

Are Formal Principles Privileged?

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Abstract

In “Revisionary Intuitionism,” Michael Huemer argues for privileging “formal” intuitions over intuitions about particular cases and intuitions about *prima facie* duties. Formal intuitions, he argues, are not prey to the many sceptical worries that afflict intuitions about particular cases and intuitions about *prima facie* duties. I shall argue that he does not show the superiority of formal intuitions to intuitions about *prima facie* duties. I then consider Sarah McGrath’s recent, very different, response to Huemer. I argue that Huemer can avoid her objections, but in a way that makes his case for formal intuitions just like a standard case for intuitions about *prima facie* duties. I close by doubting whether stressing the generality of an intuition, as Huemer and Peter Singer do, has much payoff.

In “Revisionary Intuitionism,” Michael Huemer argues for privileging “formal” intuitions over intuitions about particular cases and intuitions about *prima facie* duties. I shall argue that he does not show the superiority of formal intuitions to intuitions about *prima facie* duties (I). I then consider Sarah McGrath’s recent, very different, response to Huemer (II). I close by doubting whether stressing the generality of an intuition has much payoff (III).

Four preliminaries: First, I do not have a satisfactory characterisation of what makes an intuition “formal.” Huemer characterises formal intuitions as those which “impose formal constraints on ethical theories, though they do not themselves positively or negatively evaluate anything” (Huemer 2008a: 386). They “do not entail any specific evaluations but...place constraints on systems of evaluations” (391). This is imprecise: a constraint on a system of evaluations *is* an evaluation. I take it that for Huemer, formal intuitions do not directly apply normative terms to non-normative states of affairs. They concern combinations of such applications where the normative terms are the same. For example, in

T: if x is better than y , and y is better than z , then x is better than z

two “better than” judgments yield a third “better than” judgment. This characterisation fits all of Huemer’s examples of formal intuitions (Huemer 2008a: 386, 390).

I add the requirement that the normative terms be the same so that (as I think Huemer wishes)

U: it cannot be our duty to bring about less good than we might

does not count as formal, since it mixes deontic and evaluative evaluations. But it is unclear why keeping the normative terms the same is important. Just as one might say that what is special about T is that one can see its truth just by understanding “better than,” some will say that one can see the truth of U just by understanding “best” and “ought” (especially, but not only, if one analyses one in terms of the other).

To avoid the issue, I shall take T as a paradigmatic formal intuition and consider whether it has a special epistemic status, leaving aside how to characterise what T and other formal intuitions have in common.

Second, a characterisation of *prima facie* duty is needed. Consider one of Roger Crisp’s “Two Doors” cases.

You are confronted with two doors. If you do not pass through one or other of them, you will suffer an extremely painful electric shock. Once you have passed through either door, you will entirely forget what has happened. If you pass through door A, nothing further will happen. If you pass through door B, some other person, a stranger and out of sight, will suffer an extremely painful electric shock. Once you have passed through either door, you will entirely forget what has happened (Crisp 2006: 132).

W. D. Ross’s *prima facie* duty of beneficence says that you have a reason to pass through door A because doing so benefits the stranger.¹

Ross’s *prima facie* duties are not claims about what one has reason to do all things considered. They are claims about what one would have a non-derivative justifying reason to do all things considered, were the consideration in question the only morally relevant one, or, alternatively, claims about what one has *a* non-derivative justifying reason to do.² In one way, claims about *prima facie* duties are weaker than the intuitions philosophers often rely on, such as that one ought to turn the trolley in the standard trolley case, or

¹ For defence of reading Ross’s *prima facie* duties as making claims about reasons, see Phillips 2019: 33-37.

² For discussion of Ross’s two construals of *prima facie* duties, see Hurka 2014: 72-78; Phillips 2019: 17-26. Henceforth, I take the “non-derivative” and “justifying” as understood.

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ought not push someone off a bridge to stop a trolley from hitting five. Those are intuitions about what one has reason to do all things considered. In another way, claims about *prima facie* duties are stronger than the intuitions philosophers often rely on. *Prima facie* duties do not state merely that one has a reason. They say what the reason is—here the reason is that the stranger will be harmed if you choose B and not if you choose A.

