

Ethics, Politics, and Emigration

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ABSTRACT

In my chapters from *Debating Brain Drain*, I argue that the brain drain represents a moral tragedy; it is a moral problem, to which no solution exists that is both effective and morally permissible. Against this, Kieran Oberman, Joseph Carens, and Eszter Kollar argue that we ought to approach the question of the brain drain with alternative theoretical assumptions, on which that problem might be more tractable. This paper responds to these critics, and shows why their own alternative analyses are not without significant difficulties. In the end, I suggest, we cannot solve the problem of the brain drain without abandoning those parts of liberal political thought that make it morally attractive.

Keywords: emigration, justice, virtue, international law, freedom.

INTRODUCTION

The only point of writing philosophy, I often think, is the conversation that comes after. If that conversation features disagreement, that isn't a sign of disrespect, but a sign that the work in question deserves to be taken seriously, so that its shortcomings can be better understood. Being criticized, then, isn't a bad thing; in fact, it's the best anyone who writes philosophy can reasonably hope for.

None of that makes the criticism easier to deal with, of course. There are times when, in face of criticism, I want to retrench, and defend my view against all those who would dispute it. There are other times — perhaps fewer — when what I want to do is simply admit that there's something wrong with my view, or a problem I'm not sure how to solve. There are still other times when what I most want to do is figure out how the disagreement actually began; what it is that the critics accept that I do not. Much disagreement, after all, begins in the margins, with the

unarticulated assumptions about where arguments begin —and where they end.

In the present context, I want to use this last strategy, and understand how it is that my critics and I disagree about the ethical analysis of political institutions. There will be, I expect, some retrenchment along the way—but I am primarily interested in understanding where my critics and I disagree, rather than in vindicating my view against their criticisms. I want to focus on three of these critics in particular— Kieran Oberman, Joseph Carens, and Eszter Kollar —and show that their criticisms stem from particular visions of how to bring ethical norms to bear on politics. I will focus only in passing on the essay of Hillel Rapoport; his empirical conclusions are welcome, but do not in themselves do more than support my conclusions. I can't deal with all of the criticisms my critics raise, of course; doing so would require more space, and brain, than I have at present. I want, instead, to see how my view might be accepted, even in the face of their criticisms, as a valid inference from a plausible set of assumptions about how ethics and politics might be related. Those who disagree with that set of assumptions, of course, will find in this essay no independent reason to accept my conclusions.

The best way to explain my assumptions, though, is with reference to the alternative moral framework used by Oberman; it is to that task, then, that I now turn.

1. KIERAN OBERMAN: ON ETHICS, JUSTIFICATION, AND LOVE

Oberman, in the course of his wide-ranging critique of my view, asserts that we can simply use the state to enforce someone's moral duty to his or her fellows—a possibility he says seems to have simply escaped me. Perhaps it did; but I think there are a number of follow-up questions that seem to have escaped *him*.¹ Let's start with this one: which duties, exactly,

1 Oberman also argues that my description of the supposed "liberal orthodoxy" rests on a mistaken view of international law, which distinguishes different categories of human rights, with different degrees of inviolability. In this, he cites Article 28 of the Universal Declaration of Human Rights, which makes no such distinction; and the International Covenant on Civil and Political Rights, which does permit such distinctions, but whose legal force is much less clear. (My adopted country, for instance, has signed the ICCPR subject to five reservations, five understandings, four declarations, and one proviso.) More to the point, though, I take the simple statement of right in the UDHR as a concise statement of a view I believe worth defending; Article 28 is not the blank check Oberman seems to imply, but a fairly limited principle consistent with the view of emergency justifications I defend here. If Oberman were proven right about international law more broadly, though, so

