

Review Essay: A Critique of Michael Huemer's *The Problem of Political Authority*

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**1. Introduction**

Michael Huemer's *The Problem of Political Authority* addresses the question of whether the state is, or can be, legitimate.<sup>1</sup> He expounds and criticizes a number of different types of solution before presenting and defending the solution he favors. The attempted solutions that he rejects are traditional social-contract theories, hypothetical social-contract theories, appeals to democratic processes, consequentialist accounts, and fairness accounts. What those attempted solutions have in common is that they try to show that the state is, or can be, legitimate. Huemer concludes: "No state is legitimate, and no individual has political obligations" (sec. 13.5.1). Accordingly, the solution that Huemer defends is that there is a form of anarchism that will yield the benefits that are usually ascribed to the state while avoiding the ills that states produce.

Huemer sometimes makes statements like: "it is permissible for the state to prohibit some action if and only if it would be permissible for a private individual to use force to prevent or retaliate for that sort of action" (end of sec. 7.1.5). Such statements are misleading insofar as they make it appear that Huemer thinks that a legitimate state is possible. However, a state that could permissibly do only what non-state agents could permissibly do, would not be a state. So, perhaps Huemer's statement is intended as a *reductio ad absurdum*: A legitimate state would not be a state; therefore, there is no legitimate state.

Huemer raises sufficient difficulties against social-contract and democracy accounts to rule them out (though he does not quite show how thoroughly hopeless they are). I do not discuss those approaches here.<sup>2</sup> Nor do I consider fairness accounts (which Huemer targets), except insofar as consequentialist accounts contain a fairness component. I show that the best

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<sup>1</sup> Michael Huemer, *The Problem of Political Authority* (New York: Palgrave Macmillan, 2013). This is the electronic version, so all references are to section rather than page numbers.

<sup>2</sup> For a brief critique of social-contract theories, see my "Social Contract Theory Should Be Abandoned," *Rationality, Markets, and Morals* 4 (2013), pp. 178-89.

available consequentialist solution to the problem of political authority is untouched by Huemer's objections to consequentialist and fairness theories. I also outline the strongest objection to consequentialist solutions, which Huemer does not offer explicitly, though it is implicit in the argument of Part II of his book.

In Section 2, I explain briefly the problem of political authority. In Section 3, I outline the best available consequentialist solution to the problem. In Section 4, I show that solution to be untouched by the confused objections that Huemer raises to consequentialist accounts. In Section 5, I summarize the argument of the previous sections before outlining the strongest argument against consequentialist explanations of political authority.

## 2. The Problem of Political Authority

The problem of political authority, says Huemer (sec. 1.1), is why we should accord to the state, as contrasted with ordinary citizens, the special moral status of having authority over us. In a somewhat unorthodox demarcation (because it includes the right to rule under political legitimacy rather than under political obligation) he says that the authority in question has two aspects:

- (i) Political legitimacy: the right, on the part of a government, to make certain sorts of laws and enforce them by coercion against the members of its society—in short, the right to rule.
- (ii) Political obligation: the obligation on the part of citizens to obey their government, even in circumstances in which one would not be obligated to obey similar commands issued by a nongovernmental agent (sec. 1.2).

Huemer speaks as if these two aspects of political authority are independent; however, (i) entails (ii). If a state has the *right* to make laws for its citizens, then the citizens have the *duty* to obey the laws. That right and that duty are correlative. (Huemer does not distinguish obligations from duties, and neither shall I.) However, (ii) does not entail (i) because (i) also includes the right to *enforce* the laws. Huemer defines “coercion” to mean using physical force or the threat of physical force to induce a person to act, or not act, in a specific way (sec. 1.4). Political authority may be circumscribed, that is, there may be limits to what sorts of laws a state may legitimately make. It is a substantive question whether any existing state has political authority (secs. 1.2 and 1.5). Our question, then, is this: What could make it the case that a state has political authority?

A shortcoming in Huemer's explanation of the problem is that he does not say what he takes a state to be. If a state were defined as a body with political authority, the answer to the question would be that a state cannot but have political authority. It would then be an open question as to whether there are, or could be, any states. Huemer thinks that states do exist but do not have

political authority. So what, then, does he think a state is? He does not say explicitly, but from the things he does say (secs. 1.1, 2.1, and elsewhere) it seems that we can impute to him the following definition:

- (s) A state is a body that makes and enforces laws, provides internal security and external defense (among other things), and levies (compulsory) taxation.

The question, then, is how a state could have the moral authority to do such things or, more accurately:

- (p) How could a state, as described in (s), have political authority, as defined by the conjunction of (i) and (ii), above?

A common approach to this problem has been to try to explain political authority in terms of the ordinary moral authority of individuals. One way of doing that invokes the authority of individuals to enter contracts, the idea being that people agree, or would agree under particular circumstances, to set up a body with the right to rule, and thus they become obliged to obey that body in virtue of their agreement. Another type of explanation of political authority attempts to derive it from the respect due to individuals as (potential) participants in democracy. The failure of those types of explanations suggests that it is a mistake to attempt to derive political authority from individual authority. The explanation for political authority, if there is one, may instead ground it in the social connectedness of human persons.

