

Reason Papers

A Journal of Interdisciplinary Normative Studies

The Free and Noble Spirit: A Festschrift for John Hospers

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Preface

This issue of *Reason Papers* is dedicated to Professor John Hospers, on the occasion of his 70th birthday in June 1988. Dr. Hospers has been a friend, teacher, philosophical model, political leader, and sometimes colleague to many of those who are contributing to this volume. To me he has been friend and teacher, as well as collaborator in numerous efforts that have had a bearing on educational, scholarly, and political tasks I care about. My colleague Bob Andelson and I believe that the preparation of this volume in his honor will best serve to show John our appreciation of his many contributions to projects the value of which we all recognize. I simply wish to add my warmest thanks to him for all that he has done in the many areas of concern to us, as well as for some of the suffering he has had to endure in the process of upholding the ideals we share with him.

Thank you John.

Tibor R. Machan
Editor

Auburn, Alabama

JOHN HOSPERS AND THE ACTIVITY OF PHILOSOPHY

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In the preface of the recently published third edition of his *An Introduction to Philosophical Analysis* John Hospers notes that he concurs with Moritz Schlick's observation that philosophy "is less a subject matter than an activity." In other words, philosophy is to be understood more in terms of its search for the truth than any particular set of questions for which it seeks to provide answers. To those familiar with John Hospers' own philosophical works, there can be no doubt that Hospers is as much, if not more, concerned with the search for truth than its possession. His works bear witness to this understanding of philosophy. They convey a sense of ongoing activity.

This is not to say that one does not find in John Hospers' philosophical articles and books serious discussions of such traditional philosophical topics as, for example, the nature of mind, human freedom, truth, goodness, beauty, and the material world. Rather, it is to say that Hospers would before ever addressing these questions warn his reader that one should be careful of the expression "nature of." He would warn his audience that even the simple "What is...?" expression is wrought with ambiguities and that one should be careful not to assume that the sort of answer that works in answering one instance of this question will work in others. The same warning would go for the "What is the meaning of...?" expression and would be accompanied with the importance of distinguishing between process and product, type and token. He would also, I should note, even ask what it means to say "an answer to a question works"! John Hospers is after all what some people have called an "analytic" philosopher.

What it means to be an "analytic" philosopher is a matter of philosophical controversy, for there are many ways of doing philosophy that are covered by this label: logical atomism's creation of an ideal language to handle philosophical problems; logical

positivism's attempt to eliminate metaphysics and enshrine science by use of the principle of verifiability, and ordinary language philosophy with its many variations and use of paradigm case arguments. Moreover, the influential figure of Ludwig Wittgenstein casts a long shadow over all these procedures; for both his early and later writings remain in certain ways an enigma. Labeling John Hospers an "analytic" philosopher is, then, as problematic as speaking of the "nature of" something.

Certainly, it can be said that the logical, linguistic, and empirical dimensions of a philosophical problem are of extreme importance to an "analytic" philosopher, but what saying this actually amounts to is difficult to determine. It seems that anyone who does philosophy—be they existentialist, Thomist, or even Platonist—must pay some attention to these dimensions. Yet, it seems with those philosophers who have been called "analytic" there is a conviction that close attention to logic, language, and sense perception will pay dividends when it comes to dealing with philosophy's traditional questions. It's not that any particular view of logic, language, and sense perception is necessarily involved or even that one is somehow committed to avoiding what is sometimes called "metaphysical speculation." No, it is the belief that *before* philosophers make any pronouncements regarding "what is" these dimensions must be fully considered. There is, then, no single common feature "analytic" philosophers share; rather, there is, at best, a family resemblance among those who share this label. The resemblance pertains to how they philosophize, not to what they claim to be true.

To the reader of all three editions (1953, 1967, and 1988) of John Hospers' *An Introduction to Philosophical Analysis* one will find an approach to philosophizing that can only be characterized as "analytic." Though the subsequent editions of this work were in each instance substantially rewritten, there remains in each edition an approach to philosophy that seems to be a continuation of the methods and techniques of such twentieth century "analytic" philosophers as G. E. Moore, John Austin, and Gilbert Ryle. Conceptual analysis, the close attention to the meaning of words, is the hallmark of John Hospers' writings. One need only consult, for example, his discussion of freedom and determinism in the 1988 edition to see this technique. Here is an "analytic" philosopher at work.

According to a *New York Times* (December 21, 1987) article, "Philosophical Rift: A Tale of Two Approaches," "analytic" philosophy is under attack. It seems that there are not a small number of contemporary philosophers who believe that philosophy has become "bogged down in a stress on logic, language, and empirical data" and has lost site of its traditional function—namely, "addressing the big questions asked by perplexed mankind: what is being? Is reality what our senses perceive? Does the universe have purpose?" In other words, these philosophers, called "pluralists," have become impatient

with the highly technical and often painstaking philosophical techniques of "analytic" philosophy. They seek "a return to the more freewheeling, literary traditions of Europe, where Nietzsche, Heidegger and Sartre provided a more soulful alternative to the analysts' brainy dry logic."

Though this complaint did have merit when Anglo-American philosophy was under the sway of logical positivism, though there is at present a profound need for a reexamination of the assumptions that gave rise to Frege's and Russell's "realism" regarding logic's forms and relations and which, in turn, continue to provide the necessary foil for Quine's "nominalism" and ontological relativism, and though there is a sense in which the later Wittgenstein's philosophy is a "transcendental linguisticism" that can be used to "deconstruct" philosophy and thus should be rejected, this complaint seems nonetheless to be off the mark. It is off the mark if it assumes that one must "swim the English Channel" and consult the works of Nietzsche, Heidegger, and Sartre in order to address the central questions of philosophy. It is also off the mark precisely because there are "analytic" philosophers like John Hospers. Hospers has always dealt with the "big questions" that have perplexed mankind. He would be the last to say that he has found the answers, but he has continuously dealt with these questions. He has always dealt with the questions in a careful, thoughtful, and respectful way.

It should, of course, be readily admitted that to those who seek an integrated vision of reality, something which puts all the pieces together, Hospers' writings will be a disappointment. It does not seem, however, that Hospers lacks an integrated world view because he thinks that there can be no such thing. Rather, it seems that Hospers has just not found one and is intellectually honest enough to leave it at that. It also may just be that what an integrated world view is is much different than has so far been conceived. Finally, it should be remembered that such a world view—let's call it by its classic name, metaphysics—need not be construed in some rationalistic way. Aristotle did note, after all, that there are many senses in which something may be said to "be" and that we should not try to offer some definition of "being."

To those, however, who want to have some idea of what is being talked about when one asks a "big question," then Hospers' writings are a gold mine. They almost always help one to get a handle on the problem that is being addressed. Clarity may not be enough, but without it, there is no hope of wisdom. Further, it should not be assumed that Hospers' way of philosophizing is without its compensations. To the student who is willing to follow him through the process, Hospers states:

But if we persevere, we can gradually cut through the confusions and popular oversimplifications; and then the feeling of mastery we

experience will make it seem more than worth all the effort we put into it and all the frustrations we encountered along the way.

The master Hospers speaks of is not necessarily knowing the truth; rather, it is the realization that one has a clear idea of what is being discussed and that one knows how to examine the reasons that have been advanced for believing something. It must be remembered that philosophy is primarily an ongoing activity for Hospers.

Hospers is an "analytic" philosopher that has demonstrated throughout his philosophical career a capacity to consider points of view that have not always been favored by the philosophical establishment. The chief example of this is, of course, the thought of Ayn Rand. Though certainly attracted by her power as a writer, John Hospers was one of the first, if not *the* first, established philosopher to seriously consider what Ayn Rand had to say about philosophical issues. While a professor at Brooklyn College in New York, Hospers met Rand and had many conversations with her about philosophy. These conversations were long and fruitful to both. They helped to encourage Rand to write nonfiction. In all fairness it must, however, be said that openness and civility with which Hospers received Rand's ideas were not always reciprocated, and after Hospers publicly criticized some of Rand's views on aesthetics, their philosophical conversations ended.¹ This was tragic—tragic for Hospers because Rand was a thinker whose broad brush strokes could assist him in developing an integrated world view and tragic for Rand because Hospers' probing, wonderfully detailed strokes were just the sort of thing anyone who attempts grand syntheses should face.

Despite this rejection, Hospers remained interested in Rand's thought. As editor of *The Personalist*, he opened up its pages to discussions of Rand's philosophy. While always demanding only the best from its contributors and never letting these discussions dominate the journal, Hospers helped to bring into public view many aspects of Rand's philosophical thought—most prominently, the political philosophy of libertarianism. If one looks through the issues of *The Personalist* for the 1970s, one will find many philosophers who are today actively involved in an examination of libertarianism. Furthermore, it should not go unnoticed that John Hospers' systematic presentation of libertarianism, *Libertarianism: A Political Philosophy for Tomorrow*, was written in 1971. This was three years before Robert Nozick's *Anarchy, State, and Utopia*. The intellectual and moral courage required to take these actions at that time should not be forgotten. Neither have they been without personal and professional cost to John Hospers.

Hospers' interest in libertarianism continues to this very day. The 1982 edition of his highly acclaimed ethics text, *Human Conduct*, devotes an entire chapter to the discussion of human rights, and while not offering a justification for the claim that people have rights,

Hospers helps to explain just what kind of moral claim a right is and offers many useful distinctions that will assist anyone who tries to defend the claim that human beings have rights. The 1988 edition of *An Introduction to Philosophical Analysis* contains some interesting problems for libertarians to consider when it comes to understanding what "coercion" is and is not and what "property rights" involve and do not involve. Hospers is an expert at showing what the possible ramifications of holding a position are.

Any account of the philosophical activities of John Hospers must mention his work in aesthetics. His *Meaning and Truth in the Arts* was first published in 1946 and is considered a classic. He has authored numerous important works in aesthetics journals and in 1982 his *Understanding the Arts* was published. Hospers' many valuable contributions to aesthetics are considered in great detail elsewhere in this volume.

John Hospers was born June 9, 1918 in Pella, Iowa. He received his doctorate in philosophy from Columbia University in 1944. He was a Fulbright scholar in 1955 and has been a visiting professor at many distinguished universities. Before teaching at Brooklyn College, he spent eight years at the University of Minnesota. He has been a professor of philosophy at the University of Southern California since 1968 and was for many years director of the School of Philosophy and editor of *The Personalist*. He is currently the editor of *The Monist* and continues to teach his students with the same civility, grace, and expertise he has demonstrated throughout his career.

John Hospers is an "analytic" philosopher, and we are all the better for it. He has taught us, and still continues to teach us, the importance of that ongoing activity that is philosophy.

1. Barbara Branden, *The Passion of Ayn Rand* (Garden City, NY: Doubleday, 1986) pp. 323-324.

LIBERTARIANISM, WELFARE RIGHTS, AND A WELFARE STATE

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In a recent article,¹ James P. Sterba argued that the opposition of libertarians to welfare rights and a welfare state is ill-founded and that a libertarian justification for such rights and such a state can be given. I shall be setting forth the essentials of his argument and subjecting them to criticism.

I

Sterba's basic line of reasoning may be expressed as follows:

1. Libertarians base their political philosophy on a commitment to the right to liberty, and they conceive this right in one of the following two ways: (a) as a fundamental, underived right—indeed, as the ultimate political ideal; under this conception, liberty consists of being unconstrained by other persons from doing what one wants—or, at any rate, what one is able—to do (a conception deriving from Herbert Spenser); (b) as a right derived from other more fundamental rights such as the right to life and the right to property; under this conception, liberty consists of being unconstrained by other persons from doing what one has a right to do (a conception deriving from John Locke).
2. Irrespective of which of these two ways libertarians conceive this right, their commitment to it implies a commitment to a system of welfare rights.
3. Once libertarians realize that a system of welfare rights follows from their commitment to the right to liberty, they should come to see that the justification for a welfare state is straightforward and compelling.

Hence, (4) libertarians should acknowledge a commitment to a system of welfare rights and thus to a welfare state.²

Sterba supports this basic argument by giving backing for steps two and three.

In regard to step two, he divides his discussion into two sections, one focusing on supposed implications of a commitment to the Spenserian conception of liberty (1a), and the other on supposed implications of a commitment to the Lockean conception (2a). What he tries to do in the former instance is to parlay what he calls a "typical" conflict (of interest) situation involving the rich and the poor into a conflict between their liberties, thereby forcing a choice between the two. Having established the necessity of a choice, he provides an argument favoring the liberty of the poor over the liberty of the rich, an argument that he deems tantamount to establishing a system of welfare rights. What supposedly makes the argument so compelling to libertarians is that the only not-specifically-libertarian principle it invokes is a foundational principle allegedly worthy of acceptance by any and all political philosophies. The latter is the "ought" implies "can" principle (OIC, for short). In an auxiliary argument, Sterba calls attention to the aspect of this concept of liberty that identifies it with the ultimate political idea. His claim is that a function of such ideals is to resolve conflicts of interest in ways that would be reasonable to all parties involved.