are rightly susceptible to collective political enforcement? Many things are ethical duties —from the duty to avoid murder, to the duty to donate a sufficient quantity of one’s income to charity, to the duty to consider environmental and health effects when choosing one’s lunch. Which of these is rightly within the state’s coercive grasp? One answer, of course—which seems to be Oberman’s—is to treat this as a question to be answered only with reference to aspects of these broad moral duties, such as their stringency, relative importance, and so on. This analysis of emigration seems to undergird Oberman’s five conditions, which he presents as an alternative approach to the morality of the brain drain. But many of us think this isn’t quite enough; are there no limits on what politics ought to concern itself with? Isn’t there something more required than the bare existence of a moral duty, before we can start using law to order people about? Are there some duties, perhaps, that are merely duties of virtue, rather than obligations of right? Perhaps if something is an obligation of right, could it not be possible that we ought not think that politics is licensed to require it; could there never be a right to do what is wrong? To make things even worse, let’s take another question Oberman ignores: what do you do in cases of serious moral disagreement? You say I have a duty to become a vegan; I say cheeseburgers are morally permissible. We both want to use law to coercively prevent (or, perhaps, mandate) the consumption of beef. Is our contest to be settled only with relation to how many people our respective moral arguments convince, or is something more required before we can figure out what is compatible with justice in political life?

Thoughts such as these are, in historical terms, what gave John Rawls’s contractarian methodology its particular appeal. Rawls’s methodology requires that we take individuals as having rights to have the coercive powers of the state justified *to them*, taken as individuals with their own interests and non-infinite quantity of altruism; indeed, Rawls speaks in *Political Liberalism* of those who are least advantaged as having a veto right over distributive principles—a veto he takes to be expressive of the sorts of respect for persons that precludes us from using another as a mere means for the benefit of another (see Rawls 1993: 282). Rawls wants to give those coerced, in other words, a sort of veto right against principles that propose to justify policy simply with reference to the interests and needs of others. Instead, the original position is supposed to justify principles with reference to individuals considered as rational agents, whose asset can be

much the worse for that law. The “liberal orthodoxy” I describe is either a defensible conclusion, or it isn’t—I don’t claim that its status as orthodoxy is an independent reason to support that conclusion. For details on the United States’ approach to the ICCPR, see <http://hrlibrary.umn.edu/usdocs/civilres.html>.

given with reference to self-interest, within a set of constraints modeling what we take to be —here and now— an expression of morally appropriate limits on self-interested dealing.

All this is familiar. It is often described with reference to the concept of *hypothetical consent* —the thought, that is, that we ought to be presented with justification for political coercion to which we could be expected to agree. This agreement is hypothetical, and describes a morally appropriate context within which that consent is made; it does, however, insist on seeing people as possessed of their own capacities to pursue individual interests and goals, to which some appeal must be made in the course of justification. Rawls's difference principle, for example, provides the least advantaged with a reason, to accept the inequality they face; we appeal not to the altruism of the least well-off, but to the principle that any alternative social arrangement would make them worse off. We do not simply appeal to altruism and moral duty in the course of seeking justification for inequality. Oberman simply ignores all this, and claims that Rawls's methods are compatible with simply asserting a moral duty and taking it as sufficient justification for political coercion. If they were, of course, Rawls might have stopped after writing "Two Concepts of Rules" in 1955; a great many trees died needlessly in the Seventies. The arguments Oberman gives in defense of this proposition, moreover, seem wrong to me as well. Oberman argues that Rawls has no problem with some people being "forced to make sacrifices for the sake of others"; indeed, he claims, that's what the two principles of justice require. This is simply wrong; it would be true only if the baseline of expectations were whatever we acquired in the open market —which Rawls explicitly denies.² Instead, our baseline of expectations is equality, and those whose income is taxed do not make "sacrifices" of anything to which they had moral title. Oberman similarly argues that laws against rape protect victims, not rapists. That, too, seems simply incorrect; such laws protect *everyone*, including rapists. (Most of us, in our better moments, think that even rapists have moral and legal rights against sexual assault in prison.) Rapists have *bodies*, and those bodies are rightly protected against violent assault. Such laws could be justified to all who are embodied, as reflecting norms that are rightly made the subject of government coercion. The point, of course, is that we can justify the right of the state to coercively protect bodies —by punishing those who transgress against the bodies of others— to all people, in the contractarian manner described above. The simple appeal to moral duty

