of *possibility* is at issue here? What is *possible* here is not just what is morally permissible. What is *possible* is what is achievable in the real world. A system does not lose legitimacy if it does not ensure that someone secure basic reasoning and planning capacities if this person is not capable of securing basic reasoning and planning capacities.[xlvii] One is capable of securing basic reasoning and planning capacities when one could secure these capacities under some implementable state. People who are permanently comatose are not capable of securing these capacities. Some of those in comas will secure basic reasoning and planning capacities with good medical care, however. The second premise only suggests that legitimate states must ensure that these people secure these capacities.[xlviii] Similarly, though children cannot secure these capacities when they are very young, most children who receive proper care will secure basic reasoning and planning capacities as they get older. Again, the second premise only suggests that legitimate states must ensure that these children secure these capacities once they are old enough.[xlix]

Second, what does *ensuring* that someone secure basic reasoning and planning capacities require? What is necessary to ensure that someone secure basic reasoning and planning capacities will vary with the case. It depends on how close the person is to being able to secure these capacities 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 secure basic reasoning and planning capacities as long as they are free from interference. Others 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 one subject to a state? *Subjects* will be used here in a restricted sense only to refer to individuals. So one is *subject* to a state when the rules of the state apply to one. Thailand's rules apply primarily to those in Thailand.[1]

Finally, what is necessary for someone to secure basic reasoning and planning capacities? The idea is this: One must secure whatever kind and amount of basic reasoning and planning capacities are sufficient for one to freely 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*). This paper will say more about these requirements below but the basic idea should do for now.[li]

The First Step in Defending the Second Premise

Recall that, on actual consent theory, states are *legitimate* if and only if they secure their rights-respecting subjects' free consent. The reason libertarian actual consent theorists have to accept the thesis that, insofar as possible, rights-respecting people must secure basic reasoning and planning capacities for the states to which they are subject to be legitimate is this.[lii] *In order for someone to actually consent to a state that person must have the capacities necessary to do so.* Libertarian actual consent theorists believe that rights-respecting subjects must actually consent to their state for their state to be legitimate. So, these libertarians must agree that, for states to be legitimate, their rights-respecting subjects must, insofar as possible, secure the basic reasoning and planning capacities they need to consent to their rule.

Some libertarians might reject the preceding argument by 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 those who are only potentially capable of consent in ways that do not ensure that they secure basic reasoning and planning capacities but that are respectful and advance the

common good. These libertarians might maintain that this is legitimate since those who are only potentially capable of consent 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 (capable of reasoning and planning or not) to protect those individuals' liberty. Even if these libertarians do not want to say there is a positive duty to ensure that those who are only potentially capable of consent secure these capacities, they cannot say it is acceptable to coerce those who are only potentially capable of consent 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.[liii]

Perhaps libertarians could posit the following counter example to the claim that it is unacceptable to coerce those who are only potentially capable of consent except to protect those individuals' liberty. Suppose that a society contained only one such 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 that 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 of those who are only potentially capable of consent pose a significant (if innocent) threat to others. Anyone, including a dominant protective organization, can defend people against these threats. But, rights respecting people, capable of reasoning and planning or not, retain their rights. Just as my being unable to use my property does not justify others in taking it away, the fact that some of those who are only potentially capable of consent cannot use their rights to protect themselves does not justify others in usurping these rights. And it is important not to overlook the fact that some of those who are only potentially capable of consent are rights-respecting and can protect themselves or have hired others to do so.[liv] So the fact that the dominant protective association could legitimately protect everyone against anyone violating

others' rights does not show that this association has a monopoly on coercive force. As long as those who are only potentially capable of consent respect others' rights and do not give up their right to protect their own rights or have their agents do so, they retain these rights.

At least, those libertarians who accept the formulation of actual consent theory set out above should accept the argument to this point. These libertarians must agree that, legitimate states' rights-respecting subjects must, insofar as possible, secure basic reasoning and planning capacities.