With these points firmly in mind, let us examine the pertinent details of Sterba's reasoning. The conflict of interest between the rich and the poor relates to needs. The rich have more than enough resources to meet their basic nutritional needs; whereas the poor do not have enough such resources, even though they have tried all the means available to them that libertarians regard as legitimate for their acquisition. Thus, we have a situation in which the liberty of the rich to satisfy their luxury needs—some of them, anyway—conflicts with the liberty of the poor to take from the surplus resources of the rich what is necessary to satisfy their basic nutritional needs. Both liberties are not satisfiable. The problem for libertarians is: Which is to be chosen? Which is the morally preferable liberty? Sterba claims that in order to see that the liberty of the poor is morally preferable to the liberty of the rich, we need only appeal to the OIC. According to this principle, people are not morally required to do what they lack the power to do, or, granting the power, what would require on their part an unreasonably great sacrifice. Although the poor have it within their power to willingly relinquish the liberty to take from the rich what they require to meet their basic nutritional needs, it would be unreasonable to ask them to make so great a sacrifice. In an extreme case it would mean asking them to sit back and starve to death. We cannot blame the poor for trying to evade this sacrifice. Yet it would not be unreasonable to ask the rich to sacrifice their liberty to meet some of their luxury or surplus needs so that the poor can have the liberty to meet their basic nutritional needs. Unlike the poor, the rich can be blameworthy for failing to make such a

sacrifice. Accordingly, the liberty of the poor is to be preferred morally to the liberty of the rich and should be chosen over it. Inasmuch as the argument turns solely (for libertarians) on the acceptance of the OIC, and this principle is common to all acceptable moralities, libertarians should accept it. Moreover, since under this conception liberty is intended by libertarians to [fulfill] a moral/political ideal that resolves conflicts of interest in ways that would be reasonable to ask both the rich and the poor to accept, they should judge as reasonable the request that the rich sacrifice the liberty to meet some of their luxury needs so that the poor can have the liberty to meet their basic nutritional needs.

In the discussion of the Lockean concept of liberty (1b), the issue shifts from a concern with liberty *per se* to its consideration as specified by certain rights some libertarians consider more fundamental. Sterba identifies these as the rights to life and to property, the former being understood as a right not to be killed unjustly and the latter as a right to acquire goods and resources either by initial acquisition or voluntary agreement. Despite the shift of focus, this discussion resembles the earlier one in that it turns on an alleged problem in the relations between the rich and the poor. Furthermore, the OIC is invoked here, too, as the means of solving the problem. What Sterba tries to show is that, if they are willing to admit (as they should) the validity of the OIC, libertarians cannot legitimately appeal (as they usually do) to a view of the exercise of property rights as unrestricted or unconditional. Were they to make such an appeal, they would have to admit that there could be situations in which the rich would be killing the innocent poor. For there could be circumstances in which the rich, in freely exercising their unrestricted property rights, would be preventing the poor from taking what they require to satisfy their basic nutritional needs. True, the rich in engaging in such preventive acts

would not in fact be killing the poor, but only causing them to be physically or mentally debilitated. Yet since such preventive acts involve resisting the life preserving activities of the poor, when the poor do die as a consequence of such acts, it seems clear that the rich would be killing the poor, whether intentionally or unintentionally.³

However, if libertarians are willing to accept the OIC, they cannot hold a view of property rights that accepts the killing of the poor as simply a consequence of the legitimate exercise of property rights, or that leaves them dependent upon charity for the satisfaction of their most basic needs. They must hold an account that makes an exception in the case of "those surplus goods and resources of the rich that are required to satisfy the basic needs of those poor who through no fault of their own lack opportunities and resources to satisfy their own basic needs."⁴ Failure to make such an exception would impose an unreasonable sacrifice upon the poor, a sacrifice

they could not be blamed for trying to evade. Such an imposition would constitute an occasion for the invocation of the OIC. On the other hand, it would not be unreasonable to ask the rich to accept an account of property rights that makes the aforementioned exception. Acceptance of what amounts to a conditional theory of property rights is, of course, tantamount to the acceptance of some sort of system of welfare rights.

Sterba's support for step three of the basic argument, i.e., for the linkage of welfare rights to a welfare state, is very brief and may be expressed as follows:

(1a) Only a welfare state would be able to effectively solve the large-scale coordination problem necessitated by the provision of welfare; hence, (2a) it is inconceivable that welfare rights could be adequately secured in a society without the enforcement agencies of a state; hence, (3a) once welfare rights are acknowledged, the justification for a welfare state is straightforward and compelling.

Having offered what he thinks are satisfactory reasons in support of crucial steps two and three of his argument, Sterba believes he has completed his demonstration that libertarians should acknowledge welfare rights and the welfare state.⁵

II

It seems to me that from the standpoint of validity, Sterba's basic argument is a strong one: the steps, if true, appear to provide good grounds for accepting the conclusion. At any rate, the problems I wish to raise have to do with the steps themselves (including supporting reasons, where provided), not their logical relation to the conclusion.

Let us start at the beginning, with step one. I have no quarrel with the first conjunct of this step. Without a doubt, liberty in some sense is the basis—at least a *sine qua non*—of libertarianism. My first complaint has to do with the second conjunct and, when developed, with certain aspects of step two. Although, as we have seen, Sterba gives explicit definitions of what he takes to be the Spenserian and Lockean conceptions of liberty, he never shows that Spenser and his followers or Locke and his followers actually put forth or held these conceptions as he (Sterba) defines them. There are references to the views of certain libertarian thinkers (e.g., Hayek) in his discussion of the supposed implications of these conceptions, but no quotations from nor footnote references to their works are offered specifically to verify the accuracy of these definitions. As I read the literature of libertarianism, the concept of liberty that virtually all libertarians use as the basis of their philosophy does indeed involve reference to an absence of constraints (i.e., of force, fraud, violence, aggression, or coercion) against the agent by other persons, but it also includes reference to an absence of constraints by the agent

against other persons—unless, of course, there has been prior unprovoked aggression against the agent. In short, libertarian liberty consists of an absence of constraints and constraining. At the very least, the liberty that forms the basis of libertarian political philosophy consists of both of these elements, not just the former. This holds whether the libertarians are Spenserians or Lockceans or whatever. Thus, even if Sterba is right in his reading of libertarians' definitions of the conception of liberty *as such*, he is wrong in assuming that these definitions form the basis of the political philosophy to which libertarians are committed. The major impact of this point is to be found in step two, specifically in the conflict claim that lies at the heart of Sterba's discussion of the Spenserian conception. Sterba is able to make the conflict between the rich and the poor into a conflict between their *liberties* only because he has assumed that the conception of liberty that Spenserians maintain and take to be the basis of their position consists merely of an absence of constraints by other persons. If the so-called liberty of the poor to take from the surplus resources of the rich—with or without their permission—what is necessary to satisfy their basic nutritional needs is a genuine liberty according to the Spenserians, then it is not a liberty that they would find legitimate. Thus, either there is no conflict of liberties at all (since there is but one true liberty involved), or *contra* Sterba the conflict is immediately and straightforwardly resolved by them in favor of the liberty of the rich over the liberty of the poor. If the poor take without permission resources owned by the rich, they are guilty of theft—a highly objectionable act according to libertarians of virtually all persuasions. To put it in the language under consideration, the poor are without warrant *constraining* the rich.

To this objection Sterba may retort that I have missed the central point of his entire discussion, which is to show that it is the "hardness" of libertarians on the theft and similar issues that needs to be exposed and mitigated. He might concede that he was a bit presumptive in speaking of the "liberty" of the poor to take surplus resources of the rich; however, he might go on to add that the crux of his whole argument is to be found in his claim(s) concerning the OIC. He might say that the essential conflict he wants to press home to libertarians, whether they are Spenserians for Lockceans, is expressible in terms of the following dilemma: libertarians must either refuse to budge on the theft issue and be forced to reject the OIC, or accept the OIC and give ground on the theft question. What Sterba wants to persuade libertarians to do is to abandon the first disjunct and embrace the second. His assumption is that the disjunction is not only exclusive but also exhausts the genuine alternatives available. He wants to confront libertarians with the idea that they cannot defensibly uphold the OIC, which they should be willing to uphold, and also maintain a hardline on the theft issue.

I believe that libertarians may defend themselves against this charge in several ways on the basis of differing stands on the OIC. Recall

that Sterba claims that the OIC stipulates that people are not morally required to do what they lack the power to do, or, granting the power, what would impose an unreasonably great sacrifice on them. For purpose of analysis, the OIC may be divided into two: the primary (or stronger) "lack of power" component (LOP, for short) and the secondary (or weaker) "unreasonably great sacrifice" component (UGS, for short). Hardnosed, radical libertarians would reject the OIC in toto—at least as a universal, unexceptionable principle. They would claim that in some cases—theft of the rich by the poor being one such—people are morally required to try to accomplish certain things they know in advance they most likely cannot achieve. Even in the face of starvation and impending death, the poor ought to try to refrain from stealing from the rich (or whomever) even though they realize that their efforts ultimately will fail. Ince libertarians who reject the LOP as an unexceptionable principle are not likely to accept the UGS at all and since Sterba grants that it is within the power of the poor to restrain themselves in extreme circumstances such as these, there is scarcely any need to pursue the matter further.

Among more moderate lines of defense, the least moderate would consist of an acceptance of the LOP but an outright rejection of the UGS. The claim would be that there is no need to interpret the OIC in such a way as to include the UGS: "can" means just what it says or implies, viz., having the power, whereas "cannot" means lacking the power. If, for example, it is in principle possible for people to withstand the temptation to steal in extreme circumstances, then the OIC is satisfied. No appeal beyond this is required or even relevant. Great sacrifices, even unreasonably great sacrifices, do not violate the OIC, properly understood. A narrow and strict interpretation is not faulty simply because it is narrow and strict.

A somewhat more moderate approach would involve an acceptance of both components of the OIC but would include a denial of the applicability of the UGS to cases like the one at hand. In other words, it would deny that the poor's refraining from thievery in this context is an unreasonably great sacrifice for them to endure. A couple of types of arguments (possibly reducible to one) could be used to support this contention. First, it is not as if the poor, guilty of no crime or wrongdoing, were to be hauled off by the rich (or whomever) to torture chambers where they were "persuaded" to reveal well-kept secrets about their friends or to spread lies about them, either or both of which acts would place their friends' lives or well-being in jeopardy. Under such circumstances, the betrayal of confidences and the telling of lies clearly would be excusable to some extent. The sacrifice they were "asked" to make would be unreasonably great. On the other hand, no one is directly and intentionally causing the miserable poor to suspend their moral scruples and engage in theft. Their situation is not all that different from what many of us, poor or rich, eventually reconcile ourselves to. Of course, our "death date" might well be pushed a little farther into the future if we were willing

to engage in thievery or some other serious crime. But we would hardly want to claim that in upholding our usual morals we were having to endure an unreasonably great sacrifice. Death is a part of life, as the saying goes. A second line argument could attempt to show that a dangerous precedent would be established if we accept the idea of excusing the poor for their theft of surplus resources of the rich on the grounds that they (the poor) are being asked to make unreasonably great sacrifices. There would be no non-arbitrary reason for limiting the notion of surplus resources to the "external" possessions of the rich, nor for viewing the rich solely in terms of their ownership of "external" goods and resources. What about surplus internal organs and tissues, such as kidneys and blood? Quite a few of us are "rich" in these! If one excuses the kind of thievery that Sterba favors—under the auspices of the state, to be sure—then there seems to be no non-arbitrary way to limit it to the usual "external" trappings of wealth. If a healthy, vigorous person has an "extra" kidney or an "extra" supply of blood, shouldn't we likewise excuse the innocent "starving" poor if they or their agents forcibly remove these organs or tissues and appropriate them for their own use?⁶

How strong these three ways of defense are depends in part on how skillfully they are worked out. To make them truly effective it would be essential to develop a fairly broad range of relevant examples, followed by careful and extensive comparisons and contrasts. Only in this manner could definitive conclusions be reached. Mainly what I have tried to do is to suggest potentially promising ways in which libertarians could rebut Sterba's conception and application of the OIC and, at a minimum, to show that his point of view is not self-evident or obviously in the right. If any one of these approaches were to prove as plausible as Sterba's, then it would constitute a successful rejoinder. The onus of proof, after all, is on Sterba.