2 "As understood in justice as fairness, reciprocity is a relation between citizens expressed by principles of justice that regulate a social world in which everyone benefits judged with respect to an appropriate benchmark of equality defined with reference to that world" (Rawls 1993: 17).

is not enough; and, more to the point, it is not needed. The Rawlsian argument begins with the justification to all, taken as creatures with both limited altruism and a capacity to hold a conception of the good —as individuals to whom justification must be given in terms more substantive than the simple assertion of duty permits.

What, then, can this sort of methodology permit, when it comes to the right to prevent exit? I think the answer is: very little. That the state should have the right to protect bodies, by punishing those who assault them, seems justifiable to all those who are embodied. That the state should have the right to insist upon permanent allegiance, by preventing the exit of those who are otherwise able to leave that state and join another —well, I await what sort of justification could be provided that would pass the tests of reciprocal justification. As should be clear by now, a simple assertion of moral duty will not be enough. The justification has to be one that parties in something like the original position would accept; I cannot imagine what, consistent with Rawls's view, that justification could be. Oberman's method is, I think, wrong as an interpretation of Rawls's methodology, but also wrong as a piece of ethical reasoning. Rawls was *right* to look for something apart from naked assertions of duty as required for the legitimate exercise of political power. What politics *is* must be understood, before we can understand what politics *ought to be*. Those whose exit is prevented must be given a justification for why it is that the state should have this sort of power; Oberman has provided none.

Instead, throughout Oberman's critique, it seems as if the thought that politics is transformative —that it alters what we owe to one another, and that what states do gives rise to special duties of justification to specifically those subject to that state power —is not so much argued against as ignored. Politics is, instead, some sort of afterthought to pre-existing moral rights and duties. Take, for instance, Oberman's thought that states have taken over the world's surface, and must therefore (as compensation?) let us move about that surface. This seems an odd view of ethics; I accept, instead, the Kantian argument that our first duty in the state of nature is *to leave that state of nature*, by setting up territorial states. The division of the world into states does not leave our moral rights alone, but creates the circumstances under which the defense of rights is possible —as well as new obligations and rights, specifically held between fellow nationals. Against this, Oberman offers the thought that we cannot justify exclusion with reference to the obligations of citizenship, since people fall in love with particular others, not with states. I think he's right about the empirical story; if I met a man who loved his state more than his spouse, I would

think that man had missed something important about both marriage and patriotism. I'm not sure, though, why this tells us anything at all about political right. There is a suggestion, here, of a sort of sentimental consequentialism: the most powerful emotion wins, and love trumps borders. I think this misdescribes the moral terrain. Politics is a realm in which we are able to do what is ordinarily forbidden; we can intend to use violence and coercion against individual persons, and call that violence right. This permission to use coercion gives rise —on Rawls's vision, and on my own —to distinct forms of ethical obligation. We have to figure out, in short, not just what ethics full stop would say about desirable goals, but what it is that coercive political institutions are ethically permitted to *do*. On my view, this gives rise to a limited but real right to exclude even those whose lives might be made much better through the rights of migration. To take his example: we have no obligation to let Nazma become a member of our legal community, even though she has fallen in love with someone already here, and this fact can be justified with reference to the distinct duties that fellow citizens will have towards each other —duties that Oberman's account neglects entirely. (They may not be as poignant as the value of love for the lover, but the duties of citizenship do not thereby warrant being ignored completely.) We may, in other words, have to let love bow before politics. This does not seem, in other contexts, so morally problematic. If I fall in love with a particular painting on Oberman's wall, he does not thereby acquire a duty to let me enter his house; the fact that I love that painting more than he loves his house isn't sufficient to overcome his rights of property. The relationship he has with his house —let's imagine he's not particularly sentimental about it— is, and should be, a source of duties, quite apart from the strength of my sentimental attachment.