One might argue that reflection on trolley cases shows that I should not be confident in my beliefs about why I should act in a certain way. In the standard trolley case, where I can save five by switching the trolley to another track on which there is one, one might think that “that 5 will be saved and only one will be killed” makes it true that I have reason to switch. But reflection on the bridge trolley case makes many hesitate. However, this is a problem for claims about why I have all things considered reason to act in some way, not for claims about why I have *a* reason to act in some way. Even if I think, in the bridge case, that all things considered I ought not push, that five will be saved and only one will be killed remains *a* reason to push (Stratton-Lake 2020: 1.4).

The worry that I should not be confident about my beliefs about why I should act in a certain way may hold for more baroque explanations which are appealing only insofar as they claim to capture all-things-considered intuitions about cases and lack intuitive appeal on their own. This seems true of (for example) F. M. Kamm’s Principle of Permissible Harm. The principle says that harming one to save five is impermissible when the harming of the one is a means to saving the five (e.g., throwing a bomb at a trolley to save five, with the bomb also killing a bystander), and permissible when harming the one is the “non-causal flip side” of the saving of the five (e.g., throwing a bomb at a trolley to save five, with a bystander being killed by a piece of the exploding trolley). When counter-examples are raised to the principle, it is not tempting to reply that the considerations in the principle at least give *a* reason—whether a bystander is killed by a piece of the bomb or a piece of the trolley seems irrelevant, rather than a relevant distinction outweighed in the particular case.³ Whether the objection holds for some less baroque explanations is unclear. To cite an early example: distinguishing the standard and bridge cases by saying that it is wrong to treat the one as a means quickly faced the objection that it seems permissible to turn the trolley in the loop case, where the one is again used as a means. One might conclude that considerations of treating as a means were not a reason even in the standard/bridge cases, or one might conclude that one has *a* reason not to

³ For discussion, see Hurka 2016: 138-46 and Kagan 2016.

treat the one as a means (which for some reason to be specified is defeated in the loop case but not in the bridge case).

Third, Peter Singer has a view similar to Huemer's (Singer 1974, 2005, de Lazari-Radek and Singer 2014: ch. 7). He raises similar sceptical worries about intuitions about particular cases. But he does not stress formal intuitions. Instead, what he takes to survive the sceptical worries are abstract consequentialist principles such as U. If so, Singer cannot oppose *prima facie* duties on the ground of their level of generality; in effect, he simply favours one *prima facie* duty, beneficence. He could argue that all other *prima facie* duties fall to the sceptical worries, though he does seem to concede that the evolutionary grounds for scepticism he favours do not rule these out (de Lazari-Radek and Singer 2014: 196). When Singer and de Lazari-Radek do argue against Ross, they do so on the ground that there is disagreement about whether, for example, there is a *prima facie* duty to keep a promise when doing so will harm the promisee (2014: 85-6). Since the argument here is very different from Huemer's, and not directed at giving formal intuitions a privileged place, I put it aside.⁴

Fourth, a historical point: Huemer presents his sceptical worries about intuitions as a departure from the intuitionist tradition (Huemer 2008a: 368). The “lessons of the skeptics regarding the unreliability of certain kinds of intuitions are rarely heeded, and were almost never heeded prior to the twentieth century” (382). But Sidgwick, an earlier intuitionist, would be sympathetic. He writes, for example, that

most people are liable to confound intuitions, on the one hand, with mere impressions or impulses, which to careful observation do not present themselves as claiming to be dictates of Reason; and on the other hand, with mere opinions, to which the familiarity that comes from frequent hearing and repetition often gives a false appearance of self-evidence....[I]t cannot be denied that any strong sentiment, however purely subjective, is apt to transform itself into the semblance of an intuition....Whatever we desire we are apt to pronounce desirable: and we are strongly tempted to approve of whatever conduct gives us keen pleasure. And on the other hand, among the rules of conduct to which we customarily conform, there

⁴ Huemer does sometimes say that we should reject controversial intuitions (Huemer 2008a: 391). This would bring his argument closer to that of de Lazari-Radek and Singer. But that is not his main sceptical worry. Anyone pressing it would need to consider whether some formal or non-formal abstract intuitions are controversial. Perhaps in such cases the opposing intuitions can be explained away, but the same tactic is open to Ross (see below).