A related and perhaps more important issue is the following. In invoking the OIC, Sterba clearly wants to appeal to a meta-ethical principle not only worthy of acceptance by all moral theorists but also distinct from any special or partisan moral or political theory. His hope of changing libertarians' minds about welfare rights and a welfare state rests on this assumption. If one reflects on what is going on in Sterba's analysis and the libertarian alternatives I sketched, one must be struck by the differing views concerning the nature of human nature that underlie them. To the extent that theories of human nature are part and parcel of moral/political theories, they contain implications concerning what may and may not be reasonably expected of people in various circumstances, especially extreme ones. What this means is that there probably is no non-question-begging way to support claims about what would and what would not count as unreasonably great sacrifices for people to make or endure. Thus, although the OIC may appear to be distinct from or logically independent of all normative ethical/political theories, this probably is an illusion.⁷

One might reach the same conclusion in a somewhat different way. The term "unreasonably" as it functions in the UGS may be itself a moral term. Rather than being a sacrifice so great that it is immoral *because* it is an unreasonably great sacrifice, making an unreasonably great sacrifice may be *equivalent* to making a sacrifice so great that it is immoral. If so, it is by reference to a partisan moral theory that the application of the UGS is to be determined. Sterba's mode of applying the principle calls upon a set of special moral principles different from and to some extent in conflict with the special moral principles libertarians are committed to. Accordingly, his hope of persuading libertarians by appealing to "higher," neutral moral ground would be dashed, frustrated from the very start.

So far, apart from a brief comment directed specifically toward Sterba's analysis of the Spenserian conception of liberty, the focus of my attention in discussing step two has been on his interpretation and use of the OIC, the principle that undergirds his analysis of both the Spenserian and Lockean conceptions. Now I want to bring out a difficulty with his analysis of the Lockean conception (2a) in particular. Recall that Sterba claims that if libertarians accept an unconditional or unrestricted view of property rights, then they will have to admit that there are circumstances in which the rich would be killing the innocent poor simply as a consequence of exercising such rights. The circumstances would be ones in which the rich would be preventing the poor from taking what they require to satisfy their basic nutritional needs. For this reason, libertarians should abandon their commitment to a view of property rights as unrestricted. In my judgment, Sterba is guilty of an unwarranted stretching of the term "killing" to cover cases it really doesn't cover. Suppose that you and I are strangers in the sense that we have no prior special contractual obligations to each other; that I own a food item which is not essential to my survival or to the survival of any others to whom I have some special responsibility; that the item is essential to your survival, but you are too poor to purchase it from me; that I refuse to donate the item to you; and that, not being able to obtain the item elsewhere, you subsequently die. Then I may be properly accused of grave moral insensibility or lack of compassion; but I may not be properly accused of killing you either directly or indirectly, intentionally or unintentionally. People, like Sterba, who insist on using the term "killing" in such a context and claim that it must be taken literally, seem to be assuming what is contrary to fact, viz., that the needy person has some sort of entitlement to or lien on the property of the non-needy person. It is true that an unrestricted property rights doctrine, if implemented, does permit people to go untried and unpunished (legally) even if they commit certain deeply immoral acts or acts that are commonly regarded as very wrong. But the act of negligent homicide is not one such. The circumstances hypothesized do not warrant the latter charge. Of course, there is nothing wrong with using terms metaphorically, as long as the user is willing to

acknowledge the use for what it is. In the instance of "killing," it must be realized that metaphorical killing carries with it no punitive punch (in a legal sense).⁸

I believe that I have offered sufficient grounds for doubting the part of Sterba's basic argument that concludes that libertarians should accept welfare rights. If so, then I have likewise undercut the immediate basis of his claim in step three that libertarians should be committed to the welfare state. Nevertheless, for the sake of argument I shall pretend that, despite my criticisms, he has successfully argued for the welfare rights point. I shall now argue that the specific case he makes for step three is a weak one—certainly not compelling and perhaps not even straightforward.

It won't do to simply *state* that only a welfare state would be able to effectively solve the large-scale coordination problem necessitated by the provision of welfare (1a). First of all, this assertion if true is not *a priori* or self-evident. Empirical evidence is required to support it and Sterba offers none. Several libertarian thinkers have tried to show that it is in fact false.⁹ Unfortunately, it is all too common for statist, like Sterba, to negatively prejudge the ability of a private, free market, free enterprise system to deal effectively with complex, large-scale projects. Statists also tend to ignore or set aside the historical record in their over-estimation of the effectiveness of government-run operations. Of course, they can always avoid this problem by waxing eloquently about some ideal state. The trouble is that two can play this game. The libertarian can argue that in a truly and fully private, free enterprise market economy the need for a large-scale program to deal with the welfare problem would be non-existent, since the problem of poverty would have been essentially solved. Secondly, even if premise (1a) were true, whether empirical or *a priori*, the conclusion Sterba draws from it (2a) does not follow. From the *fact that* only a welfare state is able to effectively deal with the welfare problem it doesn't follow necessarily that it is *inconceivable that* welfare could be adequately secured without the enforcement agencies of the state. Factual claims alone are not "strong" enough to generate inconceivability claims.¹⁰ Thirdly, even if (2a) were true, it doesn't follow that a welfare state has been justified (3a). From the fact that it is inconceivable that welfare could be adequately secured *without* the enforcement agencies of the state, it doesn't follow that it could be adequately secured *with* these agencies. The possibility that nothing could adequately secure welfare rights must be dealt with and ruled out.

I conclude that as it stands the argument for step three is not cogent: its basic premise has not been shown to be true (and may well be false), and neither of the two inferences that comprise it is valid. Indeed, it is a surprisingly weak offering. One wonders if it is based on an unspoken, unrecognized argument which is

straightforward and compelling. Could it be that Sterba's "real" argument is the following?

- A. Welfare rights are legal rights.
 - B. Legal (as opposed to moral) rights can only be conceived within the framework of enforcement agencies of a state.
 - C. A state some of whose agencies enforce welfare rights is in that respect a welfare state.
- Hence, (D) the existence of welfare rights implies the existence of a welfare state.

The problem with this argument is that it is compelling only if it is trivial, only if its premises are tautologies or analytical truths. It seems so easy for statists to beg the key questions concerning rights, legality, and the state that exercise theoretical libertarians. This argument does just that. Furthermore, being unrecognized, it may have a power over statists (especially welfare statists), leading them to believe somehow that they can get by with flimsy arguments like the one Sterba uses to support step three.

III

In his attempt to get libertarians to commit themselves to welfare rights and a welfare state, Sterba has offered an argument that is quite ingenious. But its very ingeniousness tends to mask its flaws. It has been the task of this article to remove the mask and reveal the flaws. In the process, what also may be revealed are aspects of libertarianism that are unsavory to traditional political and moral philosophers. So be it. In certain key respects, libertarianism *is* radical and deviant. Efforts by centrists like Sterba to bring libertarianism closer to the mainstream are bound to be resisted by people like me who are anxious to preserve its radicalism and deviance.¹¹

1. James P. Sterba, "A Libertarian Justification for a Welfare State," *Social Theory and Practice*, Vol. 11, No. 2 (Fall, 1985), pp. 286-306.

2. This formulation is a reconstruction of Sterba's actual argument (*op. cit.*, pp. 286-298). To a great extent, the latter is developed in a dialectical manner: premises and conclusions are woven into a fabric that includes anticipated objections, replies thereto, adjustments in positions, etc.

3. Sterba, *op. cit.*, p. 296.

4. *Ibid.*

5. In the last section of the paper, he gives reasons why he thinks his demonstration is preferable to attempts certain others have made to persuade libertarians to be welfare rightists and welfare statists. Aside from a remark in footnote 7, I shall be content to argue that Sterba's purported demonstration is significantly flawed, without attempting to evaluate his comparisons/contrasts with and judgments concerning the arguments of others.

6. For an extended discussion of basic issues at stake in this line of argument, see Fred D. Miller, Jr., "The Natural Right to Private Property," in Tibor R. Machan, ed., *The Libertarian Reader* (Rowan and Littlefield, 1981), pp. 274-287.
7. This criticism is peculiarly apropos in that Sterba claims, in considering alternative attempts by others to convince libertarians to endorse welfare rights and a welfare state, that three out of four are inferior to his because they beg the question at issue.
8. According to Sterba, Rothbard distinguishes between "political ethics" and "a moral course of action," arguing that in cases of conflict between the two, following the latter is "always punishable and never excusable." A key critical point for Sterba is that Rothbard "clearly has failed to deal with the strong moral challenge to unconditional property rights contained in the 'ought' implies 'can' principle" (*op. cit.*, p. 299). My discussion of the OIC has been an attempt to address this point.
9. E.g., Murray N. Rothbard, *For A New Liberty* (Macmillan, 1973), Ch. 8; Donald J. Devine, *Does Freedom Work?* (Green Hill Publishers, 1978), Ch. 5; Jarret B. Wollstein, *Public Services Under Laissez-Faire* (Self-Published, n.d.), Ch. 3.
10. Unless these claims are purely linguistic. However, if (1a) is analytic, then this part of the argument is trivial and the argument as a whole, vacuous.
11. During the process of review prior to publication of this paper, a reader called my attention to part of Douglas B. Rasmussen's contribution to a recent debate with Sterba. In this writing, Rasmussen covers with care and sophistication some of the same ground that I have traversed here. See Douglas B. Rasmussen, "Reply to Sterba," in Douglas B. Rasmussen and James P. Sterba, *The Catholic Bishops and the Economy: A Debate* (Transaction Books, 1987), pp. 93-102. I heartily commend this essay to the reader.

BROTHERS IN CHAINS:
RALPH WALDO EMERSON AND
GEORGE FITZHUGH'S
THOUGHTS ON ECONOMIC AND
POLITICAL LIBERTY

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With the publication of John Rawls' *A Theory of Justice* in 1971, followed by Robert Nozick's *Anarchy, State, and Utopia* in 1974, the philosophical battleground in the United States over the moral limits to liberty has received more attention than at any time since, perhaps, John Dewey, writing fifty years earlier. While the discussion over the nature of economic and political liberty is hardly new, these writers more than others have revived the interest among theorists in linking the economics and politics of liberty. Nevertheless, the basis for the anarchic model of a free society proposed by some philosophers and the arguments for an "omnipotent" centralized government advocated by others have certain historical and theoretical features in common. Certainly the affinity of these apparently antithetical positions has been observed by more than a few historians, but virtually no one has attempted to compare the positions of such apparently diverse thinkers on the subject of economic and political liberty as Ralph Waldo Emerson and George Fitzhugh. Even if they had, it is unlikely that they would find Emerson and Fitzhugh as being in general agreement. Yet that is the purpose of this paper.

In the context of modern writing about freedom in general, and modern historiography in particular, an important critique of the Libertarian position, and Modernism—but one that absolutely rejects Marxism and collectivism—has been ignored. This critique, elaborated by Leo Strauss and Eric Voegelin, both of whose works bridged the 1950s and 1960s, is only now wading back into the melee. It suggests

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that a radical individualism, which makes freedom the highest value, possesses the same dangers as collectivism.¹

Libertarians, it should be noted, are sensitive to this critique. Some argue that virtue is the highest individual goal, but that freedom is a necessary coalition for virtue in this regard. They maintain that in striving for the virtuous self, man fulfills his telos, and in the process develops the good society. Strauss and Voegelin, however, argue that concepts of "good" and "virtue" are meaningless without a telos that is a part of a hierarchical ordered universe. Order, in their view, is not a spontaneous result of economic liberty, but rather is a natural precondition for it. The purpose of this essay is less to consider that particular stream of thought on individual freedom than it is to discuss the more radical anarchist-collectivist positions epitomized by Emerson and Fitzhugh.

