

The Anarcho-Capitalist Society

A Critical Analysis of Huemer's Society Without Government



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1. Introduction

1.1 The Government's Growing Sphere of Influence

Many governments have been expanding their sphere of influence domestically over the last years. In the aftermath of 9/11, the US federal government effectively seized control over its citizens' personal information through the Patriot Act. China controls intensively the movements of its citizens via cell phone usage. Amongst other political leaders, Trump, Bolsonaro and Orban subvert the authority of the government's watchdogs: their parliaments and the media.

Also, governments seize power in more subtle ways. Governmental healthcare-, education- and financial programs increase the citizens' dependency on the government and expand its influence. Obamacare has sparked a lively debate in the USA on the authority of the federal government. This debate does not only question or criticise political authority but also shows that governmental influence can be effectively used to promote and protect the interests of the less fortunate in society. Still, a proper account of political authority is required to justify governmental authority and the government's right to expand this authority.

1.2 A Society Without Government

In political theory, the presence of the government is generally not questioned. Whereas many academic discussions are held on the subject of political authority, even the most libertarian thinkers believe that some sort of government is necessary for people to live together peacefully in relative wealth.¹ In this dissertation, I will explore the possibility of a society without government. Criticism on governments would be strengthened by a viable alternative: a society without government.

In 2013, Michael Huemer published the book *The Problem of Political Authority (PPA)* in which he rejects political authority and introduces his account of the anarcho-capitalist society (ACS).² He presents his audience with a hypothetical society in which the government's functions such as security are commercialised. To my knowledge, Huemer offers the most

¹ Most notably Nozick, 'Anarchy, State & Utopia'. In section 4.4, I will explain why Nozick believes a minimal state is necessary.

² I refer to societies with (liberal democratic) governments as 'state (with government)' and to a society without government as 'ACS'.

recent, detailed and realistic account of a society without government, which makes it the best option to consider an anarchic society.³

It is the aim of this dissertation to critically reflect upon Huemer's work. Does Huemer offer a philosophically convincing theory with his ACS? A positive answer would imply that there is a theoretically interesting alternative to our current societies. However, I will argue and conclude that Huemer has not succeeded in presenting a philosophically convincing political theory. Although, this dissertation is limited to discussing one possible account of an anarchic-society, and one using a specific type of anarchy, the lack of other detailed accounts suggests that the project of anarchy is doomed to fail in theory and in practice.

1.3 A Philosophically Convincing Political Theory

By 'philosophically convincing' I understand two separate things, which concern (1) the methodology and (2) the content of the theory. Firstly, a philosophically convincing theory is based on a proper methodology, which is used correctly. Political theorists are nowhere near a consensus on what the best methodology is for political theory, but the theorist in question should be able to explain why the chosen method enables him or her to come to robust conclusions. Subsequently, the theorist must conduct the theorising properly, accordingly to the proposed method.⁴ I will discuss the criteria on methodology in chapter 2.

Secondly, a philosophically convincing theory renders robust conclusions, which are realistic and logically follow from truthful premises, which form a consistent set. With truthful premises I mean assumptions about our world which are possible and acceptable.⁵ For example, the assumption that people from the same society do not kill each other under any circumstance, is not truthful as there is contradictory empirical evidence and no sensible justification for it.

Whether the conclusions follow logically from the premises depends on the consistency of the set of premises and the deductive closure of the theory as a whole. The set of premises underlying the theory is consistent when it does not contain both 'p' and 'not p'. Anything follows from an inconsistent set of premises, which makes a theory unconvincing. Deductive closure means that the theory accepts all implications of the set of premises. So, if 'p', which is a premise of the theory, implies 's', then 's' must be part of the theory.⁶

³ For an overview of different varieties of anarchism within political theory, see Caplan, 'Anarchist Theory FAQ 5.2' and Fiala, 'Anarchism'.

⁴ Blau, 'Introduction: A "How-to" Approach', 3.

⁵ List and Valentini, 'The Methodology of Political Theory', 541–42.

⁶ Idem, 539–40.

Lastly, the conclusions must be realistic, which means that they are possible in our world. Also, the implications following from the conclusions must be attainable. To illustrate, when a political theory concludes that men and women should be completely separated, the theory is not convincing. Men and women most probably cannot be fully separated and when it would happen, it would mean the eventual end of mankind due to a lack of reproduction. I will discuss the criteria concerning the content of the theory in chapter 4.

The criteria I use to decide whether Huemer's theory is philosophically convincing are uncontroversial and objective. They do not prescribe a specific method or view of the world or society. They only demand a proper justification and use of method and consistent and truthful reasoning.

In addition, conclusions can be philosophically convincing even if they seem radical and unlikely to be attained. The fact that we have a certain way of living together does not mean that we could live in a different way. Therefore, if Huemer arrives at the conclusion that we should live together without a government – even though we have lived with a government for many generations – through a proper and correctly used methodology and when his conclusions are logically derived from truthful premises, which form a consistent set, then his account is philosophically convincing.

In order to conduct this critical analysis of Huemer's project objectively and to be able to judge Huemer's ideas on its merits, we need to believe in the idea that an anarchy is a possible alternative to a society with government. Even when his account does not provide us with a viable alternative, it surely teaches us a lot about the weaknesses and problems of our current political system.

1.4 Structure of the Dissertation

In chapter 2, I discuss Huemer's methodology. I will analyse how Huemer constructed his theory without discussing the content. I shall explain his common-sense approach to ethics with the underlying metaethical theory of ethical intuitionism. Thereafter, I discuss two problems with this approach concerning pluralism of thought in political theory which Huemer neglects and his improper use of thought experiments. I conclude that his method faces too many problems to meet the criteria on methodology as discussed in the previous section.

Next, in chapter 3, I present Huemer's account of anarcho-capitalism in its best possible form.

Then, in chapter 4, I turn to the critical analysis of the content of Huemer's theory to decide whether the theory meets the criteria concerning the content for being philosophically convincing. The first two sections of criticism will focus on Huemer's assumptions which concern capitalism in 4.2 and liberty in 4.3. I will argue that his assumptions about these concepts are neither truthful nor consistent. In 4.4, I show that Huemer's conclusions do not follow from his set of assumptions by using Nozick's argument in favour of the minimal state which demonstrates that a governmentlike institutions will inevitably arise when protection is outsourced to private agencies.

Lastly, in Chapter 5, I conclude that Huemer's theory is not philosophically convincing and I offer a suggestion for how to proceed regarding the justification of political authority.

2. Critical Analysis of the Methodology

2.1 Introduction

It is the aim of this dissertation to find out whether Huemer's account of anarcho-capitalism is philosophically convincing. In order to be philosophically convincing, the conclusions must be robust and arrived at via a proper methodology used correctly. As will become apparent in section 2.2, the robustness of Huemer's conclusions depends heavily on his method and metaethical theory as they generate a fundamental assumption underlying Huemer's theory. Therefore, I discuss Huemer's methodology and metaethical theory prior to the content of his theory. This means that in this chapter I will only focus on the criteria concerning the methodology for being philosophically convincing as described in 1.3.

Huemer uses the common-sense approach to ethics (CAE) with the underlying metaethical theory of ethical intuitionism, which I will discuss in sections 2.2 and 2.3 respectively. Then, I will evaluate this choice of method and analyse whether his use of the method meets the standards of correctly conducting research. I will raise two issues with the methodology in section 2.4. Firstly, I discuss the principle of pluralism in political theory to criticise the chosen method, which covers the first criterium on methodology (2.4.1). Secondly, I criticise Huemer's use of method, which covers the second criterium, by analysing his use of thought experiments to find moral intuitions (2.4.2). In 2.5, I conclude that his method is not philosophically convincing.

2.2 Common-Sense Morality

In the opening chapter of *PPA*, Huemer explains the CAE. He starts his analysis by using moral intuitions that are "*relatively uncontroversial*".⁷ These intuitions form the premises from which his conclusions must follow. So, Huemer does not use a comprehensive moral or political theory such as utilitarianism or liberalism as a source of assumptions. The CAE relies on the moral intuitions people have and presupposes that most people have similar intuitive ethical judgements, which make the intuitions a suitable starting point for theorising.⁸ So, the fundamental assumption underlying Huemer's theory is the idea that in developing a political

⁷ Huemer, 'PPA', 15.

⁸ *Idem*, 16.

theory, we must start with our moral intuitions and we must not resort to using any comprehensive political or moral theory. Only our moral intuitions can tell us what is good and what is wrong and thus, what the proper political system is. I will refer to the fundamental assumption as the FA. All assumptions and conclusions should be consistent with the FA following the criteria on the content of a philosophically convincing political theory. This means that all assumptions and conclusions, which are part of Huemer's theory must be supported by our moral intuitions. In chapter 4, where I discuss the content, this will turn out to be problematic.

Huemer infers his conclusions directly from the moral intuitions. However, he does not mean any kind of intuition. Firstly, these intuitions are uncontroversial. They must be shared with people with different political, social and cultural backgrounds. For example, most people intuitively believe and accept that you should not harm another person unless you have a very good reason. Obviously, there will always be individuals who contest these intuitions, but if we do not ignore these individuals, we will never reach interesting conclusions.⁹

Secondly, the intuitions concern moral judgements, which become known through evaluating the behaviour of people in specific situations. These cases do not pose dilemmas but provide us with clear moral judgements. Moral dilemmas such as Thomson's famous trolley-problem do not provide us with the intuitions that Huemer is looking for as this problem and the countless variations on it do not provide the audience with clear moral judgments but rather with moral discussions.¹⁰

Thirdly, Huemer makes a distinction between ethical and political intuitions and focuses on the former, which is interesting as *PPA* is a book on political philosophy and not on ethics. He claims that moral intuitions are less controversial, and that people are more convinced of them than political intuitions.¹¹ I will elaborate on Huemer's distinction between ethical and political intuitions in the first objection to his method (2.4.1).

Then, how is Huemer able to come to conclusions in political philosophy by using an approach to ethics? In the first part of his book, Huemer explains the most prominent political theories on political authority. By using moral intuitions, which he gathers by appealing to our intuitions in specific cases, he shows that the theories are incompatible with our common-sense morality. He continues in part II by presenting us with the ACS, which, in contrast to our current societies with government, is compatible with our common-sense morality.

⁹ Idem, 15.

¹⁰ Idem, 15.

¹¹ Idem, 17.

To illustrate Huemer's methodology, we can take a look at the structure of his argument against traditional social contract theory, which he discusses in chapter 2 and which is similar in structure to his overall argument in *PPA*. He explains that political authority derives from a contract between the state and the people. Next, he uses common-sense morality to explore what people intuitively feel a valid contract is. It then appears that a valid contract must satisfy four conditions, which the traditional social contract does not.¹² Consequently, the traditional social contract is invalid and cannot justify political authority.

It becomes clear from this structure, that Huemer's argument fully depends on the argumentative force of our moral intuitions. Therefore, Huemer needs a metaethical theory that explains this force to defend his conclusions. In *PPA*, Huemer does not mention this theory, but he does present it in his book *Ethical Intuitionism*, which I will therefore discuss in 2.3.

2.3 Ethical Intuitionism

The robustness of Huemer's conclusions depends on moral intuitions, but do these intuitions bear any argumentative force? Huemer defends the metaethical theory of ethical intuitionism, which ascribes significant relevance to our moral intuitions. He claims that we can acquire moral knowledge through our intuitions and that therefore these intuitions should be our primary concern in practicing ethics. In this section, I discuss the elements of ethical intuitionism that are relevant to understand Huemer's methodology in *PPA* and enable us to conclude whether or not the methodology is philosophically convincing.

There are basic moral principles that are self-evident such as "*enjoyment is better than suffering*".¹³ We do not need any reasoning or extensive empirical evidence to prove the truth of these principles. We intuitively know that suffering is bad as we similarly know that nothing is both yellow and green at the same time.¹⁴ But what are these intuitions exactly?