### 3. The Consequentialist Explanation of Political Authority

Consequentialist explanations of political authority may take different forms. The one that I take to be best—the Consequentialist Explanation of Political Authority—is a secular development of a form of rule-consequentialism proposed by George Berkeley in 1712 (though it differs from his view in significant ways, including not endorsing passive obedience to a tyranny).<sup>3</sup> I expound this account elsewhere<sup>4</sup>; here I offer only an outline.

Political authority is required for human flourishing because human persons are not entirely separate from each other. They are born into social relations and they usually spend their whole lives in community with other individuals. What one person does has implications, good or bad, for others.

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<sup>3</sup> George Berkeley, “Passive Obedience,” in A. A. Luce and T. E. Jessop, eds., *The Works of George Berkeley*, vol. 6 (London: Thomas Nelson and Sons, 1953), pp. 15-46.

<sup>4</sup> See my “The Good Bishop and the Explanation of Political Authority” *De Ethica* (forthcoming), accessed online at: [https://www.academia.edu/9200305/The\\_Good\\_Bishop\\_and\\_the\\_Explanation\\_of\\_Political\\_Authority](https://www.academia.edu/9200305/The_Good_Bishop_and_the_Explanation_of_Political_Authority).

So, while the flourishing of each person is normally that person's responsibility, it can significantly be helped or hindered by the actions or omissions of others. There are alternative possible systems of moral and other normative rules which provide different incentives for action or inaction, and in that way may either promote or undermine the achievement of the flourishing of individuals. The system of moral rules that is (objectively) true is the one which, if universally acknowledged and acted upon by people as they actually are, provides the best prospects for human flourishing. The true system of rules, needless to say, is for us to discover. It seems from the knowledge that we have acquired so far that, as Berkeley maintains, the true system of rules includes rules assigning authorities, rights, and duties to persons and also rules assigning authorities, rights, and duties to the state. The state is not a person; it is an institution constituted by rules governing the behavior of persons.<sup>5</sup> Human flourishing requires private property rights to be defined in as many things as practically possible and also requires individuals to have the freedom to exchange, give up, or modify private property rights, with mutual consent and minimal obstruction.<sup>6</sup> It seems, therefore, that the true system of moral rules assigns the state the authority to:

- make suitable arrangements to protect the rights of its citizens from violation by parties internal or external to its territory;
- define private property rights, when it becomes practically possible to do so, in areas where they previously did not exist (a newly discovered land mass, the oceans, the air, the moon, and so on) and lay down a scheme for the acquisition of those rights;
- alter previously existing rights if that becomes necessary to improve the prospects of the flourishing of all persons;
- make and enforce other regulations where required to solve coordination problems efficiently, if the authority that citizens have to make regulations for their own properties cannot solve those problems; and

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<sup>5</sup> See, e.g., Dorothy Emmett, *Rules, Roles, and Relations* (London: Macmillan, 1966), pp. 1-16 and 138-48.

<sup>6</sup> See, e.g., Ronald Coase, "The Problem of Social Cost," in Ronald Coase, *The Firm, the Market, and the Law* (Chicago, IL: University of Chicago Press, 1960), pp. 95-156; Garrett Hardin, "The Tragedy of the Commons," *Science* 162, no. 3859 (1968), pp. 1243-48; Friedrich Hayek, "The Use of Knowledge in Society," in Friedrich Hayek, *Individualism and Economic Order* (London: Routledge and Kegan Paul, 1945), pp. 77-91; Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), pp. 309-34; and Danny Frederick, "Voluntary Slavery," *Las Torres de Lucca* 4 (2014), pp. 115-37, sec. III.

- levy fair taxes to finance its activities.

The existence of a state with political authority will not *guarantee* that all, or even any, individuals flourish to any significant extent, for a variety of unavoidable reasons, including that human knowledge is scant and fallible (so individuals will often make mistakes); that humans have free will and may act perversely to frustrate their own fulfilment or that of others; and that human life is subject to the vicissitudes of the physical world, including diseases and natural disasters. However, the existence of a state with political authority does provide the best *prospects* for human flourishing.

The state defined by the true set of moral rules will not fully conform to the five principles that Huemer says are implicit in “the ordinary conception of political authority” (sec. 1.5), namely:

(1) *Generality*: The state has authority over at least the great majority of citizens.

(2) *Particularity*: The state has authority only over its own citizens and residents in its territory.

(3) *Content-independence*: The state has significant leeway over the content of laws that it promulgates, and even has the right to make and enforce laws which are bad or wrong.

(4) *Comprehensiveness*: The state is entitled to regulate a broad range of activities, perhaps including such matters as the terms of employment contracts, the trading of financial securities, medical procedures, food preparation procedures in restaurants, individual drug use, individual weapon possession, movement into and out of the country, the flying of airplanes, and trade with foreign countries.

(5) *Supremacy*: The state is the highest human authority in its domain.