Since Voegelin in particular argues that the understanding of order is best achieved through the analysis and application of history, the route of my discussion shall lead through the intellectual neighborhoods of some thinkers not normally identified with theories of political economy. Among the stops of this journey are the residences of Ralph Waldo Emerson, one of the foremost American exponents of freedom, and of George Fitzhugh, the nation's most logically consistent antebellum defender of slavery. I will argue that the principles of order and, hence, political economy propounded by the former in his defense of liberty were in fact developed from the same constructs as those used by the latter in his case for slavery. The very "natural right theories" explored to agitate for an ever-increasing series of rights by, among others, the American abolitionist movement were used as a smoke screen to mask their deeper attack on fundamental institutional order. This attack isolated for special attention the market and the family. Using the proslavery arguments of George Fitzhugh, the inherent compatibilities of the abolitionists' ideas and his own shall stand out with rather shocking clarity.²

Eric Voegelin has revived the Aristotelian concepts of order and the role of the polis in society by arguing that man's telos is to strive for the ordered—that is the virtuous—society. But virtue requires a standard above that of liberty. That is, liberty or freedom must be a lesser value to virtue. In economics absolute liberty is both undesirable and dangerous, a proposition clearly understood by Adam Smith. Certainly Smith believed that national defense took priority over material considerations. In the *Wealth of Nations*, he noted that it was "The first duty of the sovereign, that of protecting the society from the violence and invasion of other societies." Smith certainly had no qualms about weapons procurement, even at high prices contending that "in modern war the great expense of fire arms gives an evident advantage to the nation that can best afford that expense," because over the long-term, weapons development by civilized nations

"is certainly favorable both to the permanency and to the extension of civilization."³

Indeed, most eighteenth-century contemporaries of Smith or nineteenth-century contemporaries of either Emerson or Fitzhugh believed that their case for regulation of the market required a standard of absolutes, or of a "higher law," in William Seward's words. A few, such as Jeremy Bentham, might construct a position based on simply pragmatic considerations. Models of Benthamite political economy are both ludicrously unfair and hideously inefficient. It makes no distinction between "good": if the "best" society ensures the greatest good for the greatest number, how does one weigh "good"? For example, should one man's death count as a negative 100 to be balanced against redistribution of property, arbitrarily rated as a positive 10 per family? Practically, a Benthamite system would create a nightmare of government involvement far worse than now exists in modern socialist countries. Bentham's inability to establish a hierarchy of values represents only the most obvious problem. Again, the deeper weakness is exposed by understanding that the concept of "fairness" by which to judge these "goods" itself implies the existence of absolutes. All "good" (for the "greatest number" or otherwise) must embody some objective, absolute definition of good made in light of some eternal truth. Otherwise, the "greatest good" today might be achieved by killing all Jews, and tomorrow by killing all the bourgeoisie, and so on.⁴

Therefore, just as the market may not be left to its own devices in all cases, neither can simple utilitarianism act as the measure of efficiency. The economics of freedom is more than the economics of license: and if one follows the logic of either Emerson or Fitzhugh, the economics of freedom eventually must embody slavery! No one advocated this concept with more energy than the primary defender of slavery in antebellum America, George Fitzhugh, the Virginia lawyer (1806-1881) whose defense of slavery and his attack on Northern society was so piercing that the modern economic historian Joseph Dorfman contended it left free society with no alternative but to make war upon the South. Although Fitzhugh had little formal education, he studied the "political economists" of the day, including Adam Smith and David Ricardo. He knew some Latin and claimed to subscribe to "Aristotelian" positions. His *Sociology for the South* "aroused the ire of Lincoln more than most proslavery books." Lincoln's perception in this regard is important: he, more than any other American of the antebellum period, embraced in his thought actual Aristotelian principles. While Fitzhugh fancied himself an Aristotelian, albeit without logical cause to, Lincoln's specific concern over *Sociology for the South* reveals that Lincoln realized Fitzhugh's thought stood as the most serious intellectual attack on free society yet mounted in America. Lincoln also recognized the compatibility of the Virginian's ideas to those of the abolitionists who would soon align themselves against the president. Fitzhugh followed *Sociology* with *Cannibals All!*,

a work that "laid bare the essential core of proslavery assumption latent in other writers." Indeed, Fitzhugh's understanding of unlimited freedom as slavery exposed the proslavery proclivities of such supposed advocates of freedom as John Locke and Ralph Waldo Emerson. Although modern theorists of freedom, including Robert Nozick, have reviewed substantial analysis in contemporary literature, their ideas have seldom been examined in light of proslavery arguments made by their intellectual predecessors. By delving more deeply into the thought of Emerson, and Fitzhugh, we can come into a different, and perhaps more accurate, interpretation of the economics and politics of freedom.⁵

No American writer has been as closely identified with freedom (and, ironically, journalistic freedom) as Ralph Waldo Emerson, who "made independence or self-reliance—what is today called liberation...his ultimate teaching." As leader of a philosophical movement known as Transcendentalism, which is the logical extreme of Romanticism and is itself pure gnosticism, Emerson (who frequently referred to himself as "The Poet") maintained that the only lawful thing was that which was "after my constitution." He made freedom, in other words, the highest virtue. "Nothing," he said, "is at last sacred but the integrity of your own mind." (Or, as abolitionist Theodore Parker, Emerson's doctrinal brother, said, one must always ask "[I]s it right for me?") Actually, Emerson's freedom is reducible to a radical, atomized individualism that acknowledges no authority, even that of death. For Emerson, creating "your own world" symbolized ultimate liberation (as it did for Marx), and if man is his own creator, then man's death is the ultimate expression of freedom.⁶

Certainly modern freedom theorists, especially Libertarians, would hardly wish to identify themselves as socialists, and yet Emerson's freedom is exactly that of not only Marx, but of the Marquis de Sade as well. Marxists not only demand the death of the individual: rather, the "death of mankind is...the good of socialism." Marxist scholar Alexander Kojève suggests that "Death and Freedom are but two...aspects of...the same thing." Donatien de Sade, the eighteenth-century advocate of rape (and, as many see him, pornographer), placed freedom and death in their proper perspective by boldly stating, "The freest of people are they who are most friendly to murder." Emerson wanted to kill only authority and order, proclaiming, "I would write on the lintels of the door-post, Whim." This interesting statement, rather innocent in appearance, is laden with revelations about Emerson's true beliefs and intentions. First, Emerson had a habit of deliberately but carefully inverting and confusing classical texts and the Bible. His revisionism targeted especially Plato and the Old Testament, arguing as he did that "Two ideas, Greece and Jewry, sway us." He therefore maintained that Plato embraced "both sides of every great question," or that Plato "could argue on this side and on that." In fact, Plato flatly rejected relativism, and made clear that there existed differences between the One, the *metaxy*, and the

apeirontic. Emerson sought to eliminate in the metaxy or the in-between (i.e., remove man from his special condition to either the realm of God or beasts). Whereas Plato viewed liberation from death as possible by *eros* (love of "The One" or "The Good"), Emerson's *Orphic Poet* taught that man was liberated by creating his own world, i.e., by rejecting the order of the universe present in the One. Emerson's revisions of Biblical texts directly focused on the Second Commandment by admonishing that "You cannot say God, blood, & hell too little." For Emerson invoking the name of God in a nonsacred sense was important. "The Jew," he noted, "named him not," referring to the Jewish practice of not speaking God's name.⁷

Second, Emerson's "writing on the lintels" bespoke exactly what the Poet's understanding of freedom was "Whim." Whim is caprice, or total absence of obedience to authority. Clearly, Emerson intended man to be free from authority, although he did not logically extend his position as far as Marx or Sade. But he did invert the obedience found in the Israelites' actions during the Passover (*Exodus* 12:22-23), when God spared those who splashed lamb's blood on the doorposts, and the obedience of the Sh'ma, a Jewish prayer liturgy (*Deuteronomy*) in which the individual's obedience to God is proclaimed in the words "Hear O Israel...The Lord is One," and posted in the mezuzah on the door, with the word "Whim." The word *whim*, of course, epitomizes rebellion, and it also can be subjected to an interesting game: if the W is removed (and W in Hebrew is the letter for God), then the remaining word is *him*, which Emerson used to mean "the Poet" or himself. Removing God from man equals freedom. In other words, Emerson understood freedom to be the absence of all authority over the individual; but also the freedom of the individual from all "institutions," including family and the market. Within man, he wrote, is the eternal One: "One Man." This bold statement of idolatry contradicts specifically the Sh'ma. Emerson would transform the self into a "we." Man is free when he surrenders his will to the collective, as surely as he is enslaved by subjecting himself to God. The collective, however, removed the individual from the bonds of authority and freed him from order. Or, as Emerson put it, all mean egotism had to be submerged in a stream of spontaneity, or "self reliance." By that term Emerson meant the identification of will with truth, unhindered by choice, bound only by action. For Emerson, there is no real choice, because there are no values other than one's own—from which to choose. All thought is action. Man is the maker or creator of all freedom at the point where the self dies. Marx could not have said it better.⁸

In wishing to free individuals from the bondage of God, words, the self, the family, or the market, Emerson shared with Fitzhugh a hostility toward natural order, and such things derived from it as government and the family. And in course he came to adopt many of the positions of John Locke, that "presumptuous charlatan," as Fitzhugh called him. Fitzhugh certainly thought of himself as the

antithesis of Lockean thought, and subsequent writers and historians have accepted Fitzhugh at his word without question, labeling him a fascist, a reactionary, or a conservative. Yet his thought embodies far more of the principles of socialism than of conservatism. This becomes quite clear when assessing Fitzhugh's attack on Adam Smith: "The ink was hardly dry [on the *Wealth of Nations*]...ere the hunger and want and nakedness of that society engendered a revolutionary explosion that shook the world.... The starving artisans and laborers...of Paris, were the authors of the first French revolution." Certainly Fitzhugh stood in agreement with Rousseau when he wrote, "Whatever rights [man] has are subordinate to the good of the whole" and he has never ceded his rights to it, for he was born its slave...."⁹

Fitzhugh maintained quite candidly that laissez-faire had failed to provide for the worker, and that it was ethically unjust. Capitalist factory owners, he argued, had "command over labor...without the obligations of a master." Industrial workers, therefore, were "slaves without a master." To defend actual slavery in the South, Fitzhugh adopted the labor theory of value ("Labor makes value, and wit exploitates [sic] them"). But since a doctrine of equality was "practically impossible, and directly conflicts with all government, all separate property, and all social existence," a system that recognized inequality had to be permitted. Slavery admitted to the existence of inequalities while institutionalizing protection of the weak. From this, Fitzhugh concluded that most individuals had "a 'natural' and inalienable 'right' to be...protected...in other words...to be slaves." The Virginian's case was made stronger by the fact that it was not racist. "The defense of negro slavery as an exceptional institution is the most absurdly untenable proposition that was ever maintained by man." More important, though, Fitzhugh recognized that slavery constituted "the very best form of socialism...a beautiful example of communism." However, slavery had an advantage over socialism, because it developed bonds of affection between master and slave. Whereas capitalism permitted industrialists to live on the work and labor of others—"moral Cannibalism" (not to be confused with the modern usage of this term), as he termed it—slavery gave all the right "to be comfortably supported from the soil."¹⁰

As did Emerson, Fitzhugh invoked the authority of the classical philosophers, especially Aristotle, whenever possible. We have already seen that Emerson directly inverted and convoluted the meanings of these philosophers, Plato in particular, so that the classical thinkers appeared to support Emerson's interpretation of freedom. They did not: they stood diametrically opposed to it. Thus, if our hypothesis that Fitzhugh and Emerson actually agreed on the basic elements and directions of a free society is correct, then one would expect Fitzhugh to also misinterpret classical political economy. Indeed he did. His appeal to the authority of Aristotle, for example, specifically sought to separate Fitzhugh's position from that of "liberal" thinkers, such as John Locke.¹¹

In his rejection of Locke's major principles, natural rights, consent of the governed, and contract theory, Fitzhugh seemed to stand outside modern liberal consensus (historian Eugene Genovese has called him a "reactionary"). He claimed unashamedly to be a follower of Aristotle, in whom he saw "the true vindication of slavery." Fitzhugh brashly maintained that "Modern social reform...proceed[s] upon the theory of Locke, which is the opposite of Aristotle." But in his vociferous attack on Locke, Fitzhugh broadened his sights to include Locke's disciples, the northern abolitionists, who were also the enemies of the classical view that "society and government are natural to man." Yet, as Robert Loewenberg has shown, the Virginian "was neither Aristotelian nor anti-Lockean." Quite the contrary, Fitzhugh grounded many of his views on the writings of the northern abolitionist, Stephen Pearl Andrews, whose theory of value formed the basis for most of Fitzhugh's reasoning, and the latter quoted Andrews frequently. He also arrived at the same conclusions Andrews did, namely, that land ownership was exploitive.¹²