Huemer describes an intuition as a first intellectual thought on a certain matter, which comes prior to reasoning. Huemer explains: "*An intuition that p is a state of its seeming to one that p that is not dependent on inference from other beliefs and that results from thinking about p, as opposed to perceiving, remembering, or introspecting.*"¹⁵ To illustrate, people do not infer from other principles, perception, remembrance or introspection the truth of the proposition

¹² Idem, 25–27.

¹³ Huemer, 'Ethical Intuitionism', 102.

¹⁴ Idem, 99–100.

¹⁵ Idem, 102.

‘enjoyment is better than suffering’, they just think it is. The intuitions on matters of morality provide us with objective moral knowledge.¹⁶

Huemer presents the remainder of his account in part two of *Ethical Intuitionism* through a number of objections. I will discuss these objections and Huemer’s answer to them to clarify his account of ethical intuitionism.

Problem 1: An intuition is a belief and believing is not equal to knowing

People have many beliefs, which they do not base on reasoning or empirical evidence. They for example believe that abortion is wrong or that the war in Iraq was bad. These beliefs could be identified with intuitions, which makes intuition a kind of belief. Most epistemologists argue that belief does not provide a person with knowledge. At least a person must be justified in believing something, so one must be able to explain why he has the beliefs he has.¹⁷ However, since Gettier’s rejection of justified true beliefs, epistemologists have not settled the debate on the necessary conditions for something to be knowledge.¹⁸ Then, how can intuitions provide us with moral knowledge?

Huemer responds to this objection by claiming that propositions such as ‘the war in Iraq was bad’ are not intuitions as they are based on other beliefs such as that Iraq had no weapons of mass-destruction and that the war has cost many thousands of lives. The moral intuitions do influence the beliefs as the intuition that killing is *prima facie* wrong is fundamental to the belief that the war was wrong, but they are not a kind of belief.¹⁹

Still, one could argue that Huemer’s moral intuition is a form of belief as it is not based on reasoning or empirical evidence. He answers by stating that moral knowledge cannot be completely derived from non-moral premises. There must be some source of moral knowledge from which all moral principles are derived. Moral intuitions form this source of moral knowledge as we adopt moral intuitions and regard them to be knowledge as they are uncontroversial and simply “seem right to us”.²⁰

This line of reasoning is justified by the principle of phenomenal conservatism on which Huemer’s idea that moral knowledge exists depends. The principle means that it is reasonable

¹⁶ Idem, 101–5.

¹⁷ Idem, 103–4.

¹⁸ Gettier, ‘Is Justified True Belief Knowledge?’. Gettier argues that even a justified true belief is not always sufficient to know something.

¹⁹ Huemer, ‘Ethical Intuitionism’, 102–4.

²⁰ Idem, 99–100.

to assume that things are the way we perceive them to be. The assumption is reasonable as long as there is no good reason to believe otherwise. In the case of the moral assumption that enjoyment is better than suffering, we are justified in regarding this assumption as moral knowledge until we have good reasons to dismiss this assumption.²¹ Due to Huemer's assumption that roughly nobody will disagree with his moral intuitions as they do not have a good reason to dismiss these intuitions, he is able to argue that these intuitions are moral knowledge.

So, moral intuitions are the initial intellectual appearances, which form the fundamental source of moral knowledge. The moral intuitions bear argumentative force as there is no good reason to dismiss them. Following the principle of phenomenal conservatism, we may therefore assume that they are true.

Problem 2: Moral disagreement and development contradict the idea of objective moral knowledge, what then, is the value of moral intuition as a source of moral knowledge?

In his response to the first problem, Huemer seems to assume that all people share basic moral intuitions. However, this is not the case as some moral principles we believe to be obvious are not shared with some other cultures or previous generations. To illustrate, we believe slavery to be inherently wrong, but some of our ancestors had slaves themselves. Also, we strongly believe man and woman to be equal, whereas some cultures even today believe the woman to be inferior to the man. So, there is moral disagreement and development, which undermines the idea that there are some objective moral intuitions with which we can acquire moral knowledge.

For Huemer's account of anarcho-capitalism, this objection could be disastrous as his conclusions are based on the idea that everybody would agree upon the moral intuitions. Moral knowledge, if it exists, must be objective as otherwise people could have their own set of true moral intuitions on which they can build their own political system. If objective moral knowledge does not exist and not everybody agrees on the moral intuitions, then the FA is disproved.

Huemer does not deny the existence of moral disagreement or development but believes that they do not undermine ethical intuitionism. Firstly, intuitions are not infallible. People can make mistakes and therefore it can become apparent that an intuition was wrong all along.²² However, this is not often the case for the ethical intuitions. Moral disagreements are rarely

²¹ Idem, 99–101.

²² Idem, 105–7.

about intuitions, but rather about a lack of knowledge. For example, we can take a look at the moral disagreement on abortion. Both camps agree on the moral intuition that killing is prima facie wrong. However, they disagree about the status of a foetus in terms of living. There is no ethical intuition that tells us something about the status of life of a foetus.²³

Secondly, the idea that moral disagreement proves moral knowledge to be subjective and therefore actually not existent or at least not useful for Huemer, is an argument in the form of ‘the idiot’s veto’, according to Huemer. This argument runs as follows: something is only objective if nobody disagrees with it. This means that when an ‘idiot’ believes a claim to be untrue, the premise is subjective. So, when someone believes that under normal conditions water boils at a temperature of 50° Celsius, then the claim that water boils at 100° Celsius is only subjectively true. Huemer believes this argument to be ridiculous and concludes that it cannot prove that moral disagreement means that there cannot be any objective moral knowledge.²⁴

Thirdly, there are other sources of moral disagreement such as bias. I will not discuss these sources as we only have to understand for the present purpose that Huemer believes that moral disagreement is caused by factors that do not prove that objective moral knowledge does not exist.²⁵

To summarise, Huemer believes that objective moral knowledge exists, and we come to know about it via our ethical intuitions. These intuitions are initial intellectual appearances, which are true until we have good reason to doubt them as is explained by the principle of phenomenal conservatism. The fact that there is moral disagreement does not undermine the idea that there is objective moral knowledge and that there are no shared ethical intuitions. With this account of ethical intuitions, which explains its argumentative force, Huemer justifies the CAE in *PPA*. In the next section, I will critically analyse Huemer’s method.

2.4 Problems with the CAE

In this section, I will evaluate Huemer’s methodology, to decide whether he arrived at his conclusions using a correct method for his goal and using it properly. Firstly, I will question whether he used the proper method for developing a political theory in which he faces the

²³ Idem, 129–31.

²⁴ Idem, 131–32.

²⁵ For the complete list of sources for moral disagreement, see idem, 137–39.

constraint of pluralism. Secondly, I will analyse Huemer's use of thought experiments to see whether they are created and used correctly.

2.4.1 Pluralism in Political Thought

The first problem with Huemer's methodology concerns his choice of method as the CAE is not suitable to develop a political theory. With the CAE we can come to know what is right and what is wrong if we accept the existence of objective moral knowledge as Huemer does, but we cannot find out how we should arrange our society to live up to our moral intuitions. To make this argument, I will describe the difference between moral- and political theory by means of the constraint of pluralism. In doing so, I will argue that Huemer cannot and does not reject the presence of pluralism in political thought. Then, I will show that the presence of pluralism in political thought makes the CAE improper to build a political theory.

List and Valentini find the difference between moral and political theory in the aim of both disciplines. The aim of a moral theorist is to provide an account of morality that tells us what the right thing is to do given any situation. A political theorist aims to arrive at a world in which everybody can live accordingly to those moral rules, but the political theorist is mainly concerned with the question how to get there. He has to keep in mind that people have different points of view – the constraint of pluralism – which he must account for in his theory.²⁶ The constraint of pluralism with which I mean that people have different opinions on politics, economics and practically on everything else, marks the difference between moral- and political theory.

If we understand political theory this way, we can explain Huemer's claim that moral intuitions feel more natural to us than political intuitions and that we are more convinced of them.²⁷ Moral intuitions teach us what we naturally think the society should look like: a world in which we do not kill or harm each other without reason and in which everybody lives together as equals in wealth and not in poverty. However, our political intuitions should tell us our feelings about how we arrive at such a society. Most people intuitively feel that a democracy brings us there and therefore believe that we should strive for a democracy. However, it is not that we think a democracy is inherently good as there still may be injustices in a democracy and therefore we find our political intuitions puzzling even when we have accepted them.

²⁶ List and Valentini, 'The Methodology of Political Theory', 528–29.

²⁷ Huemer. 'PPA', 17.

However, why may I assume the presence of pluralism in political thought? Huemer might argue for unity in political thought as he did for moral thought. To start, List and Valentini refer to different political and moral theorists such as Larmore, Rawls and Waldron, who all directly or indirectly refer to the constraint of pluralism in political thought.²⁸ Next, I will present evidence myself in chapter 4, which proves the presence of disagreement in political thought. People might agree about what the best possible society looks like as Huemer believes they do, but they disagree for sure on how to arrive at such a utopian society. Lastly and most importantly, Huemer does not reject the idea of pluralism in political thought himself. He believes that he only requires uniformity in moral thought to complete his political theory and states that he does not share political intuitions and thoughts on politics with others in his society.²⁹ Thereby he accepts the absence of unity in political thought and thus the constraint of pluralism. But why do tools for moral theory in which there is no pluralism of thought according to Huemer, do not suffice to develop a political theory in which there is pluralism of thought?

Firstly, moral intuitions do not form a proper foundation for a political theory due to the constraint of pluralism. The fact that there is moral- and political disagreement, it does not matter whether the disagreement means that there is objective moral knowledge or not, means that people will have different moral and political intuitions and are therefore able to arrive at different political systems. The political theorist must find a political arrangement that enables its subjects to live together given the fact that there is moral- and political disagreement.

Secondly, the use of only moral intuitions, even if they are uncontroversial, is not sufficient to develop a political theory. The intuitions might tell us what we should and should not do or what we should aim for in terms of a good society, but they do not tell us anything about economical mechanisms, psychology or anthropology of the human being or the working of political institutions. Therefore, political theory needs more than moral intuitions to develop a proper theory in which all these aspects of society are accounted for. Huemer does discuss other disciplines but he does not create a framework of knowledge out of information from these disciplines.

To illustrate this argument, we can take a look at Huemer's ideas on capitalism, which I will extensively discuss in chapters 3 and 4. For now it suffices to understand that Huemer's account of capitalism is a means to arrive at a society which is compatible with our moral intuitions. However, the political theory based on this account can only be philosophically

²⁸ List and Valentini, 'The Methodology of Political Theory', 527 & 547.

²⁹ Huemer, 'PPA', 16-17.

convincing if it is not only compatible with our moral intuitions, but also in fact functions as suggested in reality. Does a capitalist structure truly generate a free and wealthy society and if so, how? Huemer should present the reader with economic and sociological principles or explanations to make it cogent that the ACS generates the outcomes, Huemer aims at. These principles demand amongst other disciplines, research into the functioning of economics, which Huemer does not do in constructing the ACS.

To conclude, Huemer does not use a proper method to develop a political theory. By only using the CAE, he cannot account for the constraint of pluralism. Also, he needs other tools, such concepts and principles of other academic disciplines to create a philosophically convincing theory. In the next two subsections I will argue that Huemer also does not succeed in correctly using his method.

2.4.2 Thought Experiments

The hallmark of Huemer's CAE is his use of thought experiments. While this method of argumentation and theorising is widely used and accepted, there are some methodological prescriptions for the usage of thought experiments, which Huemer does not completely adhere to. Huemer's use of thought experiments is extremely important as it is his primary tool to find moral intuitions and to convince the audience that they share these intuitions. In this subsection, I will first discuss several common issues with thought experiments. Then, I will evaluate two of Huemer's examples in *PPA* to see whether his thought experiments are constructed correctly.