The Second Step in Defending the Second Premise

This paper must say more, however, to convince libertarians that *states* must do what they can to ensure that their rights-respecting subjects secure basic reasoning and planning capacities. Consider an argument for this conclusion. When states subject rights-respecting people who cannot secure basic reasoning and planning capacities to coercive rules and do not do whatever they can to ensure that these people secure these capacities, they act wrongly. This is because such states are not justified in exercising a monopoly on coercive force over rights-respecting people who cannot secure basic reasoning and planning capacities. *If states continue to exercise a monopoly on the use of coercive force over their rights-respecting subjects, legitimacy requires that states do whatever they can to* ensure that *these peoples secure basic reasoning and planning capacities*.[lv] Insofar as they exist, states do continue to exercise such a monopoly. So, states are obligated to do what they can to ensure that their rights-respecting subjects secure basic reasoning and planning capacities. This just is the second premise of the Welfare Rights Argument.

One might object that states that subject rights-respecting people to coercive rules, even wrongly, do not thereby acquire an obligation to do what they can to ensure that these people secure basic reasoning and planning capacities. Consider an analogy. Suppose someone, let us call her Samantha, who is not capable of consent agrees to give me a large sum of money. I do not thereby have a duty to do what I can to ensure that Samantha secures basic reasoning and

planning capacities. 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 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 consented could be legitimate. Such protective organizations would not need to ensure that anyone consent. Libertarians could argue as follows. The fact that legitimate states must secure all of their rights-respecting subjects' consent just shows that there should not be states. Rather, libertarians might point out, protective organizations can exercise a monopoly on coercive force over those who actually consent to their rule. They just cannot exercise a monopoly on coercive force over rights-respecting people who do not or can not 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 the libertarians this paper addresses are not anarchists. They cannot say that in fact there should not be states. Nor can they say states are in principle unjustifiable.[lvi] They cannot even say there should be states with "holes" in them – that cede territory to those who are only potentially capable of consent and do not exercise coercive force over them.[lvii] For, I take it that the disagreement between libertarians and anarchists to revolve precisely around whether such exceptions are necessary. In the traditional debates, libertarians believe states that exercise the kind of territorial control actual states exercise can be justified, anarchists do not.[lviii] The idea that states need not cede territory to any of those who cannot consent to the exercise of coercive force over them was one of the common libertarian commitments assumed at the start.

Alternately, the objection may fail to appreciate the nature of states in a different sense. States do not acquire an obligation to do what they can to ensure that their rights-respecting subjects secure basic reasoning and planning capacities by subjecting them to coercive rules.

Nevertheless, in the actual world, states are obligated to do what they can to ensure that their rights-respecting subjects secure basic reasoning and planning capacities. This is because state*s 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 ensure that their rights-respecting subjects secure basic reasoning and planning capacities. 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 ensure that rights-respecting subjects secure basic reasoning and planning capacities 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 [lix] A better analogy might illustrate the import of these observations. If Samantha is not capable of reasoning and planning but I take her money, I can act legitimately only if I do one of two things. I can get her consent to give me the money first, which (by supposition) requires doing what I can to ensure that she secures basic reasoning and planning capacities. Or, I can stop coercing her because she has not consented to give me anything. If I do not stop coercing her, I must get her consent, which requires doing what I can to ensure that she secures basic reasoning and planning capacities. Otherwise, I act illegitimately. States continually exercise a monopoly on coercive force without their rights-respecting subjects' consent. To be legitimate, they must, thus, do what they can to ensure that their rights-respecting subjects secure basic reasoning and planning capacities.[lx]

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 ensure that their rights-respecting subjects secure basic reasoning and planning capacities. Perhaps relatives or charities can ensure that these people secure these capacities. Sticking with the analogy, the objection would be this. In order for Samantha to consent, I need not do what I can to ensure that she does so. Perhaps her family or others involved in charitable work can help her instead. I may be able to legitimately enforce my contract with Samantha without doing what I can to ensure that she can consent.

This objection has some truth in it. Others may be able to ensure that those subject to a state secure basic reasoning and planning capacities. Others may even have primary responsibility for doing so. But the objection misunderstands the nature of *ensuring*. Ensuring is like being a lender of last resort. So, in some cases, states may not need to do anything to ensure that someone secures basic reasoning and planning capacities. If a person secures such capacities 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 breech, however, if help is required. It is only if states do this that all of their rights-respecting subjects who are capable of securing basic reasoning and planning capacities will do so; so states must do what they can to ensure that these people secure these capacities. This is the only way states can be legitimate in our imperfect world.[lxi]

The second premise of the Welfare Rights Argument does imply that states can be obligated to fix problems they did not create. A state may not be responsible for the fact that some people do not secure basic reasoning and planning capacities. Cancer, for instance, can undermine individuals' reasoning and planning capacities even if states make their rights-respecting subjects better off with respect to the capacities at issue than they would otherwise be. Even though states are not responsible for the fact that some of their rights-respecting subjects lack basic reasoning and planning capacities, however, they are responsible for coercing these people. It is the fact that states coerce their rights-respecting subjects that generates the remedial obligation to ensure that these people can at least secure the basic reasoning and planning capacities they need to consent.