Andrews pressed Emerson's abolitionist theories farther than the Poet himself did, but Andrews never contradicted Emerson's world view. Most telling about the relationship of Emerson and Fitzhugh is the diagnosis of the abolitionist assumptions about freedom and their own critique of northern society. In *The Science of Society*, Andrews argued that an age of absolute individuality approached in which all government, laws, and institutions that were "adverse to freedom" would wither away. Andrews detailed a view of freedom that closely resembled that of Emerson: "The essential condition of freedom is disconnection—individualization.... The process...must go on to completion, until every man and every woman...is a perfect individual." Like Emerson, Andrews thought that individual freedom was achieved only when every social role had been stripped away. How did this radical atomization fit Fitzhugh's model of an enslaved society? First, Fitzhugh claimed that absolute freedom and absolute slavery were the same thing. Because he agreed with the abolitionists that man had no natural end, Fitzhugh could argue that all relationships were a matter of convention, and hence all political and social institutions were unnatural. By maintaining that the abolitionists constituted slavery's best defenders, he exposed their theoretical structure of socialism. Both slavery and socialism, he contended, sought the end of freedom's most definitive manifestation, the market. He adopted their critique of institutions by insisting that every relationship is slavery: father-son, husband-wife, employer-worker.¹³

Like Emerson, also, Fitzhugh confounded the meanings of words, calling slavery "freedom." He "repeatedly compared the status of wives and children to that of slaves." Fitzhugh had two definitions for freedom, one meaning license, or the condition that exists prior to civilization, and another meaning protection and security. Both of these the abolitionists shared, and they certainly favored the abolition of the market, the family, and religion. When Fitzhugh wrote,

"Government is slavery," he meant exactly the same as Andrews, who wrote, "The true order of government is [one] in which the rulers elect themselves." In *Cannibals All!* Fitzhugh arranged an interesting trial in which several abolitionists of varying degrees of "ultraism" were called into a courtroom witness stand. His questioning exposed the fact that the abolitionists strove "to abolish Christianity as now understood," certainly a development of which Emerson approved.¹⁴

Calling Horace Greeley to the stand, Fitzhugh also made clear that the power to formulate the issues and to control the language of public discourse "in light of the doctrine of free speech is really a doctrine of power." He understood, as one modern critic has charged, that the press "is radically hostile to just those principles—freedom, republican government, tolerance—that are most often thought to justify its existence in free societies." Fitzhugh recognized that Greeley's *Tribune* was "the great Organ of Socialism, of Free Love and all the other Isms which propose to overthrow and rebuild society and government or to dispense with them altogether." Fitzhugh realized that *freedom of the press* was a code phrase for political power. The *Virginian* complained that "we assert a theory bluntly and plainly, and attempt to prove it by facts and arguments, and the world is ready to exclaim, 'oh what a shocking heresy.' Mr. Greeley for twenty years maintains the same theory...and elicits the admiration and gratitude of the world." Yet Fitzhugh contented himself with the use of force because it defined man's condition.¹⁵

Ultimately, Fitzhugh's theory, called antinomic pathology (which he borrowed from Aristotle because it balanced negative opposites, or antinomies), would make the interests of the rulers and the ruled identical because it combined capital and labor in the person of the slave. Actually, the strong, because of their benevolence, "labor...[to support] the weak," and in return the strong should have a "right to enslave all" labor. The master, whose "obligations are [often] more onerous than those of the slave" must care for "the sick, the infirm, and the infant slaves." Thus, he "is always a slave himself." Worse, from the master's standpoint, while everyone was to work "according to...capacity and ability," each was to be rewarded "according to...wants." Although Fitzhugh equated the greatest good for the greatest number with society's greatest good, he nevertheless stood fast in the conclusion that man's natural condition at all times was a product of force. Fitzhugh called his political economy (which was slavery for all) "benevolent despotism." In contrast, he called the political economy of abolitionists like Emerson, Andrews, and Greeley "malevolent despotism" because in their unrestrained dynamic toward total freedom they advocated unrestrained "free love." Most socialists shared their propensity to support "free love." Robert Owen warned against the "three-headed Hydra of God, marriage, and property," while John Humphrey Noyes sought to end the four "systems" of sin, marriage, work, and death. This is not surprising: if "the distinction between men and women is the most irreducible and natural in Marx's

sense of the unfree, [then] it is the prototype of all oppression and of all alienation." Indeed, Andrews soon came to be known as the "Pontiff of Free-Lovism," and he echoed Emerson's words when he stated, "The individual himself must decide what the law of God is [since] there is no authority than himself [the individual]." Andrews contended "The legal obligation of marriage was sundered" and it might be possible to rear all children in "one unitary edifice." It was only a short step in logic to agree with the Marquis de Sade that "never may an act of Possession be exercised on a free being." Using this reasoning, Sade could argue that the "exclusive possession of a woman is no less unjust than the possession of slaves [emphasis mine]"; he continued by asserting that "no man may be excluded from the having of a woman...[because] she...belongs to all men."¹⁶

But the Sadean connection to the Andrews-Fitzhugh-Emerson univirate delineates a political economy as well as a disgusting theory of lustful possession. Consider the very example used by both Sade and Andrews regarding a theory of labor. According to both (but in Andrews' words), "So soon as I have drawn up a pitcher of water from the spring or stream it is no longer natural wealth; it is a product of my labor." Andrews elucidated this theory in his "cost principle," a dialectic that would navigate between the rocky shoals of individualism and communism. This economic law developed from a process in which the individual becomes the means of liberation, with the individual liberated from the market and from all relationships. At that point, "man may be a law unto himself." He argued that in such a system, societal order would be maintained by a simple formula: "The sovereignty of the individual [is] to be exercised at his own cost." Thus, Andrews (and Fitzhugh) contended that self-sovereignty and communism were indistinguishable. In its basic form, the "cost principle" worked toward the "extinguishment of all price," as well as the "disintegration" of special interest. Still, it looked remarkably like Marx's labor theory of value, for in it Andrews found "Cost...the only equitable limit," with cost arrived at by "the amount of labor bestowed on...production." Andrews then made the producer the standard by which value was set, not the market. However, this process threatened to reenslave men to cost just as the market had to price. To escape this dilemma, Andrews introduced a "repugnance" standard, under which distasteful, painful, or repugnant labor set the cost of an item. Of course, the most undesirable labor would be the highest paid, whereupon it might suddenly appear desirable.¹⁷

Throughout his elaboration, Andrews sought to penalize wit, skill, and talent, noting that "menial...labor will be [the] best paid." Fitzhugh used exactly the same logic: "Slavery...relieves the ignorant mass of slaves from the grinding oppression of skill [emphasis mine]." Competition among unequals, Fitzhugh asserted, led to the "oppression and ultimate extermination of the weak." Again, Andrews: the skill of others represents "natural wealth" such as the stream

in his earlier example. "Every individual has a right to appropriate natural wealth...." The final absurd, yet intrinsically logical, corollary of the "cost principle" generated a dictatorship like that authorized by Fitzhugh. "If," he reasoned, "one has to bear the cost of another's conduct [presumably of less equal skill or talent] he should have the deciding power over the conduct of the other." Ultimately, such ruminations not only reestablished a framework of despotic slavery but resumed Emerson's attack on self, i.e., the attack on every "role" or facet of an individual's existence that was not repugnant (natural wealth). So, like Sade, abolishing sexual distinctions—the ultimate expression of natural wealth—took preeminence in Andrews' and Emerson's thought. One is free when the natural endowments of others, even their physical bodies, are available to him in the same way as water and air. Rape, of course, epitomizes this theory of political economy. And if the taking of "natural wealth" through rape constituted a free act, the state also had the right to take life from those "lacking the qualities to become useful." The inability of one to liberate himself or others thus marked one for death!¹⁸

Fitzhugh and Emerson believed society to be infallible, because there is no human nature. How can a society fail if each person pursues that which is "sacred" to himself? Man had no freedom with regard to his end, and had therefore become enslaved. Antinomic pathology established no bounds for masters, for, if "masters" cannot have knowledge of their ends...their freedom is...that of conception." In other words, like Emerson's *Man Thinking*, Fitzhugh's masters found themselves limited only by what they could dream. As Emerson wrote, "The mind now thinks; not acts." Thought, as in the purest Marxism, becomes action. For Emerson and Fitzhugh, freedom meant the creation of human existence. The final point of agreement about liberty between the Poet and the Virginian, therefore, involves their rejection of the past. Fitzhugh warned that "a great memory is like a disease of the mind." Emerson rejected the idea that men could learn truth from books, especially the Bible, reminding us that no book "is quite perfect." Books are "other men's transcripts of their readings." "Everywhere," Emerson fumed, "I am hindered of meeting God in my brother, because he...recites fables merely of his brother's, or his brother's brother's God." One must dispense with "the antique and future worlds," as is made clear by Emerson's revisions of Plato and the Bible. Instead, *Man Thinking* must read "God directly." The best book, i.e., the one most "true" is that which the individual writes for himself: "Each age must write its own books.... The books of an older period will not fit this." Fitzhugh, and Andrews, and obviously Marx, would have approved of the need to remake the past. Indeed, remaking or recreating the past only underscored man's lack of nature and the dialectical process of history.¹⁹

Any discussion of the economics and politics of liberty must work from theory. Both Emerson and Fitzhugh tried to establish a theory of freedom, not just a defense of it. Yet both adopted historicist

assumptions, in which the present was used as the criterion for application of a method, namely the value-free method of social science. Fitzhugh's title—*Sociology for the South*—could not say it better. By theory, Fitzhugh and Emerson meant an opinion about human existence. Or, they rejected the attempt to formulate "the meaning of existence by explicating...a definite class of experiences." Fitzhugh and Emerson understood theory as ideology, and hence excluded all possibility of developing a political philosophy as such. Instead, they proceeded from presuppositions that these "classes of experiences" were not universal or transhistorical but subject to time and place, a methodology known today as historicism. That is, they undertook their studies of freedom and slavery on the grounds that "theories of slavery or of freedom as historical and have, therefore, no claims to truth." Of course, such an approach really precludes any possibility of understanding the past, and obviously does not come to grips with the dilemma posed by its own doctrine: How can this view, then, be "true?"²⁰

Do we mean to suggest that Emerson and Fitzhugh did not mean what they said? If so, that is itself a Marxist interpretation, wherein these thinkers only babbled ideas dictated by their own "condition of existence," or "class," or some other deterministic factor. No, this approach must be rejected: Fitzhugh certainly saw himself among the vanguard fighters that would execute radical social changes, the necessity for which the abolitionists all concurred. Yet his own claim to be an Aristotelian—and hence a political theorist—has been shown to be hollow. He subscribed to a view of freedom that advocated the destruction of society and a return to the state of nature, concluding that all relationships were conventional.²¹

Emerson, who appropriately described himself as a "transparent eye ball," indeed proved transparent when it came to his historicism. "Speak what you think now in hard words, and to-morrow speak what to-morrow thinks in hard words again, though it contradict every thing you said to-day," he admonished. The eternal present, for Emerson, required "insight to-day and you may have the antique and future worlds." To be more blunt, Emerson stated, "All history becomes...subjective.... There is properly no history." It should be made absolutely clear, however, that Emerson represented the mainline abolitionists' views in this respect, even though he was not considered a militant abolitionist himself. Theodore Parker, for example, another of Fitzhugh's targets, argued that man could know himself only directly, "not through the media of...the Church or of books.... [Man should not be] bowed down by the weight of conventions or of learning."²²

Modern observers of political economy, often mistakenly referred to as "theorists," have developed market constructs based on views of freedom similar to those held by Emerson, Andrews, Fitzhugh, and Sade. By proceeding from "state of nature" assumptions, many of the most "conservative" or "reactionary" writers fall into the trap

of ultimately advocating either a malevolent slavery or a benevolent version of it. This tendency is not lost on the trenchant modern Aristotelian Harry Jaffa, who points to a "tacit alliance between the epigones of Karl Marx and those of John C. Calhoun which dominates the American intellectual climate today." One has only to consider the "conversion of Garry Wills from "Right" to "Left" to appreciate Jaffa's remark.²³

A final piece of evidence in this vein is worth considering. No modern historian has been more acclaimed for his work on slavery and abolition than David Brion Davis. His prizewinning book, *The Problem of Slavery in the Age of Revolution*, sought to expose slavery in "all...acts of dominion." Individuals, he argued, are subject to enslavement by "all the subtle stratagems, passive as well as aggressive...all the interpersonal knots and invisible webs of ensnarement" that are a part of our daily lives. Compare this statement with the abolitionist Parker's demand that we remove the "myriad tyrannies that exercise...dominion over the minds of men." By "knots" and tyrannies Davis and Parker specifically had in mind marriage and the market. Slavery, Davis maintained in his earlier book, *The Problem of Slavery in Western Culture*, may be applied in principle to "wives and children in the patriarchal family." His "dream of a perfect society" involving total self-sovereignty is incompatible with "traditional authority" and all "conventional society." Appropriately, Davis asks if "genuine liberation [means] a higher form of servitude," contending that perhaps it is only one's opinion whether subjugation to an omnipotent state is "democratic or totalitarian." Interestingly, but perhaps not surprisingly, it not only appears that the antebellum writers themselves conflated slavery and freedom, but so have the historians who have written about them in modern times.²⁴

Fitzhugh was correct when he maintained that "the works of the socialists [abolitionists] contain the true defense of slavery." What appeared to be an irrational attack on slavery by the abolitionists instead was reducible to an attack on all relationships and institutions. Of course, Fitzhugh had to escape this moral dilemma, maintaining as he did that slavery better protected the family, which he tried to do by showing that man is naturally benevolent, i.e., social. Yet Fitzhugh had also contended that, due to antinomic pathology, man has no nature. He is as selfish as he is benevolent. Man's lack of nature formed a position accepted by Locke, Andrews, Sade, Emerson, and the abolitionists. Given that society is a human construct—but that reason is not a component of being but instead a thing of human creation—society is a necessity that is not a matter of choice. In other words, it is "naturally" unfree or enslaved. Just as Fitzhugh's society would make all men slaves, so would the radically free society of Emerson and the abolitionists: if all are free, then the individual is subject to the will of all either through a "General Will" as envisaged by Jean-Jacques Rousseau or a condition of absolute tolerance in which no individual can claim to know the truth because no truth

exists. Such a radically free society must also result in the use of coercion or force, just as Fitzhugh advocated for his own slave society.