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are many which reflection shows to be really derived from some external authority (Sidgwick 1981: 339).

Like Huemer, Sidgwick favours very abstract intuitions, some of which are formal in Huemer's sense (Sidgwick 1981: 379-82).

I

Huemer raises four sceptical worries about intuitions. The first is that they are often influenced by irrelevant factors. For example, people have the intuition that they have a duty to save a drowning child in front of them, but not save a starving child far away—but visibility or distance are irrelevant factors. The second is that intuitions are often influenced by one's culture: intuitions about polygamy, slavery, infanticide, and many areas of sexual morality depend on one's upraising, but we lack arguments to think one upraising is more likely to give us the truth than another. Third, intuitions are often influenced by biological programming: we think we have stronger duties to our families than to others, and we think we can favour ourselves to a great extent, but one might suspect that we think these things because it was beneficial reproductively for both us and our ancestors to think so. Fourth, our intuitions are often influenced by our interests and emotions. We may think eating meat is permitted because otherwise we would lose the pleasure of eating meat; we may think abortion is wrong because we think of the fetus as a cute, helpless baby (Huemer 2008a: 372-78).

Huemer argues that these sceptical worries afflict intuitions about particular cases and intuitions about *prima facie* duties more than intuitions about some abstract principles. He concedes that intuitions about some abstract principles are unreliable because we arrive at them by thinking only of typical cases. For example, “if x was the cause of y, then if x had not occurred, y would not have occurred” seems right when we think of typical cases, but not once we note examples of preemption. But “a particular species of” abstract moral claims—the “formal” ones—avoid this (Huemer 2008a: 385-6). For example,

T: if x is better than y, and y is better than z, then x is better than z

is “not the result merely of considering some typical kinds of cases and then evaluating just those cases. Rather, we seem to be able to see why [it] must be true in general; [it] seem[s] to be required by the nature of the ‘better than’ relation” (Huemer 2008a: 386).

Huemer argues that intuitions about *prima facie* duties are the *least* reliable: They

give us the worst of both worlds: they are sufficiently concrete to be susceptible to biases with an emotional, cultural, or biological source, while at the same time they are sufficiently general to be susceptible to overgeneralization. For instance, the belief that adultery is wrong is open to the suspicion of being partly a product of emotional, cultural, and/or biological bias. At the same time, it is a sufficiently general claim that one may evaluate it by thinking of typical cases, perhaps overlooking some atypical cases of adultery. The latter problem...may be remedied by adding a qualifier to the principle, resulting in a claim such as “Adultery is *prima facie* wrong”....This does, however, have the disadvantage of rendering the principle less useful, since the principle does not tell us in which atypical cases, if any, adultery is not wrong all things considered (Huemer 2008a: 385).

This is not a convincing case against *prima facie* duties.

First, choosing “adultery is wrong” as one’s example is unfair. Neither that nor “adultery is *prima facie* wrong” is on Ross’s list of *prima facie* duties.

Similarly, when making the case for emotional bias toward “mid-level” principles such as *prima facie* duties, Huemer’s example is “Killing deformed human infants is acceptable.” When making the case for cultural bias, his examples are “rules governing who is allowed to marry whom, how one should greet a stranger, how one should interact with one’s boss.” Ross’s *prima facie* duties are far more abstract than these rules. *Prima facie* duties seem more like Huemer’s examples of principles for which he thinks cultural conditioning is unlikely, such as “the general criterion of rights” (Huemer 2008a: 384). In both cases, it takes work to determine what our culture accepts. After all, there is dispute about Ross’s list (see below for discussion of whether we accept fidelity).

Second, going to “adultery is *prima facie* wrong” or—better—"there is a reason to benefit others" does indeed not tell us what to do. It is less useful than a statement of an all things considered duty. But the same goes for formal intuitions. T does not tell us what is better; it requires non-formal judgments of the form “x is better than y.”

It may still be that “there is a reason to benefit others” is susceptible to emotional, cultural, or biological biases, or makes irrelevant distinctions, or is arrived at by overgeneralization. It is susceptible to overgeneralization if there are cases in which I can benefit another but there is no reason to do so. Whether there are such cases is unclear. Particularists argue, for example, that there is no reason to benefit a bad person (e.g., Dancy 2017: sec. 6). But it is hard to tell whether there is no reason or whether there is a small reason,

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outweighed by reasons of justice or long-run beneficence.⁵ And it is perhaps possible to read Ross as offering “default” reasons—reasons that are in play unless something prevents them from being so (Phillips 2019: 102-3).