The state defined by the true set of moral rules will instantiate the principles of generality and particularity. It will satisfy the principle of supremacy insofar as it is the highest authority in its domain. However, the state is not a human; it is an institution. It will partly exemplify the principle of content-independence. There are many cases where the state will need to introduce a rule, but where there are a number of different rules which are as good as each other. In those cases, the state has permissible leeway about which ones to adopt. For example, suppose that traffic regulations need to be made by the state. It may not matter whether the regulation is to drive on the right-hand or the left-hand side of the road, so long as it is one of them. However, the state would not have the right to make and enforce laws which

are bad or wrong, as a state with such a right would offer worse prospects for human flourishing than a state which did not have such a right. Therefore, the state with political authority will not instantiate the principle of comprehensiveness. To assume or insist that a state with political authority must exemplify fully the five principles that Huemer says are implicit in “the ordinary conception of political authority” would limit conceptions of a legitimate state to those which can be refuted easily, thereby exhibiting a lack of theoretical seriousness.

Huemer, somewhat perversely, given (i) and (ii) in Section 2 above, divides consequentialist explanations of political authority into those concerned with political obligation and those concerned with political legitimacy. He says:

[C]onsequentialist arguments . . . for political obligation . . . proceed in two stages. First, one argues that there are great values that are secured by government and that could not be secured without government. Second, one argues that this fact imposes on individuals an obligation to obey the state, on the grounds that (a) we have a duty to promote the values addressed in the first stage of the argument or at least not to undermine them, and (b) obedience to the law is the best way of promoting those values and disobedience is a way of undermining them. (sec. 5.1.1)

There are two serious problems with Huemer’s statement in the above quotation. First, what he describes as the “first stage” of consequentialist arguments concerned with political obligation indicates, somewhat infelicitously, the Consequentialist Explanation of Political Authority. The “great values” to which the explanation appeals concern the flourishing of human individuals. The argument is that the best prospects for realizing those values is the existence of a state with political authority of a delimited kind. If a state with political authority exists, then its citizens owe it political obligation. What Huemer describes as the “second stage” of the argument is therefore not required. Indeed, as it grounds political obligation *not* in political authority but directly in the “great values,” it is not even consistent with the “first stage” of the argument.<sup>7</sup> Furthermore, since part (a) of the “second stage” seems act-consequentialist while part (b) seems rule-consequentialist, the “second stage” of the argument seems inconsistent with itself.<sup>8</sup> Perhaps Huemer would not count the Consequentialist Explanation of Political Authority as a consequentialist account. However, that would be inadvisable given that one of his objections to consequentialist accounts is an objection to

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<sup>7</sup> Compare Berkeley, “Passive Obedience,” sec. xxxi.

<sup>8</sup> *Ibid.*, secs. viii, xxx, and xxxi.

rule-consequentialism (see Section 3), and it would mean that his argument against political authority ignores the best explanation of such authority.

Second, I speak of consequentialist *explanations of*, rather than *arguments for*, political authority. While an explanation is generally an argument, of which the conjunction of the premises forms the *explanans* and the conclusion forms the *explanandum*, an explanation is not an argument *for* its conclusion. An argument *for* a conclusion is an attempt to prove or establish or justify that conclusion. In contrast, the conclusion of an explanation is assumed, perhaps tentatively, to be true, while its premises may (and should) be considered hypothetical, so there is no attempt to prove or establish or justify anything. The premises are hypothetical because they constitute a conjectured solution to the problem of explanation; even if that conjecture turns out to be better than any other proposed so far, a still better conjecture may be proposed in the future.<sup>9</sup> Rival explanations need not agree in their *explananda*. For example, different explanations of political authority may disagree over the scope of the political authority they ascribe to the state. Indeed, an anarchistic explanation of the impossibility of political authority will compete with them all as an answer to the question of whether a state could have political authority.

#### 4. Huemer's Objections

Huemer's stated strategy in arguing against consequentialist explanations of political authority is to grant the assumption that a state is needed to provide great benefits of the kind adverted to in Section 3 above, and to show that political authority as commonly understood cannot be derived from that assumption (sec. 5.1.2). This strategy seems either trivial or incoherent.

If by "political authority as commonly understood" he means that which fully satisfies the five principles that he says are implicit in "the ordinary conception of political authority," so that such authority includes comprehensiveness and the right to make bad or wrong laws, then he is setting himself an easy task that is theoretically uninteresting.

Alternatively, by "political authority as commonly understood" he may mean authority which satisfies his definition, quoted in Section 2 above, which combines (i) political legitimacy with (ii) political obligation. In that case, his argument is that, even if we assume that great benefits require a state as described in (s) (in Section 2), that is, a body which (among other things) makes and enforces laws, a body of such kind would not have the *right* to make and enforce laws. That seems incoherent. The value of the great benefits that depend on the existence of a state makes it the case that there *morally ought* to be a body of a particular kind making and enforcing laws. That

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<sup>9</sup> See my "The Contrast between Dogmatic and Critical Arguments," *Organon F: International Journal of Analytic Philosophy* 22, no. 1 (2015), pp. 9-20, for discussion of dogmatic, critical, and hybrid arguments.

should make it the case that individuals *morally ought* to obey the laws made by that body and submit to that body's enforcement of those laws. That is to say that people have a *duty* to obey, and comply with the enforcement of, the laws of such a body. But that implies that such a body has the *right* to make and enforce laws. So, the great benefits in question require a state with political authority, not just a state as described in (s). Just as human rights are grounded in the value of specifically human capacities (plus facts about the world), so the rights of the state are grounded in the value of the functions, specific to the state, which make human flourishing possible (plus facts about the world).