Thus the antebellum defenders of slavery actually shared with the abolitionists a world view encompassing human nature (man has none), a view of economics (labor makes value), and a view of politics (man is not a political animal, and consequently absolute slavery or anarchic liberation resulting in reenslavement to a General Will represents the "end" of society). These views continue to shape our understanding of the economics and politics of liberty to this day. One has only to consider the New Deal programs, based on John Dewey's axiom that "the process of transforming...existent civilization" constitutes the only moral end of society. It was somewhat ironic, therefore, that two New Deal political scientists, thinking they had found the exact opposite of modern liberalism, revived the political thought of George Fitzhugh in 1945. They attempted to find in him the strains of conservatism and fascism that would justify their own program of redistribution. Their attempt failed, because it has only shown the affinity between socialism and slavery, not between order and slavery. The economics and politics of liberty must be grounded in a value above liberty itself. Making man's freedom the end of society precludes society from having ends at all. We must, in that situation, be satisfied with "relative, temporary, and proximate truth," as Fitzhugh noted. Fitzhugh's significance lies in the fact that he knew that in economics as well as politics, absolute atomization is not liberty at all, but its pathological antinomy, slavery. And as long as society continues to try to reform itself on its own doctrines, it is, as Etienne Gilson said, "condemned to oscillate perpetually between anarchism and collectivism."²⁵

1. For the general historiography of the period, see John Rawls, *A Theory of Justice* (Cambridge, Mass: Belknap Press, 1971); Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974); Milton Friedman, *Capitalism and Freedom* (Chicago: University of Chicago Press, 1962), and, with Rose Friedman, his *Tyranny of the Status Quo* (New York: Harcourt Brace Jovanovich, 1983) and *Free to Choose* (New York: Free Press, 1959). A critique of the modernist position, held by all of these authors, appears in Leo Strauss, *Natural Right and History* (Chicago: University of Chicago Press, 1953), *What Is Political Philosophy and Other Essays* (New York: Free Press, 1959), and his *Liberalism Ancient and Modern* (New York: Basic Books, 1968), and, with Joseph Cropsey, eds., *A History of Political Philosophy* (Chicago: University of Chicago Press, 1963); and in Eric Voegelin, *Order and History*, 4 vols. (Baton Rouge: Louisiana State University Press, 1956, 1957, 1974), and *New Science of Politics* (Chicago: University of Chicago Press, 1952).

2. One can consult several works on Emerson: Ralph Rusk, *The Life of Ralph Waldo Emerson* (New York: 1949); Leonard Neufelt, ed., *Ralph Waldo Emerson New Appraisals: A Symposium* (Hartford, 1973). His own writings include William Gilman et al., eds., *The Journals and Miscellaneous Notebooks of Ralph Waldo Emerson* (Cambridge, Mass.: Belknap, 1960); Edward Emerson, ed., *The Complete Works of Ralph Waldo Emerson* (Boston: Centenary, 1903-04); Robert Spiller et al., eds., *The Complete Works of Ralph Waldo Emerson* (Cambridge, Mass.: 1971, 1979); Ralph Rusk, ed., *The Letters of Ralph Waldo Emerson*,

6 vols. (New York: Columbia University Press, 1939). For Fitzhugh, see Drew Gilpin Faust, ed., *The Ideology of Slavery: Proslavery Thought in the Antebellum South, 1830-1860* (Baton Rouge: Louisiana State University Press, 1981); and his *A Sacred Circle: The Dilemma of the Intellectual in the Old South, 1840-1860* (Baltimore: Johns Hopkins University Press, 1977); Eugene Genovese, *The World the Slaveholders Made: Two Essays in Interpretation* (New York: Pantheon, 1969); William Jenkins, *The Pro-Slavery Argument in the Old South* (Chapel Hill: University of North Carolina Press, 1935). As for Fitzhugh's own writings, see *Sociology for the South, or Failure of a Free Society* (New York: B. Franklin, 1965 [1854]); *Cannibals All! Or Slaves Without Masters* (Cambridge, Mass.: Harvard University Press, 1960 [1856]); "Revolutions of '76 and '61 Contrasted," *Southern Literary Messenger*, November and December, 1863; "The Impending Fate of the Country," *De Bow's Review*, II, July-December, 1866; and *A Controversy on Slavery Between George Fitzhugh, Esq. of Virginia...and A. Hogeboom, Esq. of New York* (pamphlet) (Oneida, N.Y.: Oneida Sachem Office, 1857).

3. Adam Smith; *An Inquiry into the Nature and Causes of the Wealth of Nations*, R. H. Campbell and A. S. Skinner, eds. (Indianapolis: Liberty Classics, 1981 [1776]), II:689-708.

4. Of course, there is a body of Libertarian thought on these matters, much of it found in Nozick, *Anarchy, State, and Utopia*, pp. 73-78, and passim. Invoking Seward's name here is not happenstance. His "higher law" doctrine was quite opposed to the position of Lincoln. See Robert Loewenberg, "That Graver Fire Bell: A Reconsideration of the Debate over Slavery from the Standpoint of Lincoln," *St. John's Review* (Summer 1982): 39-50.

5. Robert Loewenberg, "John Locke and the Antebellum Defense of Slavery," *Political Theory* (May 1985): 266-291 (quotation on p. 267).

6. Robert Loewenberg, *An American Idol: Emerson and the "Jewish Idea"* (Lanham, M.D.: University Press of America, 1984), p. 3; Emerson, "Self Reliance," *The Complete Works of Ralph Waldo Emerson*, II:30; Emerson, "Nature," *The Complete Works of Ralph Waldo Emerson*, I:41-42. Theodore Parker, quoted in "The Function of Conscience," James Hosmer, ed., *The Slave Power by Theodore Parker* (New York: Arno Press, 1969), pp. 287-315. Also see Henry Steele Commager, *Theodore Parker: Yankee Crusader* (Boston: The Beacon Press, 1947), p. 9. Thanks to Francis Henninger for his unpublished paper on Transcendentalism.

7. Igor Shafarevich, *The Socialist Phenomenon*, quoted in Robert Loewenberg, "Marx's Sadism," *St. John's Review* (Autumn-Winter 1982-1983): 57-67 (quotation on p. 57); Alexander Kojeve, *Introduction to the Reading of Hegel, Lectures on the Phenomenology of Spirit* (Ithaca, N.Y.: Cornell University Press, 1969), pp. 101-102; Emerson, "Self-Reliance," *The Complete Works of Ralph Waldo Emerson*, II:30; Emerson, *The Journals and Miscellaneous Notebooks of Ralph Waldo Emerson*, XI:402, 273-279. My discussion here owes a tremendous debt to Robert J. Loewenberg. See his "Emerson's Platonism and 'the terrific Jewish Idea,'" *MOSAIC: A Journal for the Interdisciplinary Study of Literature*, XV (1982), pp. 93-108, and his "Emerson and the Genius of American Liberalism," *Center Journal* (Summer 1983): 107-128.

8. Emerson, "Self Reliance," *The Complete Works of Ralph Waldo Emerson*, II:30. Again, Loewenberg illuminates this discussion.

9. Fitzhugh, "Revolutions of '76," p. 719; Fitzhugh, "The Impending Fate of the Country," p. 569; Fitzhugh, *Cannibals All!*, pp. 71-72; Fitzhugh, *Sociology*, pp. 57-66, cited in Harvey Wish, ed., *Ante-Bellum Writings of George Fitzhugh and Hinton Rowan Helper on Slavery* (New York, 1960), p. 67. The best work on Fitzhugh's link to the abolitionists is again Robert Loewenberg, *Freedom's Despots: The Critique of Abolition* (Durham, N.C.: Carolina Academic Press, 1986).

10. Fitzhugh, *Cannibals All!*, pp. 5, 8, 17, 69; 210-219; Fitzhugh, *Sociology*, pp. 27-29, 61, 69, 134; George Fitzhugh, "The Conservative Principle, or Social Evils and Their Remedies," *De Bow's Review* XXII (1857): 423; George Fitzhugh, "The Origin of Civilization: What Is Property?—Which is the Best Slave Race?," *De Bow's Review* XXV (1858): 660-661. Also see Rebecca Allison, "The Force of Argument: George Fitzhugh's Defense of Slavery," *The Conservative Historians' Forum* (May 1982): 5-13, as well as

Willfred Carsel, "The Slaveholders' Indictment of Northern Wage Slavery," *Journal of Southern History* (November 1940): 504-520, and James Hite and Ellen Hall, "The Revolutionary Evolution of Economic Thought in Antebellum Virginia," *Virginia Magazine of History and Biography* (October 1972): 476-488.

11. Loewenberg, *Freedom's Despots*, and his "John Locke," both *passim*.
12. Eugene Genovese, *The World the Slaveholders Made: Two Essays in Interpretation* (New York: Pantheon, 1969), pp. 119, 129, 244; Fitzhugh, *Cannibals All!*, pp. 7, 71-72; Fitzhugh, "Revolutions of '76," p. 719; Fitzhugh, "Impending Fate," p. 569; Loewenberg, "John Locke," p. 269. C. Vann Woodward, in his introduction to *Cannibals All!*, argued that Fitzhugh was *sui generis*. Also see Faust, *Sacred Circle*, p. 127; Harvey Wish, *George Fitzhugh: Propagandist of the Old South* (Baton Rouge: Louisiana State University Press, 1943), as well as Richard Hofstadter on "John C. Calhoun: The Marx of the Master Class," in *The American Political Tradition, Vintage Edition* (New York: Alfred A. Knopf, 1948), pp. 68-92; Jonathan Wiener, "Coming to Terms with Capitalism: The Postwar Thought of George Fitzhugh," *Virginia Magazine of History and Biography* (October 1979): 438-448.
13. Stephen Pearl Andrews, *The Science of Society* (Weston, Mass.: M & S Press, 1970 [1851]), p. 63.
14. Fitzhugh, *Cannibals All!*, pp. 89, 190-98; Fitzhugh, *Sociology*, p. 170; Andrew, *Science*, p. 34.
15. Loewenberg, *Freedom's Despots*, pp. 46-47; Fitzhugh, *Cannibals All!*, pp. 93-94; Robert Loewenberg, "Journalism and 'Free Speech' as Political Power," [Notre Dame University] *Scholastic* (December 1982): 12. As to the political power of the press, Loewenberg recalls the case of the prominent American newsman. Peter Jennings, whose advertisement for ABC stated, "There is no truth, only news." If this is true, then certainly this truth—that there is no truth, only news—must be open to question. Similarly, Walter Cronkite, once voted the "most trusted man in America," when asked about the rather obvious leftward bias of the media, replied that journalism sides "with humanity rather than authority." But what if "authority" is right and "humanity" is wrong? What is it among moderns that divides human things into "authority" and "humanity"? The answer is that the version of freedom that sustains the media and much of the intelligentsia embodies the notion that every event or principle shall be open to inquiry, particularly by the journalist. Consequently, "free speech" becomes a concept above inquiry. If everything should be open to free inquiry, that should include the notion of "free speech" itself. But "free speech" could be evaluated in another way, in light of truth. However, if no things are true (if there is "only news"), then how can "free speech" itself be immune to this "truth"? A last-ditch position by Jennings and others is that journalism tries to be "fair," but the concept of "fairness" itself implies a standard of good (or values, or absolutes). In other words, news must be evaluated only against a standard of truth. Both Fitzhugh and Horace Greeley appreciated the implications of the power of the press in this regard.
16. Fitzhugh, *Cannibals All!*, pp. 33, 80-81; George Fitzhugh, "Mr. Bancroft's History and the 'Inner Light,'" *De Bow's Review* XXIX (1860): 609; Fitzhugh, *Sociology*, p. 245; Loewenberg, *Freedom's Despots*, pp. 71, 81; Andrews, *Science*, pp. 9, 21, 47; Richard Seaver and Austryn Wainhouse, eds., *The Marquis de Sade. The Complete Justine, Philosophy in the Bedroom, and Other Writings* (New York: Grove, 1965), pp. 318-319.
17. Andrews, *Science*, pp. 8, 35-36, 53, 89, 151.
18. *Ibid.*, pp. 37, 76-77, 109; *Sade, Bedroom*, pp. 335 n. 20, 336; George Fitzhugh, "The False and True Political Economy," *De Bow's Review* XXX (1861): 544-545.
19. Loewenberg, *Freedom's Despots*, p. 149; Emerson, "American Scholar," *The Complete Works of Ralph Waldo Emerson*, I:61, 67; Fitzhugh, *Cannibals All!*, pp. 53, 55, 57, 67; Emerson, "Self Reliance," *The Complete Works of Ralph Waldo Emerson*, II:45.
20. Loewenberg, *Freedom's Despots*, p. 30.
21. *Ibid.*, pp. 30-35.
22. Loewenberg, *American Idol*, p. 59; Emerson, "Self Reliance," *The Complete Works of Ralph Waldo Emerson*, II:33; Emerson, "American Scholar," *The Complete Works of*