'Outlandish' Scenarios

Firstly, thought experiments often concern scenarios which cannot or most likely will not happen in our world. The creators of these 'outlandish' scenarios want to clean up our messy world. Even the simplest realistic scenario with two individuals contains a rich context created by the history of the two individuals and things happening around them. This history and many other aspects of the scenario result in countless variables which the theorist must account for. The solution is to create a world, where there cannot be such a context and where the theorist can focus on the variables, he deems relevant for his hypothesis.³⁰

³⁰ Thaler, 'Unhinged Frames', 1134–36.

Elster claims that we should be very careful with using ‘outlandish’ cases as he believes that we are not capable of making proper moral decisions in situations we are not familiar with.³¹ Thaler is less sceptical but does state that the theorist must make sure that the reader can develop an ‘imaginary grip’ on the situation. If the scenario contains such weird or illogical aspects, the reader will not be able to engage in proper moral deliberation.³² He adds that the more the scenario is unlikely to be real, the more relevant it is that the connection with our reality is made.³³

Thaler presents the thought experiment of Innocent Jenny, created by Steinhoff, as an ‘outlandish’ case which fails to develop an ‘imaginary grip’ as it stands too far away from our reality that the reader cannot draw any lesson from it. Steinhoff writes about self-defence and aims to show with this experiment that rape can be justified when it is used as self-defence similarly to killing out of self-defence.

‘Jenny is naked in her bedroom when she is attacked by a naked Serial Killer. Jenny is currently treating her vaginal infection with an ointment, which has the side-effect of killing any man she has sexual intercourse with. While the killer is trying to strangle her, she gets on top of him. In her desperation, she shoves the aggressor’s penis – while the aggressor explicitly says “No!” – into her vagina and starts to move up and down while the man still strangles her. But suddenly the ointment works, the man goes into shock and dies.’³⁴

While the scene occurs between two people in a bedroom with some signifiers of normality, the raping depicted as a defence, when ordinarily it is a deliberate act of violence, makes it impossible for the reader to engage in moral deliberation. Thought experiments such as these do not offer the reader theoretical or practical guidance.³⁵

Foreseeability

Secondly, Rivera-López argues that the particular build-up of the scenario must not influence the outcome of the thought experiment. He refers to Häggqvist’s criterium of conservativity. This criterium prescribes that the build-up of the experiment should be maximally conservative, requiring that it is as close to reality as possible.³⁶ Rivera-López takes this principle not to argue

³¹ Elster, ‘How Outlandish Can Imaginary Cases Be?’, 249–52.

³² Thaler, ‘Unhinged Frames’, 1134–36.

³³ Idem, 1123.

³⁴ Idem, 1132–33.

³⁵ Idem, 1133–34.

³⁶ Rivera-López, ‘Use and Misuse of Examples in Normative Ethics’, 120.

against ‘outlandish’ cases, but to dismiss assumptions of foreseeability. Namely, many thought experiments rely on the assumption that the reader is certain of the outcomes or risks, while we would not be in reality. While this assumption might sometimes enable us to make moral judgements, we could otherwise not make, this assumption provides us with answers which are not relevant for reality.

To illustrate the problem of foreseeability, we might take a look at a version of the trolley problem. Imagine that you are standing beside the track together with a heavy man and that there are five persons stuck on the track, who you cannot save. The heavy man stumbles and falls on the track just before the trolley comes by. You can save the man, but you know that he will stop the trolley with his weight and by not helping the man, you save the other five. Should you help the man?

If your answer is no, you probably have come to that answer due to the fact that not helping the man saves five other lives. However, in real life, you would not know for sure whether this would work. Would you still answer no? The fact that the assumption of foreseeability causes answers to be different in hypothetical scenarios is problematic for theorists who want to apply the intuitions to reality, which Huemer indeed aims to do. They should explain these discrepancies and argue how their thought experiments are still useful.³⁷

Question-begging and bias

Thirdly, many thought experiments and especially those of Huemer are designed to activate the reader’s intuitions and therefore they are sometimes described as intuition pumps. The reader is presented with a scenario in which often a dilemma arises. The author then asks the reader what he or she would do, or thinks is right. However, for such an intuition pump to work, the experiment must not already assume the answer or be influenced by bias according to Brownlee and Stemplowska.³⁸

A thought experiment is question-begging when the answer to a dilemma is already assumed. Brownlee and Stemplowska refer to Wittgenstein’s thought experiment about an omniscient person, who writes everything including all states of minds of all people ever lived, down in a book. He claims that this book does not contain moral facts, but that is only so

³⁷ Thaler argues that the discrepancy between the hypothetical and realistic cases is problematic for realists who want to use the outcomes of the experiment for real-life scenarios, but not for clarificationists, who only want to make a theoretical point. ‘Unhinged Frames’, 1123–24.

³⁸ Brownlee and Stemplowska, ‘Thought Experiments’, 30–31.

because he presupposes that such facts do not exist. The scenario does not prove the non-existence of moral facts, but just illustrates it.³⁹

Furthermore, the carefully crafted scenarios contain many sorts of bias that influence the reader in their answer to the posed dilemma. The presence of bias is inevitable, but the reader must be aware of it and the author must minimize the effects of it. When an author uses certain terms or names, then he must acknowledge the connotations these terms evoke in the reader.⁴⁰ For example, if the author names one of the persons in the experiment Adolf, the reader is likely to have a bias against this person. At least the author must try to keep the scenario as neutral as possible and be aware of the biases that could influence the outcomes of the experiment.

We now have some understanding of what to look for in evaluating Huemer's thought experiments. I will discuss his dilemma on Abel's apples and taxation to see whether he correctly uses thought experiments. Then, I will address a possible response to my analysis, namely that following my criteria for thought experiments, I must reject any use of thought experiments.

Abel's apple's⁴¹

Huemer argues that the presence of the state is not required to prevent people from using violence against each other. To prove this, Huemer turns to a hypothetical state of nature in which Abel has some tasty apples. You are his neighbour and you would love to have these apples without working or paying for them. If you decide to steal the apples, you will have to attack Abel and you know that he will defend himself. Also, if you are strong enough to fight Abel, you might be attacked later on by his family or you could be ostracised by your society for such behaviour. Would you steal the apples? Huemer's guess is that you would not and so he has shown that the absence of a government will not result in a Hobbesian war of all against all.

This thought experiment fails to develop an 'imaginary grip' and relies on assumptions of foreseeability. Huemer probably chose the 'outlandish' world of a state of nature to get rid of the government and to make the link with Hobbes's state of nature in which there supposedly would always be war. However, the fact that the scenario is located in a state of nature is not

³⁹ Idem, 31.

⁴⁰ Idem, 35–36.

⁴¹ Huemer, 'PPA', 200–202.

the reason for the lack of an ‘imaginary grip’. It is the fact that you as Abel’s neighbour would steal his apples and risk everything you have just for some tasty apples. Nobody can imagine doing such a thing, which makes the scenario ‘outlandish’ exactly like nobody would rape someone out of self-defence as in the case of innocent Jenny. Huemer makes you think that the idea of a war of all against all is debunked by this experiment, but actually only the fact that nobody would attack someone else for apples is effectively argued here.

In contrast, the experiment would develop an ‘imaginary grip’ if your motivation in stealing the apples was for your own survival or when you would attack him for revenge as he slept with your wife or to acquire wealth by stealing his valuable jewellery. However, such reasons would not have appealed to the readers’ uncontroversial intuitions, which Huemer needs. Namely, some people would steal for wealth, revenge or survival but others would not.

Also, in the experiment we are well aware of the risks of stealing the apples: we can foresee the future. We know that if we steal the apples, we will have to fight with Abel and if we win the fight, we have to fear his family or the rest of our society. If you could not foresee this and would believe that you could steal the apples without Abel finding out, would you consider it at least? If the apples are really tasty and you cannot get them otherwise, you might steal them.

So, as this experiment portrays such a weird scenario – risking everything for some apples – we might wonder, what this experiment if anything teaches us. The outcome of the experiment might be very different when we apply it to reality, which is harmful to Huemer’s argument as he indeed is making claims about reality. This thought experiment seems to bear strong argumentative force for the idea that the state is not necessary in preventing people from stealing or using violence. However, by critically analysing the experiment, it becomes clear that this force does not originate in the argument but in the build-up of the experiment.

Taxation⁴²

Huemer asks the reader whether taxation is fair and whether or not cheating on your taxation is similar to stop donating to charity, which is a fair thing to do. He believes that the reader will agree with him that taxation is unfair and that it therefore is fair to cheat on your taxation. He conceals his question in a thought experiment which runs as follows⁴³:

⁴² Huemer, *The Problem of Political Authority*, 3–4, 11, 69–70, 113, 145–48, 153–59, 252–53.

⁴³ *Idem*, 69-70.

Charity case: You consider giving \$50, - to a “*very effective antipoverty charity*”, but you might like to use the money for personal consumption. Your contribution to the charity would “*reduce the inequality in society and bring society closer to the equal advancement of all its members’ interests.*” However, you have donated already a lot of money to charity this year and decide therefore not to donate the \$50, -

Tax case: You have to pay your taxes which is a lot of money. You decide to cheat on your taxes by paying \$50, - below the required amount, which you can use for personal consumption.

Why it is permissible to keep \$50, - in the charity case but not in the tax case?

Huemer believes that you will agree with him, that there is no difference and that it therefore is permissible to cheat on your taxes. However, this experiment is question-begging and heavily influenced by bias created by Huemer himself.

Firstly, Huemer has already assumed that taxation is unfair. It is similar to forced charity and extortion.⁴⁴ Obviously, you are morally permitted to resist against extortion. So, the assumption that taxation is unjustified, and an illegitimate deprivation of property begs the question whether or not it is legitimate to cheat on your taxes.

Secondly, the way Huemer portrays taxes before he asks this question and the way he poses this question create a bias against taxation, which significantly influences the answer to this question and the reader’s intuitions on taxation, which Huemer claims to appeal to. His comparisons between taxation and forced charity and extortion already influence the reader’s idea on taxes in the first pages of *PPA*. He continues by claiming that tax money is used to help the less fortunate and to pay for services which you did not request. With his claims, in the experiment itself, he establishes the bias that charities are much more effective in helping the poor. Before the reader can answer Huemer’s question, the reader has been prepped that charity is more effective than the government in helping the poor and that taxation is similar to extortion as you are paying for services you did not request.

If Huemer truly wanted to know the reader’s intuitions on taxation, he should have asked this question to the reader before he gave his thoughts on the matter or he should have presented

⁴⁴ *Idem*, 3-4, 11.

the reader with a neutral account of taxation. Now, he claims that people intuitively are opposed to taxation, which is not correct to do.

Huemer might respond to my criticism by arguing that thought experiments are never possible when my criteria are used. Indeed, every thought experiment works to some extent due to its build-up and is influenced by at least some form of bias, which implies that I should reject the use of thought experiments completely. However, no author I referred to in this subsection believes thought experiments should be rejected and neither do I. We cannot expect from theorists to construct thought experiments free from bias, principles of foreseeability or made-up scenario's, but we can expect them to limit their use as much as possible and to warn the reader for these influences. Especially in the case of Huemer, who builds his entire theory on intuitions and claims that these intuitions are identical for everybody, it is unconvincing that his thought experiments are influenced by their constructions as the intuitions he wants to find should be self-evident and uncontroversial.

Still, the fact that I have disputed two thought experiments in this subsection does not mean that all examples and thought experiments are invalid in *PPA*. However, it does show that Huemer is not shy of using bias and carefully crafted scenarios to convince his readers of his argument. A reader must therefore be critical when reading the experiments and think about the reasons why he or she supports their outcomes.

2.5 Conclusions on Methodology

In this chapter, I have explained and investigated Huemer's methodology. While the CAE should not be rejected beforehand, it is not the right method for Huemer's aim and his use of the method is not satisfactory. Therefore, it can be concluded that Huemer's methodology is not philosophically convincing.

Firstly, Huemer does not use the right method for developing a political theory. He builds a theory on assumptions he claims to be uncontroversial as he believes that there is objective moral knowledge. However, in political theory, the theorist has to deal with the constraint of pluralism, which means that people will not always agree on these assumptions and will therefore be able to build their own political system on top of their own moral intuitions.