The dubiousness of Huemer's strategy seems matched by the confusions in his objections to consequentialist explanations of political authority. Huemer divides them into objections to political obligation and objections to political legitimacy. Since, as we noted in Section 2, political legitimacy (on Huemer's definition) entails political obligation, objections to the latter are also objections to the former, and all are objections to political authority. I consider and criticize Huemer's objections in the following subsections, showing that all of them are confused and none of them has any impact on the Consequentialist Explanation of Political Authority.

**a. Low-level disobedience**

Huemer says:

Proponents of the consequentialist argument for political obligation argue that general obedience to the law is necessary for the state to function. If too many citizens disobey, the state will collapse, and its enormous benefits will disappear. Furthermore, they argue, the costs of obedience, while significant, are reasonable *in light of the benefits*, since most people receive substantially greater benefits than costs from the state. Thus, a moderate principle of a duty to do good leads to the conclusion that we are generally bound to obey the law. (sec. 5.1.3)

He raises the following objection to that consequentialist argument:

It is plausible that there is some level of disobedience that would cause a governmental collapse. But as long as we are far from that level, any given individual can disobey with no consequences for the survival of government . . . [because] other people will continue to obey whether you obey or not. (sec. 5.1.4)

He adds that there are some laws, including those against murder and robbery, which one should obey for independent moral reasons. However, obedience to such laws fulfills a general moral obligation to other people; it is not an example of *political* obligation, which involves a content-independent obligation to obey the law because it is the law.

It should be easy to see that Huemer's objection is irrelevant to the Consequentialist Explanation of Political Authority. On that explanation, it is not the case that the citizens are obliged to obey the laws simply because the benefits of law-abidingness are well worth the costs, or simply because the horrors of lawlessness generate a duty of law-abidingness. It is, rather, the case that a state of a particular kind, which has the right to promulgate laws that the citizens are obliged to obey, provides the best prospects for human flourishing, and if such a political authority exists, its citizens are obliged to obey its laws.<sup>10</sup> The fact that a relatively low level of disobedience is consistent with general obedience, and thus consistent with avoiding the horrors of lawlessness, does not alter the fact that all of the citizens are obliged to obey the laws of a state with political authority because those laws are promulgated by a body that has the *right* to make laws for its citizens.

**b. Universalizability**

Huemer claims that one may break the law if what the law commands is not independently morally required and no serious negative consequences will result. He says that rule-consequentialism is closely related to a doctrine of universalizability. He introduces that doctrine as saying, roughly, that an action is impermissible if sufficiently bad consequences would follow were everyone to perform an action of that type. That doctrine, he says, may seem to rule out low-level disobedience because, if everyone did it, there would be high-level disobedience and the state would collapse. However, the doctrine of universalizability seems to have the absurd consequence that my becoming a professional philosopher is impermissible given that, if everyone became a professional philosopher, we would all starve. Huemer says that one might try to save the doctrine by describing one's proposed action more carefully. For example, my action does seem to be universalizable if it is described as "becoming a professional philosopher *provided that* there are not already too many professional philosophers." However, an instance of low-level disobedience may be described as "breaking the law when what the law commands is not independently morally required, *provided that* there are not too many people breaking the law." So described, the action seems universalizable, since a general rule of performing actions of that type would not bring about the collapse of the state. He concludes that if rule-consequentialism is defensible, it does not provide a general defense of political obligation (sec. 5.2).

Huemer here simply confuses rule-consequentialism with universalizability. The latter doctrine appears to be incoherent because every particular action can be described in various ways, such that it is universalizable under some descriptions but not under others. For example, my action of repaying a debt to Jim may be truly described as my moving my right arm in a particular way at a specific time. But if everyone moved his

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<sup>10</sup> Berkeley, "Passive Obedience," sec. xxxi.

right arm in that particular way at that specific time, then some people would be hit, some people would lose control of the vehicle they are driving, some people would knock pots of boiling water over infants, and so on. That would make my action of repaying my debt to Jim impermissible. My unprovoked punching of Jim on the nose may truly be described as my moving my body on a Monday. But it does not appear that there would be bad consequences if everyone moved her body on a Monday. So it would seem to be permissible for me to give Jim an unprovoked punch on the nose. In contrast, rule-consequentialism affirms that the correct system of moral rules is that which provides the best prospects for human flourishing, which does not entail the doctrine of universalizability. Consequently, objections to that doctrine are not objections to rule-consequentialism.

***c. Fairness***

Huemer notes that an advocate of a “fairness theory of political obligation” may respond to his claim that some low-level disobedience is permissible by saying that it would be unfair and thus wrong to free-ride on other people’s obedience (sec. 5.3.1). An advocate of the Consequentialist Explanation of Political Authority could also make that point, since his explanation appeals to the flourishing of *all* individuals. The response, says Huemer (sec. 5.3.2), is plausible only with regard to some laws, such as tax laws, where obedience provides resources to the state to fund its activities. The response is not plausible for many other laws, such as prohibitions of marijuana smoking, the sale of sex, the provision of legal advice without admission to the bar, paying less than the minimum wage, selling packaged food without listing the number of calories it contains on the package, running a private company that delivers mail to individuals’ mail-boxes, and so on. Obedience to such laws, he says, does not seem to constitute a sharing of the costs of providing protection from foreign states or domestic criminals or providing predictable rules for social cooperation. By disobeying in such cases, you do not appear to treat others unfairly.