IV. The Third Premise: Why Libertarians Should Accept Some Welfare Rights

The final step in defending the Welfare Rights Argument is showing that, to secure basic reasoning and planning capacities, most people (in all states) must 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 ensure that these subjects secure these things (at least as long as they

respect others' rights). To make this case, consider what consent requires on actual consent theory.

There are many versions of actual consent theory. So there are many accounts of what consent requires. Some are more demanding than others. How much the Welfare 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 consent people must secure basic reasoning and planning capacities, people must be able to reason about, make, and carry out some simple plans on the basis of their commitments. 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. 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 consent as well they will be committed to more robust welfare rights. As long as libertarians (who accept the bundle of propositions set out at the start also) accept this much, it will follow that they must accept some welfare rights. The next sub-section will consider what basic reasoning and planning capacities require.

Basic Reasoning and Planning Capacities

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 consent requires the ability to reason would be controversial. Kant, for instance, thinks that reason requires one to acknowledge the categorical imperative as unconditionally required.[lxii] 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 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.[lxiii] 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.[lxiv] It is not necessary to explicate the ability to make some simple plans on one's commitments further here since these are all standard moves in the literature.[lxv] 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."[lxvi] 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.[lxvii]

Consider how the ability to consent 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.[lxviii] 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 basic reasoning and planning capacities necessary to freely consent 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 freely decide, for instance, that his commitment to being 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 basic reasoning and planning capacities necessary to consent to be subject to a state.[lxix]

Perhaps one could argue that the conception of consent at issue in the Welfare 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. Basic reasoning and planning capacities 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 agreed to do so, a state would not be justified in forcing Tamil to abide by its rules if she deliriously agreed to do so. She lacks the basic reasoning and planning capacities 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 those who are only potentially capable of consent 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.[lxx]

A better (although perhaps not sufficiently good) view is this: Coercive force can only be used against rights-respecting people who are only potentially capable of consent, including children, if it helps them secure these (and other basic) capacities. It would be better yet to say that coercive force can only be used against such people to advance their interests, though libertarians might not be able to accept this proposition.[lxxi]

Although this paper has not given a systematic defense of the basic reasoning and planning capacities it suggests are necessary for consent, hopefully it has done enough to explicate and motivate them. This rest of this section will argue that, to secure basic reasoning and planning capacities, most people (in all states) must attain some minimal amount of food, water, shelter, education, health care, social and emotional goods.[lxxii] From this, the conclusion of the Welfare Rights Argument follows easily:[lxxiii] States are obligated to do what they can to ensure that these people attain these things (as long as they do not violate others' rights).[lxxiv]

The Connection Between Capacities and Necessary Goods

Consider, first, how those who lack basic food, water, and health care are likely to suffer from disabilities that undermine basic reasoning and planning capacities. [lxxv] Malnutrition inhibits one's immune system's ability to fight infection and poor nutrition is linked even more directly to many non-infectious illnesses.[lxxvi] 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.[lxxvii] The very sick and dead are obviously incapable of securing basic reasoning and planning capacities.[lxxviii]

Similarly, if people lack adequate shelter they are likely to suffer from disabilities that undermine basic reasoning and planning capacities. 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).[lxxix] 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."[lxxx] Bed nets alone could prevent a lot of illnesses that undermine basic reasoning and planning capacities.[lxxxi]