Irrelevant distinctions, and emotional, cultural, and biological biases, also seem unlikely. The “others” for Ross is not limited to those near me. As a result, the duty does not face the worry that it makes an irrelevant distinction based on proximity or conspicuousness. Nor do we adopt it as a way of improving our reproductive success by benefitting those nearby in the hope that they will benefit us. For the same reason, it is not obviously in our interest to benefit others. In some cases it will be; in other cases it will not be. Emotional considerations do not seem prominent, particularly when the duty is stated as in the Two Doors case. Cultural biases may be relevant. There may be many cultures which deny that I have a reason to benefit others, when the others are of a different tribe, race or religion. But if one is concerned with irrelevant factors, it seems that we do have reason to favour Ross—the other cultures make irrelevant distinctions (or distinctions explainable on biological or self-interested grounds).

Huemer argues that debate over T is not like debate over “if x was the cause of y, then if x had not occurred, y would not have occurred.” For the latter, the counter-example of preemption leads us to reject it. Of course, there are purported counter-examples to T. For example,

- (1) You will have a year of maximal pleasure.
- (2) You will have two years of slightly less pleasure than in (1).
- (3) You will have four years of slightly less pleasure than in (2).
- ...
- (N) You will have millions of years of barely noticeable pleasure.

Most think (2) is better than (1) and (3) is better than (2). By transitivity, (3) is better than (1). The same reasoning shows that (N) is better than (1). But few think so. Huemer, however, thinks we do not view this as a decisive counter-example to T; “our reaction would probably be to call the case a ‘paradox’” (Huemer 2008a: 386).

I think that the debates over T and over various *prima facie* duties are very similar. Since there is not much debate over beneficence, I shall consider instead fidelity:

F: There is a *prima facie* reason to keep one’s promises

⁵ For worries about judgments regarding whether weak reasons are present, see Schroeder 2007: 92-97.

In the case of T, defenders sometimes proceed by trying to explain away the intuition that (N) is not better than (1). Huemer argues that we

have difficulty grasping very long time periods. The duration of a mild pleasure that is really superior to [one] yea[r] of ecstasy is too long for us to adequately grasp; hence, we fail to appreciate its superiority. To alleviate the problem, we may replace the [one] yea[r] of ecstasy with a very short (but still clearly graspable) period of ecstasy—say, one second—and then ask whether we can imagine a superior existence consisting of mild protracted pleasure. When we thus change the example to improve the reliability of our intuition, the ecstatic experience no longer seems categorically better (Huemer 2008b: 915).⁶

Alternatively, Alex Voorhoeve argues that the reasoning found in the purported counter-example to T is “similarity-based” reasoning: we treat the amounts of pleasure in each nearest-pair as equal and choose just on the basis of the large differences in time. This reasoning leads to intransitivity, but can be shown to go wrong (Voorhoeve 2008).⁷

Now consider F. Suppose I have made a promise to A. If I keep it, I produce 1000 units of good. If I break it, and benefit B (to whom I have made no promise), I produce 1001 units of good. Ross thinks we do not favour breaking. If so, we think there is a reason to keep promises, independently of the good produced (Ross 2002: 34-5).

Those who doubt this try to explain away Ross’s intuition. Perhaps once it is made clear that the numbers take into account *all* of the goods and bads into the future, including A’s disappointment, the loss of trust, and effects on the practice of promising, we will not think there is a reason to keep the promise. Or perhaps, as Alastair Norcross argues, “how can we be sure that it is really a case in which more overall good comes of breaking the promise than of keeping it?...Ross simply tells us to imagine a case that fits his requirements. We should be highly dubious...that we have succeeded in this feat of imagination” (Norcross 2011: 220). Or perhaps we should not trust our intuitions about such unusual cases, given that they have developed in response to a much different world.

The debates over T and F are similar. In both cases, emphasis is placed on explaining away intuitions, and the intuitions themselves—that N is not better than (1) and that one ought not to break a promise to produce 1 extra unit of good—do not seem to differ much in plausibility.