Secondly, Huemer uses thought experiences in an incorrect way. He is not shy of using ‘outlandish’ scenarios, assumptions of foreseeability and bias. Critical analyses of these experiments show that they do not prove his arguments at worst and leave room for discussion at best. The cogency of Huemer’s arguments depend heavily on the intuitions explored by these thought experiments and so, it is harmful for Huemer’s theory in general, that the experiments are not constructed properly.

Therefore, we may conclude that Huemer’s methodology raises a critical amount of doubt and questions, that we cannot label it philosophically convincing. The FA does not provide us with an effective starting point to build a political theory. Nonetheless, we do not stop here but continue to analyse Huemer’s work for two reasons. First, we might be wrong in our criticism on Huemer’s methodology and second, an incorrect methodology does not mean that the content of the argument is not potentially interesting or convincing. So, we grant Huemer the FA in the next two chapters and accept the argumentative force of moral intuitions.

3. Huemer's Anarcho-Capitalist Society

3.1 Introduction

In this chapter I aim to outline Huemer's account of anarcho-capitalism, which he presents in *PPA*. In 3.2, I will discuss part I of *PPA* shortly as I will not criticise it and in fact fully accept it for the sake of the argument. Next, in 3.3, I will explain how Huemer envisions his ACS with focus on those aspects, I discuss in chapter 4. I will finish this chapter in 3.4 by making some remarks on the ACS and its feasibility.

3.2 The Illusion of Authority

The primary reason Huemer supports anarcho-capitalism and rejects societies with sovereign states, is that he rejects the idea of political authority. He defines political authority as “*the hypothesized moral property in virtue of which governments may coerce people in certain ways not permitted to anyone else and in virtue of which citizens must obey governments in situations in which they would not be obligated to obey anyone else.*”⁴⁵ In part I of *PPA*, Huemer discusses the four most influential ways in which political authority could be justified: traditional⁴⁶- and hypothetical social contract theory⁴⁷, democracy⁴⁸ and consequentialism⁴⁹. He argues that all four justifications fail, that political authority is therefore an illusion and that for this reason we should abandon the government.

For the sake of the argument, I will grant Huemer the claim that political authority is an illusion. I will assume that his rejection of justifications of political authority is correct. Also, I am aware of my bias in favour of the government as is made explicit by the psychological experiments Huemer presents in chapter 6. In the next two sections, I will present the ACS in its strongest possible form. Huemer has three objectives he needs to succeed in. The ACS must be feasible, it must be desirable over a society with government, even though this government is illegitimate and most importantly, it must be compatible with the FA, so with our moral intuitions.

⁴⁵ Huemer, 'PPA', 5.

⁴⁶ Idem, ch.2.

⁴⁷ Idem, ch.3.

⁴⁸ Idem, ch.4.

⁴⁹ Idem, ch.5.

3.3 The Anarcho-Capitalist Society

In this section, I will outline Huemer's account of the ACS. In order to do so properly, I first need to discuss Huemer's assumptions about human nature. Then, I will present his views on individual security and dispute resolution extensively as my criticism in chapter 4 will focus on this part of the ACS.

3.3.1 The Modern Human Being

Political theories need a conception of the character of the human being. The structure of society relies on how human beings behave. Often, a Hobbesian account of the human being is used, where human beings are constantly involved in 'a war of all against all' as long as there is no authority (a leviathan) who keeps them apart. Such a conception rejects the idea of an anarchic society without even considering it.⁵⁰ Therefore, Huemer starts by presenting a new conception of the human being, which I will call the 'modern human being'.

Huemer uses three general assumptions about the modern human being. Firstly, the modern human being is approximately rational. This means that he is generally able to make the rational decision, which is the decision that helps him achieve its goals in the best possible way. However, people do make mistakes and show irrational behaviour for all kinds of reasons.⁵¹

Secondly, modern human beings are aware of their environment. To a great extent they are able to interpret situations surrounding them correctly and understand the consequences of their actions. As long as a situation is interesting to them, they put effort in collecting relevant information to make sure that their interpretation is right.⁵²

Thirdly, modern human beings are selfish but not sociopathic. They value their own lives more highly than those of others. However, that does not mean that they do not respect others or not make effort to help them.⁵³

Huemer adds that it might be that human beings were different in a state of nature. However, we have evolved over time and are significantly less violent due to several social changes. Our beliefs are more liberal, we are more prosperous and developments in weapons

⁵⁰ Idem, 198–200.

⁵¹ Idem, 187–88.

⁵² Idem, 188–89.

⁵³ Idem, 189–91.

technology has made use of aggression excessively risky.⁵⁴ This means that Huemer's assumptions about the human being only work for a developed liberal society. This is not problematic for Huemer as he does not claim to develop the ACS with people from a primitive society. He aims to transform a modern liberal society and not a primitive one into an ACS. He does not believe that making this transformation results in a return of the human being to the character it might have had in a state of nature.⁵⁵ Hence, Huemer's human being, who is approximately rational, aware of his surroundings and selfish but not sociopathic, is modern.

3.3.2 Individual Security and Dispute Resolution

Nevertheless, violent conflict and the threat of conflict in particular, will be existent in the ACS with modern human beings. Therefore, Huemer must provide us with an account of how individual security will work in his ACS. He suggests a commercial system of protection agencies who will be in fair competition with each other protecting the members of society. This unregulated capitalist market system of security will provide better security for all citizens than the state provided. In this subsection, I will touch upon some key elements of the system.

To start, the agencies will be competitive but not aggressive to each other. Violence is a costly business and the agencies will make more profit when they resolve conflicts peacefully. Also, most people are opposed to violence and murder and therefore strongly prefer to work for a peace seeking agency instead of an aggressive warmongering agency. The occurrence of interagency war is far less likely than interstate war as governments have far less to lose compared to commercially driven agencies. So, the agencies will only use violence whenever they ultimately must use it.⁵⁶

Unfortunately, protection and justice are similarly for sale in this system as in a governmental system. Ideally justice and protection should not be for sale, but it cannot be expected that such an important service is done without reward. Also, without reward the desired quality of the service would not be met. How painful this might be, it is no different than in a governmental system where people pay taxes to finance justice and security.⁵⁷

However, does this mean that the poor are not able to acquire justice and security? No, protection agencies focused on low- and middle-income classes will arise. Actually, most

⁵⁴ *Idem*, 233–38.

⁵⁵ *Idem*, 204.

⁵⁶ *Idem*, 233–38.

⁵⁷ *Idem*, 240–43.

industries consist mainly of companies that deliver their goods or services for these people and there is no reason to think that it would be otherwise for the market of justice and protection. These people do not have to fear that their security will be of low quality. Due to competition, these agencies will provide good service and most probably much better than police-forces do now.⁵⁸

To summarise, a commercialised system of individual security will be accessible to everyone and provide a cheaper and more effective service of security than a government would be able to. However, what happens in case of conflict? Will the agencies be fighting each other? Again, the answer is no. Huemer states that a system of arbitration firms will arise. Some remarks need to be made about this system to understand its effective working.

Firstly, an arbitration firm is able to stand out against its competition by being fair, wise and known for its integrity. A firm only has authority when both parties in conflict agree on this firm to use. So, the firms will not be biased as this would harm their reputation for impartiality.⁵⁹ The source of law on which the arbitrators base their judgements consists of two parts: the rules property-owners create concerning their property and the arbitrators themselves. The arbitrators will base their judgements on older verdicts (jurisprudence) and the contracts involved. Via this bottom-up approach a legislative system will be created, which will be fairly applied to cases by these arbitrators.⁶⁰

Secondly, the protection agencies play a significant role in making individuals use the arbitration firms and accept their verdicts. The agencies will not accept individuals to their clientele, if these individuals do not wish to work with the arbitration firms. Using arbitration firms to resolve conflicts will provide the agencies with more profit and therefore they will force their clients to use the diplomatic instead of the violent solution. It can be expected that each agency will have its preferred arbitration firm, but the agencies whose clients are in conflict with each other, must find a suitable firm together.⁶¹ Again, simple cost-benefit analyses will make sure that the agencies will find arbitration firms in agreement.

So, a new framework of laws will be developed via a bottom-up approach by arbitrators, who judge based on rules made by property-owners, contracts between people and jurisprudence. The system of arbitration firms will be used, and its authority will be accepted due to the fact that protection agencies will force their clients to do so.

⁵⁸ *Idem*, 243–47.

⁵⁹ *Idem*, 265–69.

⁶⁰ *Idem*, 271–72.

⁶¹ *Idem*, 269–71.

3.4 Feasibility

In this chapter I have now clarified several elements of Huemer's anarcho-capitalist project. First, I have accepted Huemer's rejection of political authority for the sake of the argument. Then, I have explained what the modern human being looks like. He is approximately rational, aware of his surroundings and selfish but not sociopathic. Lastly, I have outlined the key elements of society, which are normally arranged by the government: individual security and dispute resolution. All elements of society that are not discussed but are generally arranged partly or completely by government such as healthcare, education and infrastructure, are in the ACS fully commercialised. The last question which needs answering is whether this society could actually be realised in our world.

Huemer admits that it is not likely that an ACS will soon exist. People generally accept and believe in political authority and reject anarchy.⁶² Nevertheless, there are some social developments that indicate a transformation of society in the direction of anarchy. For example, the number of businesses in security and dispute resolution have rapidly increased. Also, globalisation and the spread of democracy has softened borders and has created a more peaceful world, which needs less armies.⁶³

However, the ACS can only arise slowly. The transformation of a governmental state to an ACS will happen gradually as more and more governmental functions are outsourced to commercial firms. Also, the transforming society must be surrounded by liberal democracies as authoritarian states will probably seize the opportunity to invade. The ACS will not have an army and depends therefore on the peaceful attitude of neighbouring countries.⁶⁴

In the next chapter, I will critically analyse Huemer's account of the ACS. I will explore on which assumptions his account rely and evaluate whether these assumptions are truthful and consistent. This analysis will enable me to judge Huemer's account on whether it is philosophically convincing or not based on its content. Many comments can be made on the feasibility of the project by making empirical claims. I will only touch upon fundamental problems with Huemer's theory and not engage in discussions of likelihood that the ACS will arise.

⁶² *Idem*, 321–25.

⁶³ *Idem*, 325–28.

⁶⁴ *Idem*, 328–34. Having no army seems problematic, but a country such as Costa Rica has not had an army since 1948 and has not been attacked ever since.

4. Critical Analysis of the Content

4.1 Introduction

So far, we have discussed Huemer's account of anarcho-capitalism and how he has arrived at the ACS. In this chapter I will critically analyse the content of Huemer's project. For his project to be philosophically convincing, his theory must render robust conclusions, which are realistic and logically follow from truthful and consistent premises. In this chapter I accept the FA, although I raised issues with Huemer's use of assumptions in chapter 2, in order to be able to analyse the content of Huemer's theory critically independent from his method or metaethical presuppositions.

In 4.2 and 4.3 I focus on the assumptions underlying Huemer's society concerning capitalism and liberty respectively. Next, in 4.4, I will evaluate whether Huemer's ACS logically follows from his premises using Nozick's argument that a capitalist system of security agencies inevitably develops into a system with governmentlike institutions. Lastly, in 4.5, I conclude that Huemer's theory of anarcho-capitalism is not philosophically convincing.

4.2 Capitalism

The idea of capitalism is pivotal to Huemer's ACS. All services governments fully or partly provide for such as education, healthcare, security and infrastructure are now commercialised. Also, markets for amongst other drugs, prostitution and human organs are not prohibited or regulated any longer due to the absence of sovereign institutions. This means that Huemer's theory of the ACS is built upon a theory of free-market capitalism.

Huemer does not provide us with a theory of free-market capitalism. Therefore, I must first extract his ideas on capitalism from his moral intuitions and other works. After I have reconstructed Huemer's assumptions on capitalism, I can evaluate whether his assumptions are truthful, consistent and support his conclusions.