Less obviously, those without basic education, emotional and social goods may suffer from disabilities that undermine basic reasoning and planning capacities.[lxxxii] Basic education, emotional and social goods are often necessary for securing decent nutrition, medical care, and living conditions; they help people secure basic livelihood opportunities and earning power.[lxxxiii] Those who lack (formal or informal) elementary education may not secure basic reasoning and planning capacities.[lxxxiv] Those who lack basic emotional and social goods are at high risk for mental and physical illness, suicide, and early death from other causes.[lxxxv] "Fear, insecurity, dependency, depression, anxiety, intranquility, shame, hopelessness, isolation and powerlessness… such experiential elements of a bad life…[often impact] ….agency"[lxxxvi] Most people must secure basic education, emotional and social goods to secure basic reasoning and planning capacities.[lxxxvii]

On the account defended above, individuals have basic reasoning and planning capacities as long as their minds do not become clouded and they have some room for free action. Some people will secure these capacities 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.[lxxxviii] Most people (in all states) need at least some food, water, shelter, education, health care, social and emotional goods to secure basic reasoning and planning capacities. As Nietzsche said, "the belly is the reason why man does not so readily take himself for a God."[lxxxix]

The conclusion of the Welfare Rights Argument follows: Libertarians must agree that states have to do what they can to ensure that their rights-respecting subjects secure basic reasoning and planning capacities. To secure these capacities, most people need some minimal amount of food, water, shelter, education, health care, social and emotional goods. So, libertarians

must agree that states have to ensure that these people secure these things (as long as they do not violate others' rights). Libertarians should endorse some welfare rights.

Before considering objections to the Welfare Rights Argument, it is worth pointing out some of its consequences. The welfare rights libertarians must accept will only be as robust as the requirements for consent that they endorse. If libertarians only require the minimal capacities relied upon here, the welfare rights they must endorse will be very minimal indeed. Libertarians might only agree that states have to ensure that their rights-respecting subjects secure basic reasoning and planning capacities. Libertarians might deny that states must ensure that these people *maintain* these capacities, if they do consent to a regime that does not provide them or freely give them up. They might argue that states can fulfill their obligations to the radically poor by leaving open to everyone only one treacherous route to securing this capacities.

The welfare rights libertarians must accept are also as radical as the non-aggression and actual consent principles libertarians adopt. No existing state has ever fulfilled the condition for legitimacy libertarians must endorse. If states must literally avoid coercing all rights respecting individuals without their consent, states must literally do all they can to ensure that their rights-respecting subjects secure basic reasoning and planning capacities.[xc] States must ensure that even completely irresponsible free riders secure these capacities 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 ensure that they secure basic reasoning and planning capacities throughout their lives. Furthermore, states must do *whatever they can* to ensure that people secure basic reasoning and planning capacities, even if ensuring that people secure these capacities 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.

This last point exposes another potential problem for libertarians. If 1) ensuring that everyone secures basic reasoning and planning capacities requires coercing others and 2) libertarians will not accept tradeoffs between meeting different conditions for legitimacy, the

libertarian's position is simply incoherent. Presumably there will be some way of rescuing libertarianism from incoherence.

Some ways of reconciling libertarian commitments with the conclusion that they have to endorse welfare right to things like food, water, and shelter, might lead one to worry about this conclusion's significance. If charitable donations, for instance, literally ensured that everyone secured basic reasoning and planning capacities, 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.

Still, modulo some minimal empirical assumptions, the fact that libertarians should endorse any kind of welfare rights is incredibly important. For, it is hard to deny that there are *some things* states could do to ensure that more people secure these basic reasoning and planning capacities. After all, hundreds of millions of people lose these capacities every year because they suffer from easily preventable poverty related problems like malnutrition and malaria.[xci] Many of these people could reason and plan if their states helped them secure basic food, water, shelter, medical care and so forth.[xcii] So, despite its minimalism, the Welfare Rights Argument is as significant as it is shocking. Denying it will come at a cost for those who hold the bundle of common libertarian commitments set out at the start.

V. Objections

This section will consider some final objections to the Welfare Rights Argument. Perhaps critics could suggest that the Welfare 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. Hundreds of millions of people lose basic reasoning and planning capacities every year because they suffer from malaria alone.[xciii] 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 Welfare Rights Argument does imply that hundreds of millions of people are unable to freely enter into contracts but that is the correct view. It is only because so many (e.g. desperately ill) people *cannot even reason or plan* that they cannot freely enter into free contracts. Many of these people have, however, had the relevant capacities 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 basic reasoning and planning capacities. Those who freely marry and then suffer from malaria-induced delusions, for instance, are not suddenly divorced. Furthermore, if people who currently lack these capacities secure them 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 Welfare Rights Argument does not say anything about how we should treat contracts that are not valid. There may, for instance, be good reasons to honor some of them.