Ralph Waldo Emerson, I:67; Emerson, "History," *The Complete Works of Ralph Waldo Emerson*, II:6; Park, quoted in Commager, *Theodore Parker*, p. 59. See also Stephen Shack, "Theodore Parker and the Sims Case: A Theoretical Study," (unpublished seminar paper, Arizona State University, 1978), in author's possession.

23. Harry Jaffa, "Inventing the Past: Garry Wills's Inventing America, and the Pathology of Ideological Scholarship," *The Conservative Historians' Forum* (May 1982): 1-4.

24. David Brion Davis, *The Problem of Slavery in the Age of Revolution* (Ithaca, N.Y.: Cornell University Press, 1975), pp. 415, 564; David Brion Davis, *The Problem of Slavery in Western Culture* (Ithaca, N.Y.: Cornell University Press, 1966), pp. 12, 31, 69. Also see Robert Loewenberg, "Freedom in the Context of American Historiography," *Center Journal* (Fall 1982): 71-99.

25. John Dewey, *Reconstruction in Philosophy* (Boston: Beacon Press, 1920), p. 177; Arnaud Leavelle and Thomas Cook, "George Fitzhugh and the Theory of American Conservatism," *Journal of Politics* VII (1945): 145-168; George Fitzhugh, "Antinomic Pathology," *The Southern Literary Messenger* 35 (1863): 417; Etienne Gilson, "Concerning Christian Philosophy: the Distinctiveness of the Philosophic Order," in Raymond Klibansky and H. J. Paton, eds., *Philosophy and History: Essays Presented to Ernst Cassirer* (New York: Harper & Row, 1963), I:68. A practical application of some of the ideas presented here appears in Larry Schweikart, "Banking in the American South, 1836-1865" (Ph.D. dissertation, University of California, Santa Barbara, 1983), especially the introduction and Chapters 5, 7, and 8.

HOSPERS' "ULTIMATE MORAL EQUALITY"

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In this paper I want, first of all, to point to a serious contradiction that poses itself in Hospers' moral reasoning in *Human Conduct* (Harcourt, Brace & World, Inc., New York 1961; unless otherwise stated, references will be to this work). This came contradiction, it might be added, is almost sure to pose itself in the thinking of almost anyone who attempts, on the one hand, to support the claims of moral responsibility as ordinarily understood and simultaneously investigate the sources of human action and conduct. Thus, the topic of this paper ought to be of interest to anyone engaged in moral speculations and not just to those engrossed in the particular philosophizing of John Hospers.

Secondly, I shall attempt to locate the mainsprings of this same contradiction and show how their seemingly irresistible force can be checked and even negated, thus allowing us without running into contradiction both to support the claims of moral responsibility as ordinarily understood and to investigate the sources of human action and conduct. So far as I am aware, neither in *Human Conduct* nor in his subsequent works has Hospers himself addressed any thought to the present undertaking. Therefore, if we are correct in the claims we have so far made and if our undertaking proves to be successful this paper might be viewed as a friendly attempt to make a minor but important repair in the foundations of Hospers' moral philosophy.

THE CONTRADICTION REFERRED TO ABOVE

In *Human Conduct* Hospers tells us that "folk ethic," which is a "childhood concept of morality, which strains at the gnat and swallows the camel," is a "grossly insufficient one" and "the sooner we get rid of it, the sooner we shall be in a position to evaluate impartially where our studies lie." (p. 19) Here, by his own statement of aims,

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Hospers announces (a) that moral duties exist and (b) that, implicitly at least, moral responsibility exists. For not only is it an obvious moral truth that (c) if duties exist then moral responsibility exists but Hospers' very exhortation "that we evaluate impartially where our duties lie" as much as says, being an exhortation to us, that we are in effect morally responsible to make such an impartial evaluation. Later on he says (d) that "as we daily use the term 'free'" (p. 505) we are free in at least some of our actions and conduct. But, again, it is an obvious moral truth that if we are free as "we daily use the term 'free'" then we are morally responsible. Hence, Hospers in *Human Conduct* grants on the very face of it that moral duties, moral responsibility, and freedom exist. But it is also an obvious moral truth that if either moral duties exist or moral responsibility exists or freedom exists then (e) a person, who is being punished for some crime that he has committed, can "deserve what he is getting." Indeed, it would contradict the very meaning of "moral duties," "moral responsibility," and "freedom" to affirm their existence and deny that a person who was being punished could ever deserve what he was getting. Hence, in all fairness I think we can say that at least up to page 505 of *Human Conduct* Hospers' *prima facie* agrees that a person who is being punished for a crime can deserve what he is getting.

Yet, subsequently, this proposition (e) is denied by Hospers. As a consequence of the notion of "ultimate moral equality" (p. 521, of which more later) Hospers maintains that a person who is being punished for some crime can never "deserve what he is getting." (p. 521) Presumably, in the last analysis, there can never be a "he deserves what he is getting"—not only with respect to punishment but reward also (of which, again, more later). Consequently, what Hospers calls and advocates as "ultimate moral equality" stands in direct contradiction to other moral claims that he makes or is committed to in *Human Conduct*, namely, (a), (b), (d), and (e). For short, we might say that moral responsibility is both affirmed and denied. And this is as both we and Hospers presumably understand the term "moral responsibility" in its daily use (see Hospers' explicit appeal to the "daily use" of the term "free" in (d)).

THE SOURCE OF THIS SERIOUS CONTRADICTION

Prima facie Hospers could eliminate the contradiction that we have been describing either by rejecting (a), (b), (c), and (d) or by rejecting not-(e). But to reject (a), (b), (c), and (d) would patently be to swallow a much larger camel than any folk-ethnic asks us to swallow. Might he not, then, simply reject not-(e)? Would not minimal moral sense itself approve of his (and our) doing so? It would, no doubt. But that exit is blocked by the notion of ultimate moral equality and the arguments which seem to require our acceptance of that notion.

Let me here reproduce Hospers' own philosophizing on the subject. I should hazard the guess that when we view this philosophizing of Hospers' we are as apt to be convinced by it as of the truth of not-(e) as Hospers' himself was. I quote from page 521:

Most of the time, of course, we do not view human conduct from the point of view of ultimate moral equality. We are too much involved in human affairs, not as spectators but as participants. And as participants we find it needful to encourage, blame, exhort, judge, advise, and condemn. But when we plumb deeply (as psychiatrists do) into the ultimate cases (what Hume called the "secret springs") of human conduct, we shall become aware that people are what they are and do what they do because of circumstances outside the control of their will and that although the will itself is a causal circumstance, it in turn was fashioned by external circumstances which made it what it is. When we view other people's frailties and shortcomings in the light of this perspective we shall no longer say, "He deserves what he's getting." Instead, we shall say, "There but for the grace of God (and a favorable environment) go I."

Seemingly unanswerable, this cluster of arguments says: My actions issue from the sort of person I am, the desires I have, the strengths and weaknesses I have; these I was born with or adopted according to the desires, etc. that I found myself endowed with or imposed by my environment. In short, myself, which is the source of my actions, duly considered, is not something that I am responsible ultimately for. Thus, whatever I may do can not really be held, blame-wise or praise-wise, for or against me. And what I have just said regarding myself holds for everyone else. Hence, what obtains in truth is an absolute moral equality: one person morally is no better or worse than another. Indeed, no one deserves either blame and punishment or (to consider the matter deeply) praise and reward. No one is responsible for what he is or does except in the blameless, praiseless way that a carburetor might be responsible for a car back-firing or not back-firing.

SOME RANDOM THOUGHTS ON THIS "MORAL EQUALITY"

It is a "perspective" and supporting considerations like those delineated above that have on the face of it shaped much contemporary legislation and judicial judgment having to do with crime and criminals, welfare, and so on. What Hospers calls the notion of absolute moral equality and the arguments seeming to require its acceptance are also, I should venture, at the bottom of the equalizing strains in the social theorizing of philosophers like John Rawls. But for all their seeming incontrovertibility, this perspective and its supporting considerations propose not only a state of human affairs

that is grossly impracticable but practically abhorrent. Even if we could relate to others in ways bare of praise and blame, reward and punishment, how empty and hateful life would become. Indeed, how morally repugnant! Think of looking indulgently on the rapist in his raping, as required by the dogma of absolute moral equality, or treating thieves and murderers no differently from their victims! Being a person of good sense it is no wonder that, having been led by seemingly irrefutable arguments to accept the monstrous dogma, Hospers in his subsequent writings nowhere (so far as I know) resurrects it, even though (so far as I know) he has nowhere refuted it or its supporting arguments. As long, however, as it and its supporting arguments remain unrefuted, persons of less good sense than Hospers are likely to be victimized by them, witness, again, the many contemporary legislators, jurists, and philosophers who in fact aver, "There but for the grace of God (and a favorable environment) go I." But obviously their refutation is easier said than done. In fact, as will be seen, unless certain methodological concessions are made their refutation is *ab initio* impossible. The philosophical enterprise by its very nature militates in favor of the arguments supporting the notion of absolute moral equality. In a manner of speaking, to get at the truth—for the truth is the existence of moral responsibility and not moral equality—we shall have to saw against a good deal of intrinsic philosophical grain.

The Refutation of the Claim of Absolute Moral Equality

The two mainsprings generating the superficial plausibility of absolute moral equality are certainly subtle, philosophical misapplications of the term "cause" and the view that also issues naturally from the philosophical enterprise that a person is either an object among other objects or, terminating objective analysis, a whole that is no greater than the sum of its parts. I shall commence our assault upon absolute moral equality with an assault upon the last two contentions, for only if successful here can we sustain our claim concerning philosophical misapplications of the term "cause."

Now philosophical, as aiming to establish hidden truth, takes as its task the arrival at conclusions on the basis of objective argument, and that is to say, argument which permits inter-subjective confirmation or disconfirmation because it appeals to common objects or supposed objects. When, therefore, as part of our philosophizing, we consider ourselves as a person we naturally do so in the posture of observational knowledge or the observation of an object or objects. Under this lens ourself appears as either one object among other objects or, in final analysis, a whole which resolves ontologically into and hence is no greater than the sum of its parts. For instance, when we turn observation inward upon ourselves we seem to find that ourself as person resolves into a whole consisting and reducing to such fancied psychological parts as desires, motives, understanding, will, and so

on. Thus, we have seen Hospers referring to the "will" as one of the action-responsible parts of the self. (p. 521) "...although the will itself is a causal circumstance, it in turn was fashioned by external circumstances which made it what it is".

As illustrated in the same place, the supposition that ourself is an object among other objects or a whole reducing to the sum of its parts commits us immediately to determinism. Our actions issue as effects from the causal interplay of external circumstances upon ourself or the causal interplay of its parts. Our only escape from determinism is then to introduce chance; for example, to claim that some of our parts (e.g., "our will") sometimes act or respond without cause. The question therefore becomes: which of these Hobbsonian alternatives are we to opt for?