Oberman would, of course, reply that his house is not a country, and he would be right to make that reply. That doesn't, however, change the moral story: we have reason to examine the nature of each institutional site, and examine what duties and rights might emerge, being quite careful to figure out how those rights and duties can be justified. Property rights —like sovereignty, or the control of borders— may or may not be justified in their present forms; their justification, though, must examine more than the strength or centrality of some pre-political moral norms. Or so, at any rate, it seems to me. Oberman wants to do away with all that, and simply ask: what moral duties are the strongest, such that we have the right to prevent exit? How can we fulfill these moral values, using only free-standing moral values such as proportionality, efficiency, and so on? His view is coherent, at least, and I can see why it might attract its adherents. That does not stop it from resting on a view of political ethics I find impossible to support;

once that view is abandoned, his arguments against my own conclusions seem to fall as well.

2. JOSEPH CARENS: ON ETHICS, VIRTUE, AND POLICY

Joseph Carens picks up, in part, the challenge raised by Oberman: can't we simply assert that those who emigrate from a developing country are, in fact, morally wrong in doing so—perhaps even unjust? Carens supplements this question with a further complaint: what justifies my use of the concept of justice, as intrinsically connected with state coercion? This, as Carens recognizes, is not so much a disagreement with my view as a dispute about terminology—coupled with a request that I actually do something I avoid, which is describing whether or not those who emigrate violate ethical duties in doing so. The more central challenge raised by Carens has to do with the possibility of an effective response to the challenge of the brain drain. I suggest that there are empirical and philosophical reasons to think that a developed state's policy of excluding migrants from developing countries would be unlikely to make the world a more just place. Carens disputes these, and asks: if we could exclude such migrants, wouldn't we have a solid moral reason to do so—indeed, perhaps a duty? As before, these worries reflect, in part, a distinct vision of the relationship between politics and ethics; Carens and I disagree about what would have to be in place for a given policy to be rightly considered mandated by justice.

We can begin, though, with the first worry: what justifies me in linking justice so closely to the notion of political enforcement? What prevents us, similarly, from regarding the protagonist of *Stoner*—who frustrates his parents' desires, and overturns their settled expectations that his education would help their farm—as *unjust*? After all, we can regard a great many things—from states, to states of affairs, to individual persons—as exhibiting or failing to exhibit the virtue of justice.

Carens is absolutely right about this; we could choose a more or less capacious account of what it is to which the term “justice” applies. I would only say, in my defense, that Rawls and Kant seem to use the language in terms rather similar to my own. John Rawls describes his subject in *A Theory of Justice* as social justice, which he takes to be the primary virtue of social institutions (Rawls 1971: 7). This gloss is specified, in *Political Liberalism*, as making reference specifically to the coercive institutions of a democratic state. Rawls is, thus, not interested in “justice” *simpliciter*, but justice as a particular sort of normative concept suitable for the analysis of coercive political institutions. Before Rawls, of course, Immanuel Kant described public right as involving a necessary connection to the coercive

enforcement of law; the job of public institutions was not to make people morally perfect—duties of beneficence and self-respect, for instance, were described by Kant under the heading of the doctrine of virtue, rather than the doctrine of right— but to coerce people into respect for the public rights of others. As Paul Guyer notes: the central idea of Kant’s legal and political philosophy is that we must not only define right, but also institute a system for the coercive enforcement of that right —namely, a state; “the coercive enforcement of right is then not merely permissible but mandatory” (Guyer 2014: 307). All this, I must say, seems unproblematic to me; I am surprised that Carens finds this link between political coercion and the concept of justice so idiosyncratic.