Alternately, critics could argue that states simply cannot coerce those who are only potentially capable of consent 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, free choice. That is what distinguishes coercion from mere force. Since states cannot coerce those who are only potentially capable of consent they may not need to secure these people's consent.

It is not clearly impossible to coerce those who are only potentially capable of consent, but even if states only exercise brute force over these people, a modified version of the Welfare Rights Argument should go through. 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 capable of reasoning and planning.[xciv]

Perhaps one could object that this paper overlooks the distinction between liberty and basic reasoning and planning capacities. Libertarians only believe states have an obligation to respect individuals' liberty. They do not believe states must help people secure basic reasoning and planning capacities.

This objection rejects the conclusion of the Welfare 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, states must secure their rights-respecting subjects' consent. For people to consent to a state they must be able to do so. If states coerce their rights-respecting subjects without securing their consent, they act illegitimately. States do (because they are states) coerce their rights-respecting subjects. The only way for states to be legitimate is for them to do what they can to ensure that their rights-respecting subjects secure basic reasoning and planning capacities. If someone requires assistance from a state to secure these capacities, that state must not just refrain from interfering with that person's liberty but help that person secure them. That is why the Welfare Rights Argument is interesting. If it is correct, libertarians (surprisingly!) must agree that states have to help rights-respecting subjects who would otherwise fail to secure basic reasoning and planning capacities.

A final 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.[xcv]

First, it is worth reiterating that the Welfare Rights Argument does not address everyone who calls themselves a libertarian. Milton Friedman, for instance, was happy to accept some kind

of welfare state, and many who think of themselves as libertarians are more moderate than Friedman. Some even think Adam Smith and Friedrich Hayek were libertarians.[xcvi] Second, many of those who follow Murray Rothbard call themselves *libertarians* but qualify as *anarchists* as this paper is using the terms.[xcvii] The Welfare Rights Argument just addresses libertarians who deny its conclusion and accept the bundle of propositions set out at the start. These libertarians are not anarchists. They believe there should be some states that exercise a monopoly on force over their subjects and these states need not cede territory to any of those who cannot consent to the exercise of coercive force over them. They 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 was the paradigmatic libertarian. He accepted the relevant propositions. But the Welfare Rights Argument might also address, if not convince, libertarians like Tibor Machan and Eric Mack. That said, the Welfare Rights Argument is not intended to defend vested interests or egalitarianism. It only tries to show that libertarians should agree that states must ensure that some of their subjects secure food, water, shelter and so forth.[xcviii]

VI. Conclusion

If they accept this paper's argument, libertarians, because they should be consent theorists, should agree that states must do what they can to ensure that their rights-respecting subjects secure basic reasoning and planning capacities. To secure these capacities, most people need some minimal amount of food, water, shelter, education, health care, social and emotional goods. So, states have to ensure that these people secure these things (as long as they do not violate others' rights). Hopefully another argument can show libertarians that they should accept a more robust conception of welfare rights. Still, the conclusion that libertarians who accept the bundle of propositions set out at the start have to endorse any welfare rights at all is shocking. For, at least historically, these libertarians have vehemently rejected positive rights. This

conclusion is also important 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.

i Acknowledgments with-held to preserve anonymity.

ii This paper will reserve the term *anarcho-capitialists* for anarchists who are only committed to libertarian rights in a state of nature. It would be nice to have a way of arguing that libertarians should not be anarcho-capitalists, as some libertarians would rather accept anarchism than this paper's conclusion. Unfortunately, I do not have the space to argue that libertarians should not be anarchists here. On this debate see: Roderick Long and Tibor Machan, *Anarchism/Minarchism: Is a Government Part of a Free Country?* (London: Ashgate Press, 2008).

iii I deliberately leave this principle vague. I take it that most libertarians do not think it is acceptable to exercise coercive force over some 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 those who are only potentially capable of consent for others' benefit than it is to coerce those who have basic reasoning and planning capacities 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 those who are only potentially capable of consent for others' benefit than it is to coerce those who have basic reasoning and planning capacities for others' benefit. Even understood as prohibiting all coercive force against an 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 consents (if, that is, such force qualifies as coercion). Such coercion may be understood as protecting that individual's liberty.

iv The argument this paper defends does not show that the welfare state libertarians should accept is responsible for helping those who are incapable of securing basic reasoning and planning capacities. Another argument might have this consequence, however.