In this section, I will not argue against free-market capitalism in general. I do believe that capitalist markets are the most efficient way to cope with scarcity and that they promote wealth. However, I will claim that Huemer's assumptions on capitalism and its role in the ACS are not truthful nor consistent. In fact, if his assumptions are made truthful, it will become apparent that the ACS produces servile relationships, which directly conflicts with one of our

strongest moral intuitions that slavery is wrong. This means that the ACS directly clashes with the FA.

First, I will outline Huemer's ideas on capitalism which he assumes in his theory on the ACS. Then, I will use the framework of Satz on the ethical limits of markets to show that Huemer's thoughts on capitalism are not truthful and if they are made truthful, they are not consistent with the FA.

4.2.1 Huemer's Ideas on Capitalism

Huemer defines capitalism as an “*economic system based upon free markets and private property*”.⁶⁵ Normally, the government controls this system and regulates or prohibits markets it deems harmful. In the ACS there are no regulations or prohibitions due to the absence of government: every market is allowed and unregulated. Huemer does not argue – while he possibly believes it – that the free market system is economically superior to a regulated market system, because he does not have to.⁶⁶ He only has to show that it is morally superior as he rejects the government and its authority to regulate markets on moral grounds. In order to understand how this system will function in the ACS, Huemer made assumptions on how both individuals and businesses act in this system. I will present these assumptions as four claims on the basis of which he concludes that the unregulated market is morally superior to the regulated market.

The first claim involves the argument, Huemer makes in part 1 of *PPA*. He claims that political authority is an illusion and therefore that the government has no moral right to regulate markets.

Then, in part 2 of *PPA*, he moves on to discuss the behaviour of businesses and individuals. His second claim states that businesses aim to maximise their profit. This means that every decision a business makes is made on the expectation that it is the most profitable alternative. Huemer uses this claim when he for example explains that security agencies will not fight each other as violence is costly.⁶⁷ So, security agencies will always seek the most peaceful solution as this will maximise their profits. Huemer's second claim is important as it

⁶⁵ Huemer, 'Defending Liberty: The Commonsense Approach', 238.

⁶⁶ In fact, he believes it to be a rhetorical mistake to focus on economical arguments. Moral arguments appeal much more effectively to people. *Idem*, 238–40.

⁶⁷ Huemer, 'PPA', 234 & 244: Huemer states that businesses have the strong inclination to make profit and reasonable knowledge on how to do this.

causes Huemer's argument on capitalism to be inconsistent, which I will clarify in the next subsections.

The third claim is about human behaviour. Individuals are approximately rational, aware of their surroundings and selfish but not sociopathic. The modern human being is able to make decisions that maximise the achievement of its goals, but it makes sometimes mistakes. Huemer suggests that the modern human being is capable or at least has sufficient agency to operate properly on the market.⁶⁸ Throughout *PPA*, Huemer berates paternalizing laws, which he thinks people do not need.⁶⁹ This also shows that he believes that the modern human being does not need the protection of the government when he enters the market.

Next, the second and third claim enable Huemer to make the fourth claim: the unregulated capitalist market promotes fair transactions. With a fair transaction I refer to a transaction all parties involved freely agree with and which produces no unreasonably harmful consequences to third parties. The laws of demand and supply together with the goals of the individuals and businesses make sure that the market promotes these fair transactions. To illustrate, the security agencies will refrain from immoral and unfair actions as these scare the customers and employees away. Also, the agencies will offer cheaper services to the poor as the poor form an interesting sales market. The fourth claim does not imply that no unfair transactions or harmful outcomes can be produced, but at least it will be less of them compared to a regulated market.⁷⁰

Finally, Huemer concludes on the basis of his claims that the unregulated capitalist market system is morally superior to a regulated system. The government has no moral right to regulate the market, which makes a regulated market morally inferior to an unregulated market which promotes fair transactions due to the behaviour and capabilities of businesses and individuals.

In the next subsections, I will demonstrate that Huemer's third claim on the behaviour and capabilities of the individual is not truthful, which is the first problem with the account of capitalism. Then, I will show that a truthful version of the third claim together with the second claim about businesses does not imply the fourth claim, which states that the unregulated market promotes fair transactions, leaving another issue with Huemer's content. If I am right, the free market system promotes servility, which makes it morally inferior to a regulated market and

⁶⁸ See subsection 3.3.1

⁶⁹ Especially Huemer, 'PPA', 137–48.

⁷⁰ Huemer, 'PPA', 183–85 & 244–47.

more importantly inconsistent with the FA, which makes Huemer's theory philosophically unconvincing.

4.2.2 Weak Agency and Vulnerability

In this subsection, I will argue that the modern human being does not have sufficient agency to function properly on every unregulated market, which means that Huemer's third claim is not truthful. Especially when it concerns noxious markets, individuals are vulnerable to the greed of businesses and other individuals. There are multiple reasons for doubting the level of rationality Huemer ascribes to the human being. However, discussions on rationality and its consequences for economic transactions concern debates on capitalism in general.⁷¹ Here, I wish to show that the modern human being needs protection when he enters noxious markets. Noxious markets are interesting in this context as they are now regulated or prohibited by governments and will not be intervened with in the ACS. I will use Satz's framework for noxious markets to explain why and how individuals lack agency to function properly on noxious markets. Satz's framework fits my purpose here as she focuses on moral instead of economic effects of unregulated markets.

In her book *Why Some Things Should Not be for Sale*, Satz argues that there are some markets which are noxious and therefore should be regulated or prohibited by the government. She develops a framework consisting of four parameters, to distinct noxious- from harmless markets and to explain why regulating noxious markets is desirable. The first two parameters concern the harmful outcomes of these markets for individuals and society respectively. The second two parameters discuss the sources of these outcomes, which are weak agency and vulnerability.⁷² Here I will explain the last two parameters on the sources of the harmful outcomes, which show that individuals lack sufficient agency to act properly on some of the unregulated markets and thus, that Huemer's third claim is untruthful.

The first source is weak agency on the side of one of the transacting parties caused by a lack of intelligence or information or by deception. Individuals are not always able to know the consequences of the transaction and therefore cannot always close a proper deal. Nobody can look into the future and know what it might bring, so when a deal might have consequences for the future, the individual cannot estimate whether the deal he or she has made, is fair. In every

⁷¹ See Hausman et al, 'Economic Analysis, Moral Philosophy, and Public Policy', chapter 4 and 5 for an overview of rationality in an economic context.

⁷² Satz, 'Why Some Things Should Not Be for Sale the Moral Limits of Markets', 91–94.

market there is imperfect information, so neither of the transacting parties ever knows exactly what the deal might bring. However, in case of some markets, those which Satz labels noxious, the imperfect information can have extremely harmful outcomes.⁷³

Whereas some very unacceptable deals are made because one or both of the parties did not have proper information and knowledge on the deal, some bad deals are made because one of the parties just had no choice not to make the deal. This can be caused by the vulnerable situation this party finds itself in, which forms the next parameter of noxious markets for Satz.⁷⁴ A person might be in such high debts that he or she must accept any terms of the creditors or a person needs something to survive and is therefore willing to give anything in exchange for that good. Situations like this often appear in markets where primary goods such as water, food, medicines and treatments are traded, but also in goods which people feel that they need such as addictive's like drugs.

The parameters of weak agency and vulnerability do not show that Huemer's account of the human being is wrong, but they do show that it is truthful neither. This is because the noxious markets specifically exploit the mistakes people can make, which Huemer refers to. Approximately rational human beings can end up in vulnerable situations or make deals about which they lack crucial information. Sandel raises a similar point when he questions whether the choices customers make in certain markets are truly free choices. The fairness objection to certain markets focuses on the injustices that possibly arise when the transaction is made under a condition of inequality or when one of the parties desperately needs the transaction to happen. In these situations, we can hardly speak of free choice.⁷⁵ To show that the fairness objection and the two sources of noxious markets apply to Huemer's unregulated capitalist market system, we can take a look at the market of individual security.

Most people do not worry too much about their security. They do not have to as they can always call an emergency number to request help by the police. Some people invest in private security as they live in remote areas or have highly valuable goods at home. However, those who cannot afford extra security and simply do not need it, rely fully on the government's security service.

When this service is not present in the ACS, it cannot be assumed that all people will hire the service of a protection agency even when they are offered it for acceptable prices. The service of security can be compared with saving for your retirement or with a voluntary

⁷³ *Idem*, 96–97.

⁷⁴ *Idem*, 97–98.

⁷⁵ Sandel, 'What Money Can't Buy', 110–11.

healthcare insurance. You pay money to a company or set it aside for a moment in the future of which you are not sure of it will ever come. The average person with a limited budget will have to make a decision on how to spend his money: will he buy a new car, which he can enjoy immediately or will he buy the service of a security agency, which is expensive for him while he has no quarrel with anybody or valuable goods to be stolen? Most people with tight budgets will not choose for hiring a security agency, simply because they lack the knowledge on the consequences of not being secured.

This weak agency can be easily exploited, when this person who bought the car ends up in a fight with his boss. The boss threatens to hurt him and his family and now suddenly he needs the help of the protection agency. The agency becomes aware of the vulnerable position the person finds himself in and demands a higher price than he normally would. The person can go to another agency, but they might do the same, because they all want to maximise their profit (see Huemer's second claim) and can easily make use of the person's vulnerable position.

To summarise, the sources of noxious markets must be incorporated in Huemer's third claim in order for it to be truthful. His claim should have been that the modern human being is approximately rational and has sufficient agency for most markets, but not for noxious markets. The fact that Huemer has based his argument on capitalism on an untruthful assumption, harms the cogency of his argument and in fact of the entire theory. To make things worse for Huemer, it will become clear in the next subsections, that the truthful version of his third claim will lead to inconsistencies within the argument and ultimately to a contradiction between Huemer's theory and the FA. Next, I will show that weak agency and the vulnerable conditions people face in noxious markets will have harmful consequences.

4.2.3 Extremely Harmful Outcomes

Does the free market system still promote fair transactions if we assume that people do not always have sufficient agency and that businesses will try to make use of the irrationality as they aim to maximize their profit? In other words, does Huemer's second claim in combination with the truthful version of his third claim, still lead to the fourth claim? In order to answer this question, I will discuss Satz's first two parameters on the outcomes of noxious markets and then apply them to the market of individual security.

Naturally, markets are a place where money can be won and lost. Some people get rich by taking risks and others end up in poverty by making mistakes or having bad luck. Most people do not find this problematic. However, some markets produce such harmful outcomes

to individuals that it harms their ability to live a decent human life. Such markets are noxious according to Satz and should be regulated at least to protect individuals against these outcomes.⁷⁶

These outcomes are not limited to individuals but may harm society as a whole. With society as whole, Satz refers to the relationships between citizens, which should be equal. It does not matter that one person is more affluent than another, but one should not be fully depending in such a relationship. Noxious markets are able to produce relationships in which one party is fully depend on the other: the poor are then relying on the affluent. Unnatural relationships of dependency are often considered to be a modern form of slavery.⁷⁷

Modern slavery mostly exists in the form of voluntary labour contracts between two parties. One party faces an enormous amount of debt of financial or natural kind to another party and agrees to work for the creditor to pay off the debt. The debtor does not necessarily have to use labour as collateral to make the transaction. If all markets are unregulated, the debtor can use his own body as collateral and for example sell an organ if he cannot pay the debt. So, if no regulations are in place on what can be bought and sold or on how transactions of labour and property can be shaped and if we assume that people do not have sufficient agency to avoid these nasty deals, it cannot be concluded that the unregulated market system promotes fair transactions. In fact, it promotes servile relationships, which most people strongly oppose to out of moral concerns. This means that the argument on capitalism clashes with the FA, as most people consider the rejection of slavery an uncontroversial moral intuition.

We can now return to the market of individual security and see what outcomes can be expected when individual security is outsourced. As explained in the last subsection not everybody will hire the service of a security agency as the need for one is not as obvious to everyone. If people do not enjoy the protection of an agency, they will become vulnerable to theft and assault. A thief or anyone who wants to do harm, only has to find a potential victim who has not hired a security service. The fact that you are not protected has made you a target. Obviously, assault can take serious forms and threaten someone's ability to live a proper life.