All this is separable from Carens’s more substantive question, though: what can we say about those who, like Stoner, satisfy themselves, rather than those who sacrificed so much? Stoner’s parents purchased an education for their son, with the expectation that he would use that to become an effective farmer; he thwarted their wishes. Is he not morally pernicious—even unjust, on a broader notion of that term—in so doing?

My answer, I’m afraid, is: no —or, at least, not necessarily. Stoner may have some duties of beneficence, on which he is obligated to take account of the interests and ends of others in forming his own plan of life. He would, in other words, be failing at the task of being a righteous person, were he to ignore every opportunity to make the success of other’s goods as a part of his own good. He might well take his parents’ plans as providing one particular avenue within which he might fulfill his duties of beneficence. His parents, though, are not wronged —and cannot call him unjust— if he refuses this particular course of action. His duty is an imperfect one, and his parents are not entitled to the particular sorts of actions that his decision to remain on the farm would entail. (Indeed, if Stoner’s antipathy to farming were great enough, he might be betraying a duty to himself, were he to embark upon a life wholly alien to his own values and ends.³) This does not, of course, determine how we ought to see the ethical quality of those who leave their developing countries for well-paid lives in developed societies; if their departure causes the wholesale devastation of those left behind, we would perhaps be right to revisit the relevance of Stoner as an analogy. For my purposes, I want the analogy to stand for only this: we are not morally wrong, and certainly not unjust, in all those cases in which we frustrate the wishes of those who helped educate us. The individual has a right to build her life that is capable of trumping the wishes of those who would prefer she built it along other lines.

³ Stoner might, for instance, be rightly criticized as abandoning his duty to build a life of value to himself (see Hill 1973).

I will revisit this thought when I examine the arguments of Eszter Kollar. For the moment, I will transition to the final, and most significant, of Carens's challenges. I paint the brain drain as a problem without a simple solution—a moral tragedy, as I describe it, without a permissible policy solution capable of transforming the world from unjust to just. What, asks Carens, is wrong with the thought that we might exclude the highly-educated? Do countries receiving migrants not have a strong obligation to cease doing so in ways that contribute to underdevelopment? Against this, I raise empirical and philosophical objections; Carens rejects both.

On the empirical front, Carens thinks it is simply implausible that the refusal to permit emigration would lead to brain waste and undocumented migration. I note only, in passing, that Hillel Rapoport's contribution to this exchange provides some empirical evidence that this contention might be not only plausible, but likely. If returns to education are reduced, through reduced ability to transform that education into desirable forms of life, then fewer people will seek that education.⁴ Mobility rights for the well-educated, in contrast, tend to increase the number of people who want to become well-educated, and not all of those people will in fact end up leaving their countries of origin. Carens is right, perhaps, that this is beside the point: no-one endorses futile and counter-productive policies. (At least, we hope that no-one does, once they're aware that they're futile.) So: let's imagine that the policies might actually succeed in making the world better—less unequal, with less glaring forms of deprivation and poverty. Are these policies an adequate solution to our difficulties? Might they be mandatory, as requirements for liberal states?

My answer here cannot be that states cannot refuse these migrants; my own view is that it is permissible for states to refuse many migrants—although Carens is quite right that my view does not permit me to exclude nearly as many migrants as international practice now permits. I am, in other words, committed to the thought that this policy is permissible. The policy does, however, not seem to me to be an ethical necessity, and this is true in part because I do not think that this sort of policy would suffice to solve the problem of skilled emigration. There are two reasons for this. The first is that the policy here seems to be only one pathway through which an ethically mandatory end might be reached; it does not count as an ethically mandatory means. All states of the world with the capacity to do so have an obligation to work for global justice—which includes both economic and political rights. This is a complicated task, and it is made more complex because that task necessarily falls on a plurality of political

⁴ “Most of economics can be summarized in four words: ‘People respond to incentives.’ The rest is commentary” (Landsburg 1993: 3).

agents, each of which has obligations to the world and to their own citizens. If a political community decided to emphasize some other pathway — through extensive development policies, for instance — it might therefore be able to make the claim that it was now doing enough. I think actual states making this claim are suspect — no state is, to be brief, doing *enough*, however we might understand that concept. But I do not want to therefore describe as mandatory a policy that is, instead, one possible means to a mandatory outcome.