Huemer’s response here seems inappropriate. The advocate of a consequentialist explanation of political obligation need not be committed to defending the authority of an existing state or an obligation to obey its unjust laws. An attempt to explain how political authority, and thus political obligation, is possible is not, or need not be, an attempt to explain why any existing state has political authority. In the case of the Consequentialist Explanation of Political Authority, as we already noted, it is only a delimited kind of state that is deemed to have political authority. The same may apply to other consequentialist explanations of political authority.

***d. Better value alternatives***

A further objection that Huemer raises to fairness theories is worth examining because it allows us to make additional points about consequentialist theories. This objection is that obeying the law often interferes with doing more important things. Huemer says that it would be

permissible safely to evade \$1,000 worth of legally prescribed taxes if one could spend the money in a more socially valuable way than giving it to the state. That option is almost certain to be available, he says, because the marginal social benefit of each dollar given to the state is much less than the marginal social benefit of a dollar given to any of a variety of extremely effective private charities (sec. 5.3.4).

Whatever force that objection has against fairness accounts does not transfer to rule-consequentialist accounts. The difference between act-consequentialists and rule-consequentialists is that the latter deny that a rule may be broken whenever an action in accord with the rule provides a smaller social benefit than an alternative action which breaks the rule. It has been a commonplace in philosophy at least since Berkeley<sup>11</sup> and David Hume<sup>12</sup> that, even in the best system of law, or of moral rules, there will be particular instances in which social benefit would be increased by breaking a law but in which it is impermissible to break the law. A system of rules is morally required, but no system of rules is blemish-free. On the Consequentialist Explanation of Political Authority, one always has an obligation to pay one's taxes if the tax laws are promulgated by a state with political authority that acts within its authority.

All that is consistent, though, with there being relatively rare cases in which it is permissible to act contrary to the obligation imposed by a given law or moral rule, if that is the only way to avoid a calamity. That will be so if it is a moral rule that an impending calamity generates an obligation and if, in the circumstances, the obligation imposed by that rule overrides the (still existing) obligation imposed by the given law or rule. One then has an obligation to make amends, in a way which is appropriate in the circumstances, to the agent to whom the overridden obligation is owed.<sup>13</sup>

On rule-consequentialist accounts of political authority, then, it is generally false that it is permissible to evade a tax where such evasion produces an increase in social benefit. Even when an impending calamity makes it permissible to evade the tax that does not show that there is no obligation to pay the tax; it shows only that the obligation to pay the tax is overridden in the circumstances. Thus, *contra* Huemer, the permissibility of tax evasion need not constitute an objection to the claim that the state has political authority.

Huemer's claim about the marginal social benefit of taxation versus charity is a claim about the situation in contemporary America. Proponents of

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<sup>11</sup> *Ibid.*, secs. viii, xiii, xxx, xxxi, and xlii.

<sup>12</sup> David Hume, *A Treatise of Human Nature*, ed. L. A. Selby-Bigge (Oxford: Clarendon Press, 1888), p. 579.

<sup>13</sup> See my "Pro-tanto versus Absolute Rights," *Philosophical Forum* 45, no. 4 (2014), pp. 375-94; and my "Pro-tanto Obligations and Ceteris-paribus Rules," *Journal of Moral Philosophy* 12, no. 3 (2015), pp. 255-66.

a consequentialist explanation of political authority need not affirm (and really ought to deny) that the existing American state has political authority and consistently acts within its authority. Showing that it is permissible to disobey the laws of a state without authority, or laws which go beyond the state's authority, does not amount to showing that it is permissible to disobey the laws of a state with political authority that acts within its authority.

*e. Disagreement*

A further objection that Huemer raises concerns citizens who deny the legitimacy of the state's activities:

This includes . . . those who are morally or ideologically opposed to government in general (anarchists). It includes people who, while supporting the general idea of government, believe that the proper sort of government is radically different from the government they have. And it includes people who oppose specific government programs but are nevertheless forced to contribute to them. For instance, pacifists may not want the alleged good of a military force, yet they must pay for it just as everyone else does. (sec. 5.3.3)

These citizens raise a difficulty for explanations of political authority, Huemer thinks, because "it is difficult . . . to account for an obligation to assist in projects to which one is sincerely opposed, whether or not one's opposition is well founded" (sec. 5.3.3). For those of us who do not see the difficulty, he offers an illustration (secs. 5.3.1 and 5.3.3). Several people are in a lifeboat, caught in a storm, and the boat is taking on water. Some of them believe that praying to Jehovah will assist them in staying afloat. Suppose that they are correct in that belief: Jehovah exists and is receptive to petitionary prayer and, provided that a large majority pray, Jehovah will assist them. Sally does not believe that. She believes that praying to Jehovah will more likely be harmful, because it will offend Cthulhu. She therefore opposes the other passengers' plan. In this situation, does Sally really have an obligation to pray to Jehovah?