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

vi This paper will 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. 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 Pres, 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).

vii 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: Author. Reference with-held.

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

ix Legitimacy, as this paper will use the term, comes in degrees. Some people believe legitimacy is an all or none affair. This is not a substantive disagreement. Those who hold a binary theory of legitimacy can specify that a state is legitimate in the binary sense if it surpasses a threshold of legitimacy in the degree sense. Understanding *legitimacy* as a degree term, allows one to specify different thresholds on legitimacy for different purposes. In what follows, one need only suppose that imperfectly legitimate systems must be reformed. For an example of a binary theory see: Allen Buchanan, *Justice, Legitimacy, and Self-determination: Moral Foundations*

for International Law (Oxford: Oxford University Press, 2004). For discussion of the degree conception of legitimacy see: John Simmons, *Moral Principles and Political Obligations* (New Jersey: Princeton University Press, 1979).

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

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

xii Ibid.

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

xiv 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.

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

xvi Nor need actual consent theorists hold that subjects must consent to every single part of their state for it to be legitimate. They might only require subjects to consent to the general principles underlying their state(s). Alternately, actual consent theorists might only insist that subjects consent to the general structure of their state(s), not every subsidiary rule and institution. 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).

xvii More work is necessary to finesse this point.

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

xix Actual consent can include tacit consent if people can realistically avoid tacitly consenting (where this requires the basic reasoning and planning capacities set out below).

xx Some libertarians believe it is possible to for people to relinquish all of their rights.

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

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

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

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

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

xxvi Ibid: 335.

xxvii Ibid: 337.

xxviii A different argument for a state is 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).

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

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

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

xxxii Ibid: 338.

xxxiii Some libertarians, however, try to defend a state having a monopoly on coercive force by distinguishing between different ways the monopoly could come about. 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, 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 when it prohibits 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 it did not own). Saying people can move elsewhere does not answer the objection. 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),

xxxiv If the exit must be more than merely formal people will probably have to secure some basic reasoning and planning capacities to be free to leave.

xxxv 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).

xxxvi 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). Acknowledgement with-held to preserve anonymity.

xxxvii 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).

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

xl Ibid. Page 242.

xli Ibid. Page 237.

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

xliii 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' 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 consent. But why must all institutionalized consent mechanisms be ones everyone consents. 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 consent 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.

xliv Nevertheless, there is something compelling about this objection. At least actual consent theorists who are not inclined toward libertarianism or anarchism can accept the claim that, all things considered, it is better to have peace and coercion than war. There is a conflict between different values in the example. 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 consent of the most disagreeable miners, is necessary to fully legitimize the state.

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

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

xlvii Presumably some ways of securing 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 etc. that full legitimacy requires a state to do whatever is possible to ensure that its rights-respecting subjects can consent to its rule. See discussion that follows.

xlviii If we simply lack the resources to ensure that everyone who has the potential to secure basic reasoning and planning capacities do so, then further restrictions will be necessary. I discuss these issues elsewhere. See: Author, reference withheld.

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

l 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, 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 consent to a state.

li Basic reasoning and planning capacities probably come in degrees. One needs to secure whatever amount of reasoning and planning ability one needs to consent to a state. To make this idea precise, however, it is possible to draw a threshold on the basic reasoning and planning capacities 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.

lii 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. Suppose possible states are ranked 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 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 this paper has 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' liberty. Acknowledgement with-held to preserver anonymity.

liii This paper's argument actually addresses even libertarians who think it is acceptable to coerce (rights-respecting) people who cannot secure basic reasoning and planning capacities for others' benefit. Though, the obligations that it can convince these people to accept are, unsurprisingly, weaker. The argument entails that a state must help those who would attain basic reasoning and planning capacities 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 basic reasoning and planning capacities without the state's help. Exploring this possibility at length would, however, take us too far afield.

liv Presumably, these people cannot hire people to protect them when they lack basic reasoning and planning capacities, but their existing contracts may remain valid and they may retain their rights to hire other protective organizations if they regain their basic reasoning and planning capacities.