The second reason for this relates to what I called *paternalism* in the book; I am now convinced that I should have described this in other language. I believe, to put it in the most general terms, that politics in the ordinary sense requires that political coercion be justified to those over whom political coercion is exercised, and that democratic contestation is part of that justification. Politics is only justified when those people over whom power is exercised have a right to contest that exercise — to have, in short, some role in speaking back to, and in making, the policies that control them. I think that this is not only morally required for legitimate governance, but also empirically required as a goad against moral corruption. (When you do not have to answer to someone, it is tempting to infer that their interests and needs are exactly would you would most want them to be.) What is most problematic about the proposed restrictions on emigration is that it proposes to use some people — the would-be migrants — as sites for the benefit of others; and neither of the parties in question — neither the would-be migrants, nor those whose interests are at stake — will have any meaningful say in how that policy is drafted or interpreted. This is a fairly significant problem; it could not be solved, I think, without a more robust set of international institutions than we now have, and I am not sure that we have any morally permissible pathway from where we are now to those institutions. If we stay with the politics we have, then, we would have to have domestic citizens voting for a policy that mildly inconveniences them, significantly inconveniences the would-be migrants, and to some unknown degree provides advantages for foreign citizens. I think we would be unlikely to have such proposals raised; even if the empirics worked out — which I think they wouldn't — I think we would be unlikely to be virtuous enough to avoid the temptations to mold the proposals until they ended up shifting the balance in our own favor. If I have not written about these proposals, it is because I think we are unlikely to end up doing this, and doing this well. I would end, though, with this admission to Carens: if he could show me that Rapoport is wrong, that the policy would actually help development, *and* that the policy were not susceptible to capture by the self-interest either of voters or of those politicians beholden to them, then I would vote for it. I think it is unlikely,

given the tenor of the ongoing election in the United States, that I will provided the opportunity to do so any time soon.

3. ESZTER KOLLAR: ON ETHICS, THE BODY, AND THE REALM OF THE POLITICAL

I mentioned above that the individual has, on my view, a right to his or her own plan of life; to build a life from the inside, that makes sense to him or her, even if some other form of life might help others. This thought is not, of course, unlimited; there are political constraints on what we can do — my freedom is rightly limited by the freedom of others, most notably. The appeal of the thought, though, is undeniable; it offers us a way of grounding the thought that there are some prices that politics cannot make us pay, and some sacrifices we cannot be asked to make. The question, though, is what we might use to understand the limits of what politics can ask of us. One way of asking this question involves simply asking the question from within political philosophy: what do we have good reason to think should be immune from political coercion? What can people not be made to do? Another way of asking this, though, inquires about the conceptual, rather than the moral, limits of the domain of the political. What is that is immune from state coercion *ab initio*? What sorts of things are not subject to the wrangling of collective political decision-making?

As an example of this latter strategy, we might note that Rawls does not subject all goods to the principles of justice. Natural primary goods, for instance, are prepolitical, in the sense that they are not the product of the political society at issue, and so not subject to redistribution by that society. We may justly redistribute the money I earn with the labor of my hands, for instance, but cannot justly redistribute the hands themselves. (Even if I have three hands and you have none, I am free from redistributive surgery.) The money is the result of a political system, subject to collective political decision-making; the hands are natural, if by that we mean only that we do not look to political society to understand how they come into the world, or to whom they belong.