The question is rhetorical: Huemer assumes a negative answer. It seems, though, that the answer to the question is *yes*. Sally does not cease to have an obligation simply because she does not think that she has it. Whether or not one has an obligation is an objective fact. We do not cease to have obligations by burying our heads in the sand to avoid noticing them. Similarly, we do not cease to have an obligation to  $\varphi$  (where " $\varphi$ " stands in for a description of an action or an omission) just because we hold a theory according to which we do not have an obligation to  $\varphi$ . An ethical egoist has an obligation to save the drowning child even though he sincerely denies it.

One might be inclined to follow Huemer in assuming a negative answer to the rhetorical question, if one fails to distinguish two issues:

- (a) whether person *A* failed to fulfill an obligation to  $\varphi$ , and

(b) whether person *A* is blameworthy for not  $\varphi$ -ing.

In the lifeboat example, Sally is not blameworthy for refusing to pray to Jehovah, because she sincerely believes that it would be more likely to hinder than to help, and her erroneous belief (let us suppose) is not the result of culpable action or inaction. Yet she has the obligation to pray to Jehovah, which she fails to fulfill. Her refusal to pray is wrong, but it is blameless because she is non-culpably misinformed. Similarly, a sincere and diligent ethical egoist does wrong in letting the child drown, but she may be blameless if she is non-culpably misinformed as to what her duties are. Of course, we cannot know whether the egoist is sincere. Insincere appeals to egoistic theory would provide an easy way out for all manner of wrong-doers, so we might have a practice of always blaming egoists who default on their duties (except perhaps under special circumstances).

That Huemer confuses issues (a) and (b) seems clear from the following:

If the existence of Jehovah and the effectiveness of petitionary prayer were easily verifiable facts, which Sally could be blamed for failing to know, then perhaps Sally would have a moral obligation to pray to Jehovah. But assume that this is not the case. Assume that these are matters on which there is reasonable disagreement and that Sally's view is rational or at least not markedly less rational than the view of the majority of passengers. In that case, it is not wrong of Sally to refrain from praying to Jehovah. She is not seeking to gain some sort of unfair advantage over others nor to profit through others' labors. (sec. 5.3.3)

Huemer's talk of "easily verifiable facts" suggests that he is unaware of the problem of induction, the paradoxes of confirmation, the Duhem problem, and the theory-ladenness of observations. Putting that to one side, it seems that there is a reasonable line of thought in that passage, namely, that if Sally is not to blame for having the views that she has, then she is not to blame for the action that she takes which conforms with those views. However, because Huemer does not distinguish (a) and (b), that line of thought gets perverted into this false one: if Sally is not to blame for having the views that she has, then the action that she takes which conforms with them is not wrong.

Inconsistently, Huemer does later distinguish issues (a) and (b):

[T]he fact that government employees believe themselves to be acting rightly makes them less blameworthy than they would otherwise be . . . [but] government employees' ignorance of their ethical duty does not alter the appropriate assessment of what they really ought to do. It does not alter the fact that they have no right to enforce unjust laws. (end of sec. 7.3)

He does so again elsewhere:

Suppose that Mary is . . . stealing money from her company. Mary, however, sincerely believes that the laws governing property are unjust, for she has been taken in by a misguided political ideology that rejects private property. In this case, is Mary's behavior right? No, it is not. Mary is mistaken in thinking that the property laws are unjust, so she is also mistaken in taking her own behavior to be ethically permissible. Depending on how understandable her error is, Mary may be less blameworthy . . . but her *action* is just as wrong. (sec. 7.5.1)

Consequently, Huemer's objection to explanations of political obligation from the fact of political disagreement is unsound and it also involves him in self-contradiction. If the Consequentialist Explanation of Political Authority is correct, then anarchists, pacifists, and other dissidents are obliged to obey the laws promulgated by a state with political authority, and to make appropriate amends for not doing so, even though they may deserve no blame for their disobedience.

Finally, the fact that we can have no certain knowledge about what we ought to do raises the questions of what moral theory to act on, and what institutional arrangements to make in order to try to ensure that people in positions of power act on a moral theory that is appropriate in the circumstances, even though it may be false.<sup>14</sup>

#### *f. Emergencies*

Huemer's first objection specifically to consequentialist explanations of political *legitimacy* (as he defines it) draws on an analogy with emergency situations. The Consequentialist Explanation of Political Authority could be summarized by saying that the reason for political authority is that, without it, human life would be far worse than it could be. That may suggest an analogy with emergency situations in which it is permissible for an ordinary citizen to coerce a person or infringe a person's property rights in order to prevent something substantially worse from happening. Huemer gives an example. You are on a lifeboat that is in danger of sinking unless most of the passengers quickly start bailing water. You cannot perform the task alone, but none of the other passengers is willing to bail, and no amount of reasoning or pleading will persuade them. It seems permissible for you to pull out your gun and order the other passengers to start bailing out the boat. He says: "perhaps the state is justified in coercing people and seizing people's property through

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<sup>14</sup> I address those questions in Sections 4 and 5 of my "Theoretical and Practical Reason: A Critical Rationalist View," accessed online at: [https://www.academia.edu/793164/Theoretical\\_and\\_Practical\\_Reason\\_A\\_Critical\\_Rationalist\\_View](https://www.academia.edu/793164/Theoretical_and_Practical_Reason_A_Critical_Rationalist_View). The questions deserve a more extended discussion, though.