In addition, allowing the market of individual security to be commercialised, may have extremely harmful outcomes to society as it creates servile and extortive relationships in several ways. To start, those who do not buy security may need it one day desperately due to a conflict or threat. The vulnerable condition they find themselves in by that moment makes them an easy prey for extortion by the protection agencies. They may just demand some more money than

⁷⁶ Satz, 'Why Some Things Should Not Be for Sale the Moral Limits of Markets', 94–95.

⁷⁷ Idem, 95–96.

usual, but they can also make more harmful demands such as forced labour or the sale of an organ. Similarly, people who are customer of an agency may be extorted by their own agency, when they find themselves in a vulnerable situation. Lastly, one individual may extort another individual by using its protection agency as a threat of force. Huemer states that there will be different agencies with higher and lower qualities of protection. If the protection agency of your neighbour is weak compared to yours, you can use this inequality of protection to your benefit and make some demands to him.

Huemer might respond to this analysis in two ways. Firstly, he could argue that all people will be wise enough to buy the service of the agencies before they get in trouble. He claims that it is financially possible as some agencies will focus on offering a 'private label' quality security service. Even if this is true, the market of individual security remains noxious and will have the same consequences. Namely, security is not a matter of being member of a security agency. If your neighbour or boss is much better protected than you, then the unequal relationship is not different from the situation in which you are not protected at all. Those with an affordable 'private label' security agency will not be able to compete with a 'luxury brand' protection agency. The noxious market of individual security needs equality in protection as only the government can provide in order to prevent the extremely harmful outcomes.

Secondly, Huemer might reject the idea that individuals or businesses can use their protection agency to extort others by using a threat of violence as the agencies will not cooperate with such behaviour. I do not agree with this line of reasoning. Huemer might be right that the agencies want to limit the use of violence as this is costly, but the threat of force itself does not require the use of violence and as the agencies want to maximise their profit, they will have no issue with its client using the threat as long as they will not have to execute the threat.

In conclusion, due to the weak agency of individuals and possibly their vulnerable conditions, in combination with the selfish character of both businesses and other human beings, unregulated noxious markets have extremely harmful outcomes to individuals and society and so, do not promote fair transactions. In contrast, they produce servile relationships in which one party fully depends on the other. So, when Huemer's third claim is made truthful, it does not, in combination with the second claim, support the fourth claim and therefore the conclusion any longer. More importantly, if we hold on to the FA, which demands that we find a political system that is compatible with our moral intuitions, the unregulated capitalist market system cannot be accepted as it promotes servility.

4.2.4 Slavery in the Anarcho-Capitalist Society

In this section on Huemer's account of capitalism, which is vital to his theory of anarcho-capitalism, I have shown that the account is untruthful, inconsistent and clashes with the FA. Huemer assumes that the modern human being is capable enough to operate properly on unregulated markets. By means of Satz's analysis of noxious markets, I have argued that the modern human being is not sufficiently rational to operate on noxious markets. It needs the protection of the government to prevent extremely harmful outcomes. So, Huemer's third claim is not truthful, which damages the cogency of his theory severely.

Furthermore, it has become clear that the truthful version of the third claim in combination with the second claim, which stated that businesses aim to maximise profit, does not render the fourth claim: the unregulated market promotes fair transactions. The extremely harmful outcomes including relations of servitude cannot be considered fair. This means that the claims are not truthful and do not support each other.

Lastly, the fact that the unregulated markets promote servile relationships does not only mean that the unregulated market system is morally inferior to the regulated market system, it also means that the system directly clashes with the FA. Our moral intuitions tell us that slavery and servile relationships are wrong. Huemer thinks so too, so he cannot uphold his account of capitalism and the FA at the same time.⁷⁸

In conclusion, Huemer's account of capitalism is not truthful and inconsistent intrinsically and inconsistent with the FA. This means that Huemer's theory does not meet the criteria on the content for being philosophically convincing.

Ultimately, Huemer could respond one last time to my criticism by arguing that the relationship between government and citizen is one of perpetual slavery and therefore worse than the relationships between citizens in the ACS. In the next section I will respond to this idea when I discuss the matter of freedom.

⁷⁸ See Huemer, 'PPA', 44, 323–24 and a blog post on 'Cato unbound' published on March 4th, 2013: <https://www.cato-unbound.org/2013/03/04/michael-huemer/problem-authority> retrieved at May 6th, 2020.

4.3 Liberty

Huemer's political theory is based on a negative approach to liberty. He does not discuss nor conceptualise liberty in *PPA* or in another work to my knowledge⁷⁹, but his arguments against the government and in favour of the ACS, reveal that he equals liberty to non-interference. In this section, I will show that Huemer treats liberty as non-interference and I will then argue that a negative account of liberty does not exclusively correspond to our moral intuitions. So, to assume negative liberty is not consistent with FA, which prescribes a broader account of liberty, which can only be provided by a government and not by the ACS.

To start, I explain why Huemer needs a conceptualisation of liberty. Then, I infer from his theory, that he assumes a negative account of liberty. Next, I will discuss other approaches to liberty and show that our moral intuitions prescribe a broader account of liberty than only negative. I conclude my criticism on Huemer's concept of liberty by arguing that the ACS is not desirable as it generates only negative liberty for the powerful and affluent.

4.3.1 Huemer's Concept of Liberty

Huemer argues in part II of *PPA*, that the ACS is a more favourable social system compared to a system with a government. In the previous section I have shown that the unregulated capitalist market system causes such immoral outcomes that it cannot be desirable. However, Huemer might consider unjustified political authority as a similar immorality, which brings us to the question, what is the best alternative and how do we decide that? Miller claims in his article *Constraints on Freedom* that freedom is the key variable in judging and comparing social systems.⁸⁰ His thoughts are interesting here as he, like Huemer, is comparing two opposite kinds of social systems. Freedom has such relevance to our lives as the amount of freedom we enjoy determines our possibilities, opportunities and restrictions. So, by investigating which system in general provides the most freedom to its citizens, we can decide, which social system is favourable.

People have different ideas about freedom. Miller argues that the differences in conceptions of freedom make discussions on which social system is desirable hard to settle.⁸¹ In order to understand if we must agree or disagree with Huemer's ACS, we must understand

⁷⁹ See Huemer's website, where he published an overview of his works. An article on liberty is not present: <http://www.owl232.net> retrieved at May 7th, 2020.

⁸⁰ Miller, 'Constraints on Freedom', 66–67.

⁸¹ Idem, 67–68.

what he means by freedom. Only then we can judge whether or not his society provides its citizens with more freedom than a society with government. So, based on his writing in *PPA* and in other works I assume that he holds the following conception of freedom.

Huemer only discusses liberty in the negative sense and mostly in combination with governmental interference. This means that a person is free to the extent that he is not interfered with by others. Obviously, the government is the actor that interferes most with citizens and therefore if the government is non-existent, the citizens of the society will enjoy a lot more freedom. Huemer reveals this position multiple times when he strongly rejects laws that forbid people to do things which for example only harm themselves and supposedly not others such as alcohol- and drugs laws. So, someone's freedom ought to be only limited by the other person's liberty: a person or businesses should be allowed to do anything as long as it does not interfere with anyone else's liberty.

Also, in the discussion of moral intuitions, Huemer focuses on violations of liberty in a negative sense. He discusses the matter of taxation and declares it to be an unjust removal of one's property, which severely impedes one's freedom. Besides, in *Ethical Intuitionism* he presents the following example of a moral intuition: "*If a person has a right to do something, then no person has a right to forcibly prevent him from doing that thing*".⁸² These examples do not prove that Huemer rejects any other account of freedom. However, he does not mention any other form of liberty nor does he implicitly refer to other kinds of liberty than one that focuses on non-interference. Therefore, I will assume that Huemer compares social systems in terms of liberty as non-interference to decide which system is favourable.

4.3.2 Different Concepts of Liberty

The problem with Huemer's negative account of liberty, is that it is too narrow. There are more sides to liberty that are not assumed by Huemer while these sides equally appeal to our moral intuitions. This means again that there are inconsistencies in Huemer's assumptions, which in turn means that the content of Huemer's theory does not meet the criteria for being philosophically convincing. In this subsection, I will not make the case for any other account of freedom or provide my own. Instead, I will appeal to some moral intuitions on liberty and show that they are not captured by the account of negative liberty. If I am right, Huemer must broaden his account of liberty in order to make it consistent with the FA. However, if he

⁸² Huemer, 'Ethical Intuitionism', 102.

broadens his account of freedom, he cannot reject the presence of a government as the government then appears to be a protector of freedom instead of a threat.

Different authors have published different accounts of freedom. Berlin made a famous distinction between negative and positive freedom,⁸³ Pettit explains freedom as the absence of arbitrary domination,⁸⁴ MacCallum rejects these sorts of approaches to freedom and claims that it is a triadic relationship in which absence of domination, interference and the presence of opportunities all play a role⁸⁵ and lastly, Millar focuses on moral responsibility in deciding what makes something a constraint on freedom instead of a natural disability to do something.⁸⁶ This short overview of different thoughts shows that Huemer's approach to liberty is not uncontroversial even though he claims that it is based on uncontroversial moral intuitions. In what follows, I will show that each of the authors named refers to our moral instincts on liberty.

Isabella rides the busy subway every day to work. She wants to embark the train but is stopped by an officer who tells her that women are no longer allowed in the subway due to the limited space. Would you consider this impediment a restriction of Isabella's freedom? Most of us would intuitively feel so. This is an interference with her actions, which closes a door which was open to her. Hence, this is an example of negative liberty. Berlin states that the wider the circle of non-intervention the wider our freedom is.⁸⁷

Next, Isabella decides to take the bus to her work. Her husband had shown her how to take the subway in order to get to the office, so she now has to find the way herself. However, Isabella is illiterate and is too embarrassed to ask for help reading the signs. Ultimately, she decides to go home with which she risks losing her job. Would you consider Isabella to be a free person? Most people would intuitively dispute Isabella's freedom because she lacks autonomy. Berlin would say that she is not her own master in the sense that she cannot live her life without external help. Positive liberty does not focus on the absence of obstacles, but on the person's ability to make a free choice.⁸⁸

When Isabella returns home, she has to face her husband. Both of them are raised in a culture in which the wife must obey the husband, so she is not much more than her husband's property. Luckily, Isabella has found a great husband who is kind to her and does not force her to do or to abstain from doing anything. Would you consider Isabella to be free in her

⁸³ Berlin, 'Four Essays on Liberty', 15–16.

⁸⁴ Pettit, 'Republicanism', chapter 2.

⁸⁵ MacCallum, 'Negative and Positive Liberty', 312–13.

⁸⁶ Miller, 'Constraints on Freedom', 80–81.

⁸⁷ Berlin, 'Four Essays on Liberty', 16.

⁸⁸ *Idem*, 15, 22–23.

marriage?⁸⁹ Most people would intuitively consider Isabella not to be free. Although she is not interfered with in her choices or actions by her husband, he is arbitrarily able to interfere and therefore, he dominates Isabella. This forms the basis for Pettit's republican freedom, where someone is free to the extent that he or she is not dominated by an arbitrary force. I will come back to Pettit in a moment.

The next day Isabella steps into the lift. The lift stops halfway, and Isabella is not able to call for assistance. She is trapped and has to hope that someone will come look for her. Would you consider Isabella to now be constrained in her freedom? Most people would not, and Berlin and Miller explicitly agree with them. They consider this case to be a natural constraint on freedom, a mere disability to leave the lift but not an impediment on freedom.⁹⁰ However, the janitor in Isabella's apartment building is obligated to check the lift once a day at 6 PM. At this particular day he wants to be home by 6:15 to watch baseball, so he decides not to check the lifts. Now most people would believe that Isabella is rather unfree than unable to leave the lift. Miller argues that moral responsibility is the distinctive factor in deciding whether something is a constraint on freedom or a natural disability.⁹¹ The janitor has not caused Isabella to be locked up, but he did fail to fulfil his moral responsibility to check on the lift and get her out. Therefore, she is unfree and not unable to leave the lift.