At this point, we might introduce the objection of Eszter Kollar. Kollar offers a challenge to my argument that the labor we perform is rightly regarded as immune from collective political interference. I tend, in brief, to think that forcing specific acts or patterns of acts is akin to the taking of the body itself; while not as invasive, it involves the state's trespass on an area in which it has no right to proceed. The state can take my money, I have argued, but it cannot (rightly) force me to perform a particular form

of labor. Kollar's challenge, though, is why we should be satisfied with this particular cut between the political and the pre-political. She imagines several alternatives: one extreme view, given by Cecile Fabré, argues that even the body, dependent as it is on collective political decision-making, is rightly (at least in principle) subject to collective political control. On this view, we have no pre-political rights over the body, and *a fortiori* none over the money that body manages to earn. My own view, taken as the opposite extreme by Kollar, argues that the Rawlsian cut is correct: we have reason to regard the funds we earn as subject to political control, but not the body itself, nor the specific acts undertaken by that body.⁵ Kollar asks, though: why are these the only options open to us? What reason do we have to not seek a more moderate solution, on which the body is neither as open to collective interference as on Fabré's view, nor as immune as on my own? Kollar imagines a view on which we have robust, but limited, rights to regard our bodies as immune from collective political control; in cases of serious emergency, so long as our autonomy can be otherwise protected, we might have the right —on such a view —to insist upon particular forms of labor. What can be said to rule this sort of possibility out?

Kollar's argument here is significant, and I think her challenge requires me to focus on something I have often simply ignored: what is it that makes something a valid part of the world of political life, versus something to which people have strong rights against political control. Kollar believes, though, that the difference between money and the body is a difference in degree; both are subject to collective political control, at different times and in different ways. I think there is a difference in kind; money is distinct from the body, and from the actions undertaken by that body, in ways we have reason to respect. How can I vindicate this idea?

I cannot say anything that is sufficient, I suspect, but there are at least three thoughts that occur to me. The first is that the body is distinct from money in how it relates to human agency. Wealth is a social primary good; what this Rawlsian concept means is that money is useful for a great many plans of life, but does not count as more than a mere means. One who regards his money as sacred, as something more than a tool for the acquisition of other people's stuff and time, is making a mistake about the point of money. Money helps the self get further along the road to the ends it has chosen. The body is, instead, *constitutive of that self*. Having a body is a condition of having any ends at all. This is why, for me, Fabré's argument

⁵ I would note, in passing, that the libertarian view would include both money and the body as subject to this sort of pre-political right; Robert Nozick's vision of the minimal state is produced precisely from the conviction that people have natural rights both to the body and to what that body acquires through labor and transfer. If I am extreme, then, there are at least those whose view is more extreme (see Nozick 1974).

is unconvincing; it simply does not understand the relationship between the body and agency, between the self we are and the body we inhabit. I believe that something like this applies not simply to the body, but to the actions performed by that body. The state can, of course, tax my earnings, and so indirectly cause me to shift my patterns of agency in response; perhaps I would have to work more hours, were my tax bill to go up. But someone who proposes to force me to do a particular thing, in contrast, tells me that I shall pursue a particular end—in medicine, that I shall take the patient's ends as my highest good, shall perform this role in a particular place, and so on. This is the direct provision of particular ends, in a way that seems to not just constrain my ends but to constrain my very person, and to replace it with another. My body, my agency, my self—all these are devoted, in a limited way, to the agential choices of another. This seems to be at the heart of the condemnation of specific performance in the legal history of the United States; it runs up against the Constitutional prohibition of slavery. If there were not something different between the body and money, this would be a gross oversimplification—or, perhaps, evidence that the worst rhetorical excesses of libertarians are correct, and all taxation is indeed equivalent to forced labor. I think, instead, that forced labor is something different, and forced labor short of chattel slavery can be quite wrong indeed. If this distinction in kind is true, then we might have a right to be free from particular forms of labor even when the costs involved are quite great for others. Think, for instance, of the novel *The Children of Men*, in which the human race loses the ability to reproduce (James 1992). There exists one woman—Julian—who is capable of carrying a child to term. Would it be acceptable to force Julian to perform the particular sort of labor involved in reproduction? The consequences of not doing so, after all, would be the annihilation of humanity itself. My answer, though, would be that we are not right to force this sort of labor on Julian, even at the cost of universal extinction. We do not have a right to treat the body in this way; Julian has rights to that body that trump even the existence of the human race.