taxation, because doing so is necessary to prevent a virtual collapse of society” (sec. 5.4.1). The analogy, says Huemer, breaks down. Your entitlement to coerce in the lifeboat is neither comprehensive nor content-independent:

[I]t depends upon your having a correct (or at least well-justified) plan for saving the boat, and you may coerce others only to induce cooperation with that plan. More precisely, you must at least be justified in believing that the expected benefits of coercively imposing your plan on the others are very large and much larger than the expected harms. (sec. 5.4.2)

Huemer’s conflation of facts and opinions is evident here. What makes it permissible for you to coerce the others to bail water is the fact that, unless they bail, all of the people in the boat will die. So long as that fact obtains, it is permissible for you to coerce the others to bail even if it never occurs to you to do so. Furthermore, if that fact (or one very much like it) did not obtain, your plan to save lives by coercing the passengers to bail would not make it permissible for you to use coercion, even if your plan were “justified” or even “well-justified” (assuming that sense could be made of such talk), though your mistaken opinions may make your use of coercion excusable (see my response above, in Section 4.e, to Huemer’s previous objection from disagreement).

Every analogy breaks down at some point, which is why it is just an analogy, but the analogy between the state and an individual in an emergency situation does not break down in the way that Huemer claims it does. It was noted in Section 3 that the Consequentialist Explanation of Political Authority cannot explain comprehensive political authority and that it can explain only a restricted authority to promulgate content-independent laws. In both of those ways, the analogy of the lifeboat holds. Huemer is mistaken in saying that, in the lifeboat, your entitlement to coerce is not content-independent. There may be different, equally good, ways in which the bailing may be organized and you are entitled to enforce any one of those. Thus Huemer does not show that the analogy breaks down. The analogy does break down, though, in the following way. The person acting in an emergency permissibly *infringes* the rights of some citizens, but a state with political authority, acting within its authority, does not infringe any rights of its citizens. The rights that individuals have against other individuals, they do not always have against the state, because the state has a right, which citizens do not have, to *alter* the rights of its citizens in specific ways. In Wesley Hohfeld’s terms, the state has some particular “powers,” not possessed by any of its citizens, to alter the rights and duties of its citizens, who have the corresponding “liabilities.”<sup>15</sup>

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<sup>15</sup> Wesley Newcomb Hohfeld, *Fundamental Legal Conceptions*, ed. Walter Wheeler Cook (New Haven, CT: Yale University Press, 1919), pp. 50-60.

(The “powers” in question were indicated in the first set of bullet points in Section 3 above.)

Huemer goes on to consider a range of laws promulgated by existing states, such as paternalistic, moralistic, and redistributive laws, which he claims cannot be explained by the Consequentialist Explanation of Political Authority. Let us suppose that he is right. All that shows is that existing states either do not have political authority at all or that they act illegitimately, outside the scope of their political authority. It leaves the Consequentialist Explanation of Political Authority untouched.

***g. Supremacy***

Huemer finds it puzzling that political authority could be supreme, that is, granting to the state a right to coerce individuals which no other agent in the territory has and denying to everyone the right to coerce the state. You would lose your entitlement to coerce the passengers in the lifeboat to bail out, he says, if another passenger, also armed, sees another impending disaster that can be averted only by use of coercion and he takes appropriate steps. The fact that you were the first to use coercion to save the boat does not render you immune from being coerced in circumstances in which it would normally be permissible to coerce someone (sec. 5.4.3).

Why does Huemer expect us to take this objection seriously? According to the Consequentialist Explanation of Political Authority, human flourishing requires a state with delimited authority of a kind that belongs to no individual or other body within the territory. Huemer objects, “but that makes the state different to individuals and other bodies.” Of course it does.

It appears that confusion between person and role (or office) underlies Huemer’s objection. He says, “the state does not, on consequentialist grounds, have supreme authority. Other agents may use force to achieve the same goals that the state would be justified in using force to achieve in the event that the state’s own efforts are inadequate” (sec. 5.4.3). However, in such circumstances, those agents would represent the body with political authority. A body with political authority is one which performs particular functions; it is not an individual or a collection of individuals which at a particular time discharges those functions. That individual or that collection of individuals only represent the state at that time. If the individual(s) representing the state begin, at a later time, to act outside of the state’s authority, they do not, in so acting, represent the state, even though they might *say* that they do. If those individuals are then ousted by others who do perform the legitimate functions of the state, then those others become the representatives of the state. That Huemer confuses person and role seems evident from his claim that the doctrine of political authority, which ascribes a special moral status to the state, is not compatible with equal respect for persons (end of sec. 13.1), as well as from his claim that political “authority is puzzling . . . some explanation is required for why some *people* should have this special moral status” (end of sec. 1.6, emphasis added).

## 5. Conclusion

Huemer raises the problem of political authority and discusses a number of possible solutions. He manages to dispose of social-contract and democratic-process theories.<sup>16</sup> However, his arguments against consequentialist theories are often irrelevant, always confused, and sometimes self-contradictory. The prominent confusions which beset his discussion are those between:

- different consequentialist theories,
- different conceptions of political authority,
- laws of a state with political authority and laws of existing states,
- an obligation's being overridden and an obligation's not existing at all,
- act-consequentialism and rule-consequentialism,
- rule-consequentialism and universalizability,
- objective facts and people's opinions about those facts,
- an action's being blameworthy and its being impermissible,
- infringing and altering a right or duty, and
- a particular role and the particular person(s) charged with fulfilling that role.