To accept the determinist alternative is to suppose not only that ultimately there exists no moral difference between human beings but none between human beings and robots. In short, morality as ordinarily conceived has to be jettisoned. The valuation of aspiration, self-esteem, or whatever other aspects of being human we may cherish, has to be jettisoned also, for now a valuation is itself no more than the final effect in a blind causal chain. Our own most considered judgments have to be re-interpreted as mere end-effects of blind causal chains and any judgment concerning them but one more blind end-effect of blind causal chains. Thus, there eventuates a deterministic night in which all judgments are sightless. These conceptual and evaluational inroads of determinism naturally leave us aghast. But where to fly for refuge? When we seek refuge in indeterminism we find but injury added to insult. We have to forfeit all that we had to forfeit under the ministrations of determinism; but where determinism at least permitted some sort of predictability in human action, corresponding or seeming to correspond to the predictability that we actually find, indeterminism would seem to rob us of even that. If the parts of myself responsible for my now sitting at this desk sometimes operate by mere chance or without cause or if I do why should not my next action be to shout as if I were at a football game or jump out the window or something else just as irrelevant to my environment or contrary to my past behavior? Chance, after all, is just chance. But whether indeterminism is less acceptable than determinism or not—and, like Hospers, most philosophers have thought that it is—neither, it is clear, is a position that we can want to accept or even can, as a matter of expressing a considered judgment, self-consistently accept. Our refutation of absolute moral equality will, therefore, have to take us, among other things, safely between the Scylla of determinism and the Charybdis of indeterminism. But what other alternative is there?

As long as we remain in the observational posture that seems to belong inherently to the philosophical enterprise, the answer is "none." Certainly, however, not all knowing is observational knowing.

We know, for example, that we have a pain by *being* in pain, not by a process of observation (thus, by what we might call "knowledge by being"). We know and conceive the existence of force, not on the basis of observation, but through acting on things and being acted on by them (thus, by what we might call "knowledge by participation"). These avenues of knowledge do not confine knowledge to objects. Thus, strictly speaking, pain and force are not objects; indeed, cannot be intelligibly construed as objects; nor, for the matter, can *person* be. Therefore, these "knowledges" may possibly not commit us, as knowledge by observation does, to either determinism or indeterminism. Indeed, I should want to contend that it is through knowledge or knowing by *being* and knowing by *participation*, as substrates of knowledge by observation, that we all know, as we all do, that we and other persons are morally responsible beings, that we can have duties, but we are free, that we can deserve punishment, and so on. But because these avenues of knowledge cannot be objectified, being in this respect like the *notions* of Berkeley or what Wittgenstein in the *Tractatus* calls *showing* (as opposed to *saying*), one cannot provide theoretic structures of them, as one would have to in answer to such a question as to *how* they operate. And for the same reason, one cannot provide theoretic structures describing what otherwise and misleadingly we should call their "objects": pain, force, person, and so on.

For the purposes of philosophy this, of course, will not suffice. Thus, it hardly suffices as philosophy to simply assert, as one only can on the basis of either knowledge by being or knowledge by participation taken neat, "But we *are* morally responsible for our actions and everyone knows we are!" What we can do, though, is draw on partial analogies, somewhat in the manner of Bergson when trying to conceptualize *time*, and thus partially satisfy the philosophical commitment to objective knowledge. Furthermore, we are certainly entitled to connect these partial analogies with whatever truths knowledge by being and knowledge by participation vouchsafe us. Where, in my opinion, such connections are being drawn I shall insert in brackets a KB for *knowledge by being* and a KP for *knowledge by participation*. I shall not, however, attempt to justify these insertions. To do so would be the topic of another and much longer paper.

As correcting the analogy that knowledge by observation forces upon us, that the person or self is a whole which reduces to the sum of its parts, it will be essential to propose the counter-analogy that the person or self is a whole that is greater than the sum of its parts: greater in this way—not merely as something not reducible to its parts, but ontologically greater. In the tradition of the classical philosophers that is to say, *superior in substantial enduringness* and *superior in dependence relations*. It is the last property that will especially concern us.

What superiority in dependence relations comes to with respect to the self and its parts is that, the function of the latter being to serve the former, the actions of the parts conform to the actions of the self without causal interaction, just as the surface of the hand conforms to the movement of the hand without causal interaction. This seamless conformity obtains, of course, only where that natural harmony obtains which constitutes the person's being a whole that is ontologically greater than the parts which it includes. Thus, normally, when I walk down the street I am not causing the motions of my legs and their muscles, although they conform seamlessly with my walking, nor are the motions or muscles of my legs causing me to walk down the street, although, obviously, if I possessed no legs or muscles I would not be walking down the street. On the other hand, where for one reason or another I am not, with respect to my parts, an ontologically greater whole, efficient causality obtains logical space and can take place in either direction between my self and its parts. If my leg is paralyzed, for example, I may try with great exertion to effect a motion in it. Again, a tumor in my brain may cause me to jump up and down to my own intense astonishment. These exceptions, however, cannot be taken to be the rule. To posit the normal actions of the self and its parts as causes and effects is finally to relegate that very posit to the limbo of a blind effect and thus, as we noted before, render it void of any title to our assent.

When parts of the self or person become causally related to the self or person they fall outside the latter's wholeness and become a part of the external environment. It does not follow, however, that the external environment in general is causally related to the self or person. The spatially external environment in fact is a cause upon the self or person only in those unusual cases where it completely preempts the actions of the self. A breeze blowing in my face does not, as an efficient cause, cause me to stop walking, though it may influence my decision to stop walking. A tornado does, though, cause me to fly up into the air and whirl around. Decision here plays no role. It is also true that the external environment is constantly causing effects in my parts; for example, excitations in my retina, physiological variations of one sort or another, and so on. But while the productions of effects upon my parts by the external environment is normal, that does not mean that effects are thereby being caused upon my self or person. On the contrary, since no efficient causality obtains between the parts of a person and the person as an intact whole, the external environment normally has no causal effect upon my person and my actions. But if neither the environment nor my parts are normally causes upon my self as an intact whole it follows that the actions that I engage in are not things that issue from a self or person that I am because of what I was born with the way of parts or the environment in which I was born. I am not required, therefore, to assent to that deadly chant, "There but for the grace of God (and a favorable environment) go I." All that I am entitled to say that

I had no control over was the fact that I was born and that my parts were such and such and my environment was such and such. With respect to the person I am these data may be considered conditions or even influences but not efficient causes, except in those necessarily abnormal cases where they entirely preempt the actions and wholeness of the self. And certainly in our KB and KP understanding of things, these exceptions are acknowledged and morally taken into account.

So far, one might say, so good. But does not our analysis leave the self, *qua* an ontologically greater whole, a perfect blank (as it were) and how in terms of that perfect blank are we to charter a course between the Scylla of determinism and the Charybdis of indeterminism that yet allows for the sort of predictability that we in fact discover in both our own actions and the actions of others? Without departing from our analogy of the self's being a whole that is ontologically greater than its parts let us see how far we can proceed in surmounting this second Socratean wave.

Now for one thing a person is born with mental and physical capacities which have limits. He is born in a particular cultural and physical environment that also prescribes limits and impossibilities. Thus, typically we know to begin with many things that a person will not do because he cannot do them. In his own case, for instance, a child discovers that he cannot fly like Peter Pan after trying to. Having discovered this he will not, unless he goes stark mad, attempt to fly like Peter Pan. Here is one toe-hold upon predictability that both he and we now possess. These toe-holds based on intrinsic limits and impossibilities are legion.

Another sort that are legion are the habits and routines persons as such engaged in. These, except where in exceptional instances they entirely preempt the actions of the self, are not causes of what we do. Rather, it is more accurate, although not completely accurate, to say that we typically go along with our habits and routines. Indeed, it would be impossible for us not to. We should be paralyzed in our actions if we did not. Thus, our knowledge of our own and other persons' habits and routines provide a basis for predictability.

We also typically discover that doing certain things ends up in pains or pleasures for ourselves. Predictably we will avoid the one and seek the other. We possess this or that character—which is like a habit of doing certain things; we possess desires, ambitions, phobias, and so on: all of which provide bases both for ourselves and others for predicting what we will or will not do. At the same time, except in exceptional cases, none of these things are efficient causes with respect to our actions (KB and KP, and as above). A desire may nag us, for example. But even if it is given into—as the very expression “given into” indicates, that outcome is not the effect of a cause, nor the effect of anything, but the following out of a decision.

All that I have so far said is common knowledge that at least leaves unimpaired the claim that the relationship between the person taken as an ontologically greater-than-its-parts whole and those parts is not one of efficient causality and yet is one that allows predictability. Moreover, the sort of predictability allowed is clearly not that which pertains to efficient causality. For in each of the above cases the person can be completely unpredictable. He can and sometimes does do what he knows will bring pain to him; he can and sometimes does act counter to his character, desires, and ambitions, and so on. He may even try to do what he knows that he cannot do, nor in these cases can we always ascribe efficient causality or some other non-decisional basis. Thus, duty can lead (not cause) a person to try to do what he knows he cannot do: he has promised to be a certain place at a certain time; he knows he cannot be there at that time; nonetheless, he tries. He feels it is his duty to try and decides to. In spite of all these things being known, however, we want, as philosophers, an answer to the question, "If the self is the blank it is portrayed to be in our analogy of the whole and its parts, how can even this weak predictability of a person's actions be accounted for?" In other words, what theoretic structure can be advanced to explain it?

Let us, in the way of another partial analogy, relate the panoply of a person's desires, ambitions, character, conceived duties, habits, perceptions, and so on to the person as we might to the map a car-driver is using to the driver. On the map of the car-driver are marked routes, towns, distances, and so on. The driver is not caused by the markings on the map to take this road at a fork rather than that. Rather, using the map as a guide, he predictably chooses, his destination being so-and-so and the map distances such-and-such, to take this road at a fork rather than that. On the person-driver's map are marked in the person's desires, ambitions, and the rest of his parts making up the aforementioned panoply. Might we not, in partial explanation, they say that the person-driver chooses to pursue his desire rather than that, his ambition being so-and-so, with the case of the roads at a fork?

But are we not in this model of ours cheating conceptually in the following way. The person as a whole is our driver. The map he is using consists, content-wise, of such things as his desires, perceptions, ambitions, decisions, and so on. Using these as a guide our person-driver decides so-and-so or such-and-such, exactly like our car-driver. But as our car-driver possesses motives, desires, perceptions, and so on must not our person-driver, as he views *his* map, possess motives, desires, perceptions, and so on? But if he must, then our model's map is irrelevant and immaterial or else it involves us in a vicious infinite regress. Another person-driver and his map of parts will have to be constructed representing the desires, perceptions, and so on of the person-driver and for its person-driver a new map, and so on *ad infinitum*.

I shall grant so much: as long as we retain the perspective of observational knowledge, the criticism just leveled cannot be refuted. We said originally, however, that our car-driver model was only a partial analogy. And clearly it is no more than that. The car-driver and his map are, for one thing, spatially separate entities. A person as a whole and his parts are not spatially separate entities. And in many other ways the present model is clearly inadequate as a representation of ourself as a person or whole and our constituent parts. But this was true of even our analogy of a whole and its parts. According to our initial claims, all theoretic structures have to be inadequate and they have to be because they attempt to objectify what is not a mere object—the person.

But for that very reason we may justifiably refuse to fill the head, as it were, of our person-driver with a new set of desires, motives, perceptions, and so on, corresponding to what we fill the head of the car-driver with. We shall insist that the map being used by our person-driver contains as its features his very desires, motives, perceptions, feelings, and so on. Consequently, we shall not accede to the request to provide a new set of these desires, feelings, and so on. Nor does refusing this request leave our person-driver without desires, feelings, perceptions, and so on, and hence a perfect blank deciding on no grounds at all or purely at random, as in the case of indeterminism. There they are, there on the map. Thus, according to our present analogy, the person as a whole is both a blank (as it were) and not a blank.

This paradox or contradiction justly projects the inability of any object or objects to stand proxy for a subject or person. Nonetheless, our car-driver model does, I think, preserve the relationship obtaining between a person and his parts insofar as that relationship is neither deterministic nor indeterministic and yet provides the sort of predictability that pertains to human beings. And that was all that it was intended to do.

A final question, however, might be raised at this point, which needs answering. We have described human predictability as including unpredictability. A person may do the unpredictable. If he is free, though, to do the unpredictable what is to prevent him from doing at all times the unpredictable? Thus does not freedom, like indeterminism, leave human action simply unpredictable?

If a person were able in all things and at all times to be unpredictable in his actions, human freedom would no doubt have the unpalatable consequence described. Such unpredictability, however, would have to rest upon decisions to do what was not predictable. Otherwise, habit, character, and so on would ensure predictability. But deciding to do the