It now should be clear that there is more to liberty than non-interference. Our moral intuitions teach us that there is a wide variety of ways in which someone can be unfree. These different thoughts on freedom are not made up by individual idiots, a lack of information, by bias or by any other source Huemer could come up with to counter the argument that other forms of freedom than negative freedom, equally appeal to our moral intuitions. So, if Huemer wants to uphold the FA, then he requires a broader account of freedom for his theory not to be inconsistent. However, if Huemer broadens his account of liberty to make it consistent with our moral intuitions, then the ACS clashes with our moral intuitions, which I will show by taking a deeper dive into Pettit's republican liberty. Pettit forms the ideological opposite to Huemer in claiming that a government is necessary for people to be free. If republican liberty successfully appeals to moral intuitions, then Huemer must reconsider which social system promotes freedom the best.

⁸⁹ Inspired by Pettit's example of Nora in Pettit, 'A Brief History of Liberty-And Its Lessons'.

⁹⁰ Inspired by Miller, 'Constraints on Freedom', 70-71 and Berlin, 'Four Essays on Liberty', 16.

⁹¹ Miller, 'Constraints on Freedom', 80-81.

4.3.3 Republican Liberty

In his book *Republicanism*, Pettit develops a theory of republican freedom, which he believes is the absence of domination. With domination he means that one party has the power to interfere with the other party's business arbitrarily. Note that a person does not have to be interfered with at all to still be unfree according to Pettit. Whereas Berlin believed that the number of doors open to you defines your freedom, Pettit adds that there should also not be a doorkeeper who can close the door whenever he likes.⁹²

This conception of freedom can be supported by our moral intuitions. A slave who is allowed to do anything by his benevolent slaveholder is still unfree according to our moral intuitions as he is still dominated by his master, who might cut his freedom whenever he feels to do so. The slave is still a slave and slavery is still wrong. Pettit and Huemer diverge in what is next.

Huemer argues that the relationship between citizens and the government is one of illegitimate domination. The government has the power to intervene in the lives of its subjects. It may prohibit and regulate the consumption of goods and the performance of activities. In most countries the government can rob a person of its life by imprisoning him and in some countries even by killing him. Therefore, a society in which there is no government, provides its citizens with more freedom as no person or collective of persons has the right to intervene in someone else's business.

In contrast, Pettit argues that 1) the government does not harm citizens in their freedom as a government does not dominate arbitrarily and 2) the government provides citizens with freedom as it prevents relationships of domination from being formed. He states that there are two strategies to prevent relations of domination: reciprocal and constitutional power.⁹³

With reciprocal power he means that citizens need to be equal in terms of power so that they cannot dominate each other. This is a similar thought to Huemer's idea that 'equality of power breeds respect'.⁹⁴ If every person and every institution is equal in power, then nobody will dominate another person, and nobody will dare to intervene with the other's business. Such a society, which cannot have a sovereign government due to the fact that everybody must be equal in power, succeeds in providing its citizens in both freedom as non-interference as in non-domination. However, such a society does not exist. There cannot be a society with complete

⁹² Pettit, 'A Brief History of Liberty-And Its Lessons', 15.

⁹³ Pettit, 'Republicanism', 66-67 & 92-95.

⁹⁴ Huemer, 'PPA', 202.

equality of power. Huemer must admit this as he concedes that there will be inequality in wealth and in protection.⁹⁵ Some people will earn more money than others, which in turn enables them to have better protection. These inequalities enable citizens to dominate other citizens and these more powerful citizens will make use of their advantage, which can also easily be explained by cost-benefit analyses Huemer explains human decision-making with.

Next, with constitutional power Pettit means that there must be a powerful institute that will deprive citizens of the possibility to dominate others. This powerful institute must be the government which is bound by a constitution that protects the interests of the citizens. When it successfully tracks these interests and reflects the common good, it cannot be said, according to Pettit, that it dominates its citizens. The government indeed holds sway over its citizens, but it cannot arbitrarily interfere with the business of its citizens.⁹⁶ In the second part of his book, Pettit explains in detail what conditions the government must meet in order to be the proper protector of freedom. The question whether Pettit's defence of political authority based on freedom and the lack of arbitrary interference, which Huemer does not discuss in his analysis of political authority, is correct falls outside the range of this paper. I have granted Huemer the claim that the government has no legitimate authority, so the only thing I can do here is to analyse whether a government can indeed provide its citizens with more freedom than the ACS does.

As I have shown in the previous section on capitalism, the unregulated capitalist market system produces servile relationships. Inequality in wealth and in security generates domination of one party over the other. There is no third neutral party that will deter the threat of domination. So, in best case-scenario, in the ACS a significant part of the population is not free in republican sense of the concept. However, it is safe to assume that a significant part of the dominating individuals will use its power to intervene arbitrarily. This is not because people are evil or sociopaths, but because their cost-benefit analyses will tell them that some interventions will help them fulfil their desires without paying large costs. Huemer has only argued that his ACS will not be victim of a significant increase in violence, which I can agree with. Using a dominant position does not mean that violent force is required. So, the absence of the government will not result in an absence and probably not even in a decrease of violations of negative freedom, albeit not in a violent way.

⁹⁵ On several occasions in *PPA*, Huemer states that there will be inequality in wealth and power in his society. See for example pages 183-185 & 240-245.

⁹⁶ Pettit, 'Republicanism', 67-68.

The government does not only prevent servile relationships, but also provides its citizens with assistance in self-development. By funding all sorts of self-development projects such as sports, healthcare but mainly education, governments help their citizens in becoming independent and autonomous persons. Being independent and autonomous is a condition for being free in the positive sense. In the ACS people will have to make sure that they develop themselves and thus, that they invest in education and other development methods. These investments are expensive and require long-term thinking, which is not something all people and especially those less wealthy and poorly educated, are capable of.

To conclude, a government protects its citizens from interventions and domination and provides them with tools to become autonomous. In contrast, the ACS produces servile relationships which will lead to interventions in citizens' freedom. Also, the ACS does not provide its citizens with tools to become autonomous. In order to argue that the ACS still provides its citizens with more freedom and therefore would be the more desirable society, Huemer should have shown that the citizens will have more freedom in practice due to the absence of the government and not only theoretically as the most dominant institution in society is gone.

4.3.4 Freedom in the ACS

In this section on freedom, I have shown that Huemer's assumptions on freedom, which he reveals implicitly by his theory, are not consistent with the FA. He starts off with moral intuitions but then does not translate our moral intuitions properly into his political theory. The ACS seems to be a champion in providing liberty for its citizens as there is no government who can intervene in the lives of its citizens. This society is therefore more liberal than one with government in the negative sense of the concept.

However, as I have shown, there are more sides to liberty which equally appeal to our moral intuitions. Someone who is not interfered with by another may still be unfree as the slave of the benevolent slave master is still a slave. This means that Huemer must either drop the idea of negative liberty, which is not consistent with the FA or define more clearly which moral intuitions he wants to use. He now claims to base his theory on uncontroversial moral intuitions in general, which is not consistent with using negative liberty, which is on itself already an untruthfully narrow approach to liberty.

Finally, it is not clear how an ACS provides its citizens with more freedom than a society with government. It only guarantees the absence of a government, which Huemer believes to

be the most intruding source of interference in freedom. However, even if the government lacks legitimate political authority, it most likely generates more freedom for its citizens as it prevents servile relationships between citizens, which are a significant cause of interference in freedom and as it provides its citizens with the tools to be autonomous.

To conclude, Huemer's assumptions are not consistent with the FA. Again, if they are made consistent with our moral intuitions by broadening the account of liberty, it is not absolutely clear how these assumptions support the conclusion that the ACS trumps a society with government. This makes Huemer's theory of anarcho-capitalism philosophically unconvincing.

4.4 The Inevitability of the State

The first two criticisms on Huemer's theory have shown that the assumptions underlying the theory are neither truthful nor consistent. In fact, when they are made truthful and consistent it becomes clear that the ACS clashes with our moral intuitions. Although this has proven that Huemer's theory is not philosophically convincing, I will make one last argument against Huemer's theory in this subsection while accepting his assumptions. Even when the assumptions would have been truthful, consistent and not contradictory with our moral intuitions, Huemer's theory would still not be philosophically convincing. I will argue that the ACS will naturally evolve into a society with dominant institutions that act like governments. To make this argument, I will use Nozick's argument to reject anarchy and support the minimal state.

In *Anarchy, State and Utopia* Nozick develops an interesting invisible hand-theory to explain the emergence of the minimal state. His theory does not only show how the state emerges, but also explains why it is legitimate. Especially this second part is heavily contested since its publication.⁹⁷ I will not discuss this part, which mostly concerns the principle of compensation as I have granted Huemer the idea that political authority in any way is illegitimate and as I do not need it for the present purpose of deciding whether Huemer's theory is philosophically convincing. In this section I will show, following Nozick, that a dominant private agency will arise. I will not argue that this agency is identical to a state, but I will claim

⁹⁷ See Mack 'The Cambridge Companion to Nozick's Anarchy, State & Utopia', and Childs, 'The Invisible Hand Strikes Back'.

that it will show the behaviour, Huemer condemns the state for. If this is the case, it is not clear how Huemer's ACS differs from a society with state.

4.4.1 The Emergence of the State

Nozick starts by claiming that a Lockean state of nature seems to be the best society in which people's rights can be respected. There is no person or body of persons that has authority over another person and so, everybody's individual rights are respected and lived up to.⁹⁸ However, conflicts of all sorts will arise and need to be resolved. Nozick, following Locke, does not believe that these feuds will be resolved properly as "*there is no firm way to settle such dispute, to end it and to have both parties know it is ended*"⁹⁹.

Then, how will individuals solve their disputes? They will protect their own rights and might use help of others in doing so. According to Nozick, one has the right to have his rights protected. Individuals will start to help each other in protecting each other's rights and in this way, protection associations are formed. While these associations might be local and private at start, they will gradually develop into protection agencies as people tend to divide labour.¹⁰⁰ Eventually a market of protection will arise, and this makes Nozick's presentation of protection agencies comparable to Huemer's system of protection agencies.

The protection agencies will have to deal with three sorts of conflicts. Firstly, between its clients, which it will want to solve internally. This will cause a system of arbitration firms with a kind of legislative body to be developed, which can resolve the disputes non-violently. Secondly, between two individuals being clients of two different agencies. The agencies will first try to resolve the issue non-violently but might use force when it comes to it. However, if one of the two persons feels that it has lost the battle, he might leave his agency for a more effective one. Thirdly, conflicts can arise between an individual protected by an agency and an individual not protected by an agency. The agency can force the unprotected party to become a client, so that the situation can be resolved peacefully or the unprotected party resists with all its consequences.¹⁰¹

As a consequence of these conflicts, dominant protection agencies will arise naturally and without violence. This happens because people join the successful agencies. These agencies

⁹⁸ Nozick, 'Anarchy, State and Utopia', 10.

⁹⁹ Idem, 11.

¹⁰⁰ Idem, 12–13.