Some of his objections to consequentialist theories may raise difficulties for some weaker accounts, but none of them has any impact on the Consequentialist Explanation of Political Authority.

Astonishingly, Huemer seems to concede this point himself, for in the concluding section of his chapter on consequentialist explanations he says:

The state may be entitled to collect taxes, to administer a system of police and courts to protect society from individual rights violators, and to provide military defense. In doing so, the state and its agents

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<sup>16</sup> See Frank Dietrich, "Consent as the Foundation of Political Authority—A Lockean Perspective," *Rationality, Markets, and Morals* 5 (2014), pp. 64-78, for an explanation of how an existing state may *acquire* political authority by consent that seems to escape Huemer's objections.

may take only the minimal funds and employ only the minimal coercion necessary. The state may not go on to coercively impose paternalistic or moralistic laws, policies motivated by rent seeking, or policies aimed at promoting unnecessary goods, such as support for the arts or a space program. (sec. 5.5)

This is astonishing because it contradicts his claims that “political authority is a moral illusion” (sec. 1.7) and “[t]o realize that government is illegitimate, it suffices to accept the arguments in this book” (sec. 13.4). Perhaps this quotation should be read as saying that *even if* the Consequentialist Explanation of Political Authority explains how a limited state would have political authority, it cannot explain how contemporary Western states have political authority. With that we can agree.

The strongest argument against the Consequentialist Explanation of Political Authority is one that Huemer does not state as such. It is that even if we could establish a state that had political authority, the institutions through which its role is fulfilled would almost inevitably degenerate into an organization which is, at best, similar to the illegitimate states (without political authority) that exist in Western societies today and which frustrate human flourishing in myriad ways, including:

- millions of lives ruined or set back by welfare dependency;
- millions of lives blighted by unjust criminalization for victimless crimes;
- lives lost and resources squandered in military adventures;
- enormous waste of resources through government frustration of the market processes of efficient adjustment;
- resources consumed unproductively by government and quasi-government bureaucracies;
- innumerable lives lost or impaired due to untreated medical conditions which could have been addressed had government activity outside of legitimate state authority not squandered resources and frustrated investment and technological development; and
- countless ambitions thwarted by prohibitions, bureaucratic obstacles, and high taxation.

The reasons that a state with political authority would almost inevitably degenerate into such an organization are that:

- love of power and love of oppression are common human characteristics and the people who exemplify them more prominently are those most likely to seek careers in politics;
- organized interests endeavour to persuade politicians to introduce laws which go beyond the state's authority and which are intended to increase the wealth or well-being of the organized interests at the expense of the rest of society<sup>17</sup>; and
- collectivist and anti-market ideologies are an evolutionary inheritance from our tribal past<sup>18</sup> that are not likely ever to be completely eliminated, especially since they are actively maintained by major religions and political movements, and their prevalence will predispose many citizens to favor (or not to resist) initiatives by politicians and organized interests to extend the power of the state beyond its authority.

The Consequentialist Explanation of Political Authority argues that political authority provides the best prospects for human flourishing. The argument assumes that the state with political authority will *remain* a state with political authority. However, if a state with political authority (assuming that it could ever be established) is highly likely to degenerate into the sort of illegitimate state under which we currently live, then it is doubtful that it provides the best prospects for human flourishing. This argument would be strengthened into a refutation of the Consequentialist Explanation of Political Authority, if it could be shown that there is an alternative to the state that offers better prospects for human flourishing than the sorts of states under which we currently live.

Huemer does not present this argument as an objection to consequentialist explanations of political authority, but he does present a similar argument in Part II of his book, as part of his anarchistic solution to the problem of political authority. There he says that he assumes that representative democracy is the best form of state (sec. 8.1.3) and he argues

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<sup>17</sup> Mancur Olson, *The Logic of Collective Action* (Cambridge, MA: Harvard University Press, 1965); Mancur Olson, *The Rise and Decline of Nations* (New Haven, CT: Yale University Press, 1982); and Mancur Olson, *Power and Prosperity* (New York: Basic Books, 2000).

<sup>18</sup> Friedrich Hayek, *The Mirage of Social Justice* (London: Routledge and Kegan Paul, 1982), chap. 11; Karl Popper, *The Open Society and Its Enemies* (London: Routledge and Kegan Paul, 1945), chap. 10.

that such a state almost inevitably degenerates into the sort of state that currently exists in Western societies (chaps. 8 and 9). He also argues that a particular kind of anarchist society would be better and would not be likely to degenerate into a form of anarchy or government that is worse than contemporary Western states (chaps. 10-12). I cannot discuss Huemer's defense of anarcho-capitalism here except to say that, despite being suggestive, it seems generally to be too glib, superficial, and porous to be taken seriously.<sup>19</sup>

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<sup>19</sup> My thanks to Mark D. Friedman for comments and questions on an earlier draft of this article, which helped me to improve it in several places.