⁶ For discussion and a reply, see Temkin 2012: 154-60.

⁷ For discussion and a reply, see Temkin 2012: 301-9.

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Earlier I suggested that Huemer does not see

U: it cannot be our duty to bring about less good than we might

as formal. I might be wrong about that reading. If I am, the point above can be made with even more force. Ross's 1000/1001 example is meant to cast doubt on U. Whether or not Ross is right, the debate about his example shows that formal intuitions—assuming U is formal—can be just as controversial as intuitions about *prima facie* duties. Indeed, since Ross's example is both an attempted counter-example to U and an argument for a *prima facie* duty of fidelity, here the debates are the same.

If U counts as formal, there is a further problem for Huemer. If U avoids the sceptical worries, it would be very odd to think that the *prima facie* duty of beneficence does not avoid them as well, since it seems a limited case of U—adding that the good is located in others, subtracting the claim that no conflicting duty can defeat this duty.

Perhaps one might avoid my objection by considering not T (or U), but rather a much more restricted set of intuitions as formal, such as the principles of deontic logic. For example, “if something is wrong, it is not right” does not prompt the sort of debate surrounding T, U, or F.⁸ But it seems unlikely that appeal to such intuitions will give Huemer what he wants—for example, an argument for the repugnant conclusion or against “Weak Deontology.” In these arguments, Huemer appeals to intuitions such as T or “if it is wrong to do x and it is wrong to do y, then it is wrong to do both x and y” (Huemer 2008b: 903–6; 2008a: 390). Nor is appeal to intuitions such as “if something is wrong, it is not right” likely to yield a cut between unreliable intuitions, such as those about sexual morality or favouring deontology, and reliable ones, such as those favouring consequentialism (Huemer 2008a: 390, 392).

II

McGrath concedes, for the sake of argument, that our judgments about particular cases are unreliable.⁹ She does not, however, think we should proceed, as Huemer recommends, by relying on abstract judgments.¹⁰ Her main objection is that learning that you are unreliable about particular cases

⁸ I owe this suggestion to the editor.

⁹ She does, very briefly, note that she disagrees with one of Joshua Greene and Peter Singer's arguments to show that sceptical worries are more prevalent for “deontological” intuitions about particular cases than for “more general consequentialist principles” (McGrath 2019: 55n37).

¹⁰ McGrath lists Huemer as a target (McGrath 2019: 54).

should *also* significantly undermine your confidence that you're reliable when it comes to determining which general moral principles are true on the basis of which principles seem true. Even if there is some kind of defeasible presumption that when a general moral principle seems true to you, you are entitled to endorse it as true, that defeasible presumption would not survive learning that, when it comes to lower level moral claims, *what seems clearly to me is not a good guide to what is true* (McGrath 2019: 56–7).

But, oddly, McGrath does not say *why* confidence about abstract principles should be undermined. If Huemer were right to isolate certain factors as leading to unreliability, right to find these factors prevalent in judgments about particular cases, and right to find them largely absent in judgments about formal principles, it is not clear why confidence about the latter should be undermined.

At one point, McGrath puts her point slightly differently: “the closest possible world...in which we are unreliable even with respect to those lower level moral judgments that strike us as clearly true in optimal conditions for judging is *not* a world in which we are nevertheless entitled to have justified confidence that those general moral principles that seem clearly true to us *are* true” (McGrath 2019: 58). Huemer might agree: if we are unreliable about lower level judgments in optimal conditions for judging—that is, in conditions in which the sceptical worries are absent—we may well be equally unreliable about general moral principles judged in optimal conditions. But his point is that optimal conditions for judging are much less likely to be found when judging particular cases than when judging formal principles.

It is worth adding that McGrath may not be targeting formal intuitions. By “general moral principles,” McGrath seems to have in mind “consequentialist principles” such as “we act wrongly whenever we act in some way other than the way that would maximize the good” (McGrath 2019: 48, 50). For Huemer, I think that that is an “abstract” but not a “formal” principle. Huemer does claim that some abstract principles, such as the consequentialist one, or the Kantian principles that it is wrong to treat people as mere means or in ways that could not be made a universal law, are less open to doubt than particular judgments (Huemer 2008a: 383, 384). And he does use formal principles to argue in favour of consequentialism (Huemer 2008a: 390). But the formal principles themselves—what he is most concerned to give special status—seem not themselves to directly apply a normative term to a non-normative state of affairs or mix normative terms.