¹⁰¹ Idem, 13–15.

will have an increasing sphere of influence, which makes it easier for them to solve disputes, which in turn makes the business less costly. As a consequence, the agency can offer its services cheaper than the competition, which then will cause an increase in clients once again. However, the fact that some agencies will become dominant, does not make it similar to a state. This changes though, when these agencies are becoming dominant in a particular geographical area.¹⁰²

When two competing agencies, who are dominant in the same area, have clients in conflict, several things can happen. Hopefully, the two agencies come to agreement on the case and are able to agree on a penalty. Unfortunately, we cannot expect this to happen in all cases even if we have a positive attitude towards the human being. In the case that the two agencies cannot peacefully solve the conflict, three things might happen according to Nozick. 1) The agencies battle, one wins and most of the customers of the losing agency will transfer to the winning agency, 2) one agency is more powerful in one part of the area and the other in another part, they both win the fights closest to their centre of power and so clients will move to the most dominant agency in their particular place. Nozick claims that for both options, one agency will dominate a particular area. However, there is a third option: 3) the agencies are equal in strength and actually win and lose battles equally or foresee that this will happen and will therefore come to an agreement how to resolve disputes they cannot settle. In this case a judicial system will arise in which agencies both operate. This system can be compared to a federation, in which a common law rules over the subjects protected by different agencies which act according to this law.¹⁰³

Either way, the ACS will eventually fall under the jurisdiction of one dominant protection agency or of a group of agencies (possibly in combination with agencies specialised in dispute resolution), which will create a body of laws similar to one a society with government has. This body of laws will be straightforward and simple at first but will become complex as conflicts will become more complex as well.¹⁰⁴ Also, it might be assumed that the citizens of this society will find out that this central body of laws will be perfect to solve collective-action problems, to prevent disputes instead of later being forced to solve them and to promote the wealth of the society. Laws, which at first seemed to have nothing to do with protection, such as drugs-laws and rules about labour conditions will become part of the body of laws.

¹⁰² Idem, 14-16.

¹⁰³ Idem, 15-16.

¹⁰⁴ Idem, 16-17.

Also, the dominant protection agency or agencies have the power to control the laws as they are the ones controlling the use of force in the particular area. This will enable them to create and change laws and enforce them. In addition, it will not permit other individuals of protection agencies who are not part of the established order to use violence or to make their own rules. Consequently, the dominant protection agency or agencies will have a monopoly on the use of force. So, now the agencies make the laws, make people comply to those laws and control a monopoly on force in a particular geographical area. Hence, the ACS has developed naturally into a society with one or more institutions similar to a government.

4.4.2 Problems with Nozick's Theory and Its Application to the ACS

In this subsection, I will respond to Huemer's rejection of Nozick's theory and to Childs who believes that Nozick has not been able to show that governmentlike institution arise.

Huemer does not dispute the idea that Nozick's dominant agency is similar to a state, but he rejects the idea that such a dominant agency will arise. He raises two issues with Nozick's account.

Firstly, Huemer claims that an individual does not hire a protection agency to battle with another agency and no agency would offer such a service.¹⁰⁵ Here, he continues to push the principle of non-violence, while this principle does not imply a lack of force. An individual might not hire a protection agency to fight another one, but when it comes to it, which it definitely will occasionally, you want to be sure that your agency is truly capable of protecting you. Again, protection is not something you buy on a certificate, which you can show to others, it is a relational predicate. Whether you are truly protected depends on the means your protector *and* your aggressor have. So, even when no violence is used at all, individuals will look for the strongest protection agency to defend their interests. When protection agencies then have to negotiate on resolving a dispute, the stronger protection agency will have the position to make the demands, which in turn will attract new customers.

Huemer uses his principle of non-violence on several occasions in *PPA*. However, in order for it to have worked, he should have argued for the idea that there is no use of force in his society at all. However, he has not dared to use this notion of pacifism, which would have made his argument consistent. He has overlooked the fact that a person can make others do whatever he likes without using violence, so that it is not costly. As Binswanger argues in a

¹⁰⁵ Huemer, 'PPA', 253-254.

discussion on anarchism with Huemer, Huemer comes nowhere with making claims about non-violence, he needs a pacifistic lack of force in his society, which Huemer knows he cannot realise.¹⁰⁶

Secondly, Huemer disputes the idea that protection agencies grow in size to eventually become a monopolist. In markets where a monopolist arises, the monopolist company has made use of economy of scale. High fixed costs, which are marginalised per unit, prevent new companies to enter the market and enable the monopolist to drive out smaller companies. Huemer argues that protection agencies cannot do this as they have no large fixed costs. They only need to invest in personnel and in some weapons to arm them.¹⁰⁷

Again, Huemer fails to understand the idea of security. Whether you are secured or protected does not only depend on the means you have, but also on those your opponents have. This means that protection agencies must keep up with their competitors in order to be able to truly protect its clients. Consequently, the agencies end up in an arms race. When one agency has a new weapon, the others must follow. When a new agency tries to enter the market, it faces high costs to meet the level of protection the other agencies are able to provide. Also, when an agency lies ahead, it can use its advantage to drive out smaller agencies. The arms race which will inevitably arise in the market of protection, will lead to a monopolist or several agencies controlling a specific area each.

However, is the dominant protection agency or the structure of several agencies united in a kind of federal system, in such a way equal to a government, that it dismisses Huemer's conclusions? Childs rightly states that a body of laws or rules to live together does not make a society lose its anarchic character. A legal system can take several forms and does not have to indicate the presence of a government.¹⁰⁸ Probably, Huemer would argue that the body of laws arising in his ACS, is created on the basis of the unregulated capitalist market system and our moral intuitions.

Nevertheless, the dominant protection agency - or group of agencies collectivised in a kind of federal system - shows certain characteristics, which make it similar to a government to such an extent that Huemer cannot uphold his theory in good faith. Firstly, a group of individuals together in one or several agencies enjoy the power to make rules about living together within a specific territory whether or not influenced or advised by the public opinion. Secondly, this group has the power, legitimately or not, to prohibit certain actions such as

¹⁰⁶ Binswanger, 'Anarchism versus Objectivism', 232.

¹⁰⁷ Huemer, 'PPA', 254-55.

¹⁰⁸ Childs, 'The Invisible Hand Strikes Back', 25.

setting up a protection agency or using goods that might threaten other members of the dominant protection agency (or group of agencies). Thirdly, in case of conflict, the dominant agency is the party who decides how the conflict is resolved. If the client is not happy with this procedure, there is not much he can do as there is only one agency or in the case of multiple agencies, the agencies will back each other.

So, the dominant protection agency or the federal system of protection agencies, will enjoy the power of designing society in such a way that it is most beneficial to themselves. Due their powerful status, they have the sovereign power in a particular territory. It seems as if we have returned to the beginning of *PPA*, where Huemer starts his analysis on how this arrangement is not legitimate. In conclusion, the anarcho-capitalist project appears to be self-defeating.

4.5 Conclusions on Content

Huemer has been brave to not only reject political authority, but also to provide us with a possible alternative: the ACS. Unfortunately, the analysis of his content in this chapter has proven that his theory suffers from several major inconsistencies and is based on untruthful assumptions. Ultimately, when we would agree on all of his assumptions, we would still end up with a society with governmentlike institutions.

First of all, I have argued that the human being lacks sufficient agency to operate properly on all markets as Huemer assumes. Especially noxious markets, which are mostly regulated or prohibited by governments, have extremely harmful outcomes for individuals and society as whole. These markets promote servile relationships which clashes with our moral intuition that slavery is wrong. Either Huemer must accept that his theory is at conflict with one of our deepest moral intuitions, so with the FA, or he must acknowledge that some markets need regulation by a powerful governmentlike institution, which then, results in his conclusions being false. Either way, Huemer's account of capitalism does not meet the criteria on content for being philosophically convincing.

Second of all, it is highly questionable whether the ACS provides its citizens with more freedom than a society with government. Huemer assumes a negative account of liberty, but this account is not consistent with the FA. As shown in the discussion on capitalism, the ACS promotes servitude, which causes a significant part of society (especially the poor) to be dominated. Huemer does not provide us with any reasons to assume that this intrusion of freedom is less harmful than one of a government. Again, his assumptions are not consistent

with the FA and if they would be, they would not support his conclusion. So, inconsistencies in the assumptions make the theory repeatedly philosophically unconvincing.

Last of all, when we would accept Huemer's project, it is still doomed to fail as the protection agencies will ultimately start behaving as little governments. They will enjoy the power to force their will upon others. Large-scale violence is not necessary and exactly the desire not to be violent will evoke rules and laws to prevent violence and to resolve disputes. Those rules and laws will be created and enforced by the dominant agency, which then becomes similar to a government. This means that Huemer's theory does not support its own conclusions. Namely, Huemer's ACS evolves into a society he rejects, which makes his theory philosophically unconvincing.

When my three lines of criticism are put together, it becomes clear that Huemer's theory is not philosophically convincing, mainly because of his focus on violence instead of force. He set himself the challenge to only use uncontroversial ideas and to appeal to common-sense in order to arrive at his radical conclusions. Posing the idea that an anarchy will not cause an increase in violence falls within this aim to stay away from controversy. However, as Binswanger rightly states, anarchy must assume pacifism, which is controversial and therefore not useful to Huemer. Our governments enjoy the monopoly of force and when it falls away, force will not. Anarchists, and especially those who wish to appeal to moral intuitions, need to explain how this force will not be misused by individuals to become powerful or rich over the backs of others. Huemer has not succeeded in doing so.

5. Conclusions and How to Proceed

Huemer's ACS, if feasible and desirable, would force political philosophers to (re)consider an anarchic society. They would not be able to set anarchy aside as a hobby of radicals. Unfortunately, my analysis has shown that the ACS as Huemer has presented it, is not philosophically convincing.

In my introduction, I described the conditions a political theory must meet in order to be philosophically convincing. It should be based on a proper methodology used correctly. Also, the assumptions from which the hopefully robust and realistic conclusions follow must be truthful and consistent. As argued in chapter 2 and 4, none of the conditions are met.

Huemer used the CAE, which states that we must turn to our moral intuitions to know what to accept and what not. These moral intuitions must guide us to the one and only legitimate political system. However, I have argued that this approach is not suitable to develop a political theory as it neglects the presence of the constraint of pluralism in political thought. In addition, Huemer makes extensive use of thought experiments, but his experiments do not meet the criteria as at least some of them are question-begging and based on bias, improper 'outlandish' scenarios and on assumptions of foreseeability. These issues with the methodology make the theory philosophically unconvincing.

Then, the content of the theory is neither philosophically convincing. Huemer believes that the right political system lives up to our moral intuitions. However, the ACS seems not to provide us with a society in which our moral intuitions are respected. The unregulated capitalist market system and especially the market of individual security, promotes servile relationships. In the ACS, the affluent will dominate the poor, so there will not be more freedom for the citizens and our deepest moral laws will be violated structurally. Ultimately, the emergence of dominant protection agencies will bring us back to a society with governmentlike institutions raising the question whether Huemer's ACS could sustainably exist. Conclusively, the theory is based on untruthful and inconsistent assumptions and its conclusions are far from robust and realistic, which leaves us with the conclusion that Huemer's theory is not philosophically convincing.

Now that we have dismissed Huemer's theory of anarcho-capitalism, we can go back to the matter of political authority, which I, following Huemer, assumed to be an illusion. In the first part of *PPA*, Huemer rejects the common justifications of political authority. Contrarily to the aim of his theory of anarcho-capitalism, his theory might inspire us to come up with a new (or old in a new fashion) justification of political authority.

In critically analysing Huemer's theory, it became clear that a society, which does not clash with our deepest moral intuitions, needs a mechanism to protect individual rights and to control powers that arise wherever there are social relationships. Huemer hoped that market mechanisms would do the job, but I have shown that this is not the case. Further research into the matter might provide us with a justification of political authority, in which political authority is seen as the necessary tool to guarantee freedom and to control power within a society.

This justification of political authority would not be based on a form of a social contract, on democratic principles or ideas of fairness, which Huemer all reject. It would accept the fact that there is power and force in our society, which need to be managed. A government, which manages this power in a fair way promoting the interests of all its citizens, would have its authority legitimately as there is no better solution to arrange society in a just way. Obviously, this account of political authority needs elaboration, but the rejection of Huemer's theory presents a promising start to justify the presence and power of the government.

I conclude with a note on today's politics. 75 years after the liberation of the world from the Nazi domination, we must not forget that too much power in the hands of a few, may lead to unimaginable horrors. In the end it does not matter whether these few men constitute a legitimate government, a free business or nothing at all. It must be the aim of politics to prevent any person in any formation of attaining too much power. We need to accept and embrace Huemer's scepticism against authority even in times of medical or financial crises or in times of riots and turmoil. We must remain critical when governments are violent against any of its citizens and ask us to give up rights, all for the greater good. Citizens must be able to breath.

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