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

lvi 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 Welfare Rights Argument by saying states need not exercise a monopoly on coercive force.

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

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

lix One might worry that libertarianism will not remain distinctive if it requires a welfare state. As will become clear below, however, most libertarian actual consent theorist will only accept a much more minimal and radical welfare state than most welfare liberals accept.

lx This argument has pushed pretty hard on the idea that states' monopoly on coercive force must be justified via consent. But it is because states constrain individuals' ability to protect their rights that they must be justified (not just because they exercise a monopoly on coercive force). So, even if libertarians give up their commitment to a state with a monopoly on coercive force, arguing that individuals should be able to protect their own rights and hire competing protective agencies to do so, this argument may still have practical import. For, it shows that libertarians' other commitments force them to agree that any constraints on rights-respecting individuals' ability to exercise coercive force must be justified by consent.

lxi The Welfare Rights Argument must be qualified in several ways which the final section of this paper will discuss. It may be worth pointing out here that even if a state cedes some territory to those who are only potentially capable of consent so that it does not coerce them, this argument applies to the territory over which a state does exercise coercion. This move also raises many questions about the coerciveness of state borders which go beyond the scope of this paper. See: Author. Reference with-held.

lxii 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).

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

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

lxv 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. See, for instance: John Rawls, A Theory of Justice (Cambridge: Belknap Press, 1971). Also 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).

lxvi Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon Pres, 1998).

lxvii 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 consent. Still, the ability to carry out some simple plans (and, in particular, those plans that will allow one to consent to a state) is necessary.

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

lxix The basic reasoning and planning capacities set out do not prevent one from acting from poor reasons (e.g. wishful thinking). If one thinks this is not compatible with consent, additional criteria for consent will be necessary to rule out this possibility.

lxx 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. It would be better yet to say that coercive force can only be used against those who are only potentially capable of securing reasoning and planning capacities to advance their interests.

lxxi Libertarians might not be able to accept this way of formulating the relevant constraint. Presumably, though, neither way of formulating the constraint commits one to the view that abortion is impermissible if fetuses are not persons.

lxxii 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).

lxxiii 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 ensure that they secure basic reasoning and planning capacities. 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 basic reasoning and planning capacities.

lxxiv As with autonomy, what is sufficient to ensure that subjects 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 rights-respecting subjects do not actually secure these things is that they have chosen not to do so.

lxxv 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).

lxxvi 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.

lxxvii Ibid.

lxxviii 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.

lxxix 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>.

lxxx 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>.

lxxxi 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>.

lxxxii 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>. Also see: Rodger Doyle, "Calculus of Happiness: Assessing Subjective Well-being Across Societies," *By the Numbers.* Scientific American. November 2002.

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

lxxxiv Stress may contribute to a host of mental disorders that can undermine reasoning and planning ability. 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).

lxxxv 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," *Isum* 2, no. 1 (2001). Available at: <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.

lxxxvi 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).

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

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

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

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

xci World Health Organization (WHO). 2004. *The World Health Report 2004*. WHO: Geneva. Available at: <www.who.int/whr/2004>. Annex Table 2

xcii For evidence to this effect see: Author, reference with-held to preserve anonymity. Many who are not poor also suffer from disabilities that can undermine reasoning and planning ability – e.g. some of those who have cancer due to smoking. Although it is probably impossible for a state to be fully legitimate and ensure that all those who can secure basic reasoning and planning capacities 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 consented to do so).

xciii World Health Organization (WHO). 2004. *The World Health Report 2004*. WHO: Geneva. Available at: <www.who.int/whr/2004>. Annex Table 2

xciv 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 basic reasoning and planning capacities their rights suddenly disappear.

xcv Acknowledgment with-held.

xcvi See, for instance: Peter Vellentyne. 2009. "Libertarianism." Stanford Encyclopedia of Philosophy. Available at: <http://plato.stanford.edu/entries/libertarianism/>.

xcvii Ibid.

xcviii Furthermore, even if no libertarians accepted all of the propositions with which this paper's started, one might (at least initially) think it is a plausible libertarian position. It is both surprising that worth noting that this position is fraught with difficulties.