McGrath does, however, give another argument. She notes that our confidence about abstract principles stems in part from “our sense of the

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intuitive plausibility of the concrete implications of the principles” (McGrath 2019: 56).¹¹ Presumably Huemer agrees: he is anxious to discredit the intuition that N is not better than (1) because, if N is not better than (1), we would doubt T.

Huemer might reply, as quoted above, that our confidence in T is “not the result merely of considering some typical kinds of cases and then evaluating just those cases. Rather, we seem to be able to see why [it] must be true in general; [it] seem[s] to be required by the nature of the ‘better than’ relation” (Huemer 2008a: 386).¹² But the same can be said for *prima facie* duties and for non-formal abstract claims. For example, Ross claims that one who disagrees with fidelity “may be suspected of not having reflected on what a promise is” (Ross 2002: 39). Ewing claims that “it is very hard to believe that it can ever be our duty deliberately to produce less good than we might, as it would have to be on Ross’s view on many occasions” (Ewing 1965: 76). They think there is an *a priori* link between duty and having made a promise or between duty and not producing less good. Both treat this as a source of confidence separate from giving particular cases. Both proceed by treating potential counter-examples in light of the general principle—Ross deals with counter-examples by restricting when the duty arises, Ewing by expanding what counts as good (Ross 1939: ch. 5; Ewing 1965: 76-7). The debates here again seem no different than those about T. For example, one way to save T is to argue for breaks in the chain of cases leading to N: at some point or points before N, double the years of slightly less pleasure than the proceeding case is *not* an improvement. One suggests this because one wants to preserve T, not because it seems on its own especially plausible, just as Ewing counts the state of affairs in which a promise has been broken as bad because he wants to preserve U.

¹¹ She treats this argument as separate from the argument considered above, but one might read it as underwriting that argument. The reason scepticism about particular cases leads to scepticism about abstract principles is that the case for the abstract principles depends in part on judgments about particular cases.

¹² He could give the same reply to another objection offered by McGrath. She argues that although learning that we are bad at judging particular cases leaves judging about general principles as “the best that we can do,” that procedure is not shown to be “any better or moral [sic] reliable for that” (McGrath 2019: 57-8). I think her point is that no positive case for general principles comes from learning that we are bad at particular cases. That is true, but Huemer can appeal to the positive case deriving from simply considering the principle.

III

I have concentrated on intuitions about *prima facie* duties rather than about particular cases. A different argument against Huemer's project can be made by considering something he says about a particular case.

After giving the sceptical worries, Huemer writes that they "may show that we have a good deal less moral knowledge than is commonly supposed, but I see little plausibility in the suggestion that they show that no one knows whether Ted Bundy's murders were wrong" (Huemer 2008a: 378). That Bundy's murders were wrong is an intuition about a particular case.

Perhaps, then, Huemer's view is that it is *more likely* that intuitions about *prima facie* duties and particular cases are infected by the sceptical worries than are intuitions about formal principles. An intuitionist should "attempt to distinguish those intuitions that are most likely to be reliable from those that are less likely to be reliable, and...base her ethical theory on intuitions of the former kind" (Huemer 2008a: 383). This, however, requires surveying a range of *prima facie* duties and particular cases and a range of formal principles, and showing that the sceptical worries arise more often for the former than for the latter. Huemer does not do this (though I grant that, in the case of intuitions about particular cases, he may be right).

More importantly, there would not seem to be much payoff from considering the level of generality of an intuition.¹³ If there are non-formal intuitions that are not prey to the sceptical worries—such as F or U or "Bundy's murders were wrong"—then for any intuition, one must assess it in light of the sceptical worries, without considering its generality. At best, if the needed survey were done, one should be initially more suspicious about a non-formal intuition. But since the suspicion should be overcome in some cases, one needs to check. One cannot—as Huemer may wish, and Singer does wish—discount intuitions about particular cases that conflict with abstract principles on the ground of the difference in generality (e.g., Singer 1974: 516).

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¹³ For a different argument for this conclusion, see McGrath 2019: 52-3.

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