Kollar could resist this, of course, either by simply saying that Julian might be rightly coerced into reproductive labor, or by (rightly) arguing that reproductive labor is distinct from other forms of labor (see Satz 1992). Nonetheless, there is still—on my view—something disquieting about all forms of enforced labor, even when they involve less intimate forms of labor than pregnancy. This leads to a second consideration: the body seems, not to put to fine a point on it, prepolitical. This is simply to disagree with Fabré, of course; on my view, Fabré—and, to a lesser degree, Kollar—ignore the ways in which money and the body have distinct relationships with political society. Both can of course be shown to depend, in different

ways, on political processes. The long-term health of the body requires the existence of a stable society; hermits can exist, but they don't exist for long. Money, in contrast, is necessarily social, and cannot exist but for socially-created rules. (A solitary castaway who builds a currency regime is just staving off boredom.) The difference, then, is that one is a *practical* necessity, while the other is a *conceptual* necessity. Society is a practical necessity for the body to continue being an integrated body. Money, though, does not even come into existence as a meaningful concept in the absence of those forms of human relationship that are constitutive of society. I think this is another way of rephrasing Rawls's idea that the natural primary goods are immune from redistribution, since they are not the product of social processes; the social goods are social precisely in that their existence only happens once society builds norms for those goods' creation and allocation. There is, in short, an important difference in kinds between labor and taxation, and this could at the very least ground a resistance to accept the middle path Kollar's proposal represents.

My third reason for resisting that pathway, though, is quite simple: even if we can arrive at cases in which we would be right to constrain labor directly, and to insist that some perform labor for the sake of others, we ought not give ourselves permission to act on that right. As I argue in the book, there seems to be a structural similarity between torture and forced labor: we can all come up with hypotheticals under which they would be morally permissible, but we all do (or ought to) recognize that we ought not give states as we know them the permission to determine that such an eventuality has arrived. States are made of people, and people are subject to self-serving analyses and moral corruption; the right to do what is generally prohibited, in *these specific circumstances*, often ends up becoming the right to do that prohibited thing *when it is expedient*. I think there is a reason, with torture, to insist that we ought to refuse to grant the permission to use it, even when we are aware that great benefits would follow—or great evils avoided—from that torture's use.⁶ The program described by Kollar is not a particularly egregious evil; certainly, forced labor is not as evil as torture, and Kollar's proposal involves insisting that one perform a particular job in a particular society, while leaving space for other autonomous pursuits—which is about as gentle as forced labor could be. Nonetheless, forced labor still strikes me as the right description for what is demanded of the educated citizen under her proposal, and I think we are right to prevent even the mildest versions of the policy. If political history teaches us anything, I think it is that what we rarely give ourselves permission to do what will eventually be done with frequency and

6 See Shue (1978).

enthusiasm; I am convinced that we ought to avoid giving ourselves this sort of permission, even if my other arguments about the nature of labor fail.⁷

In the end, Kollar, like my other commentators, reflects a distinct vision of the relationship between politics and ethics. For her, the realm of politics ought to be understood as involving even the body; for me, ethics itself requires that the domain over which we are permitted to exercise political power is curtailed. There is, in other words, a very great deal of philosophical work happening in the margins, with both of us operating from unstated visions of how it is that we might relate the demands of ethics to the realm of the political. I have learned much from her exchanges with me, as I have with Oberman and Carens; I am grateful to them for their care and attention, and look forward to the debates to come.

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⁷ Terry Pratchett's Sam Vimes expresses this well. "Beating people up in little rooms—he knew where that led. And if you did it for a good reason, you'd do it for a bad one" (Pratchett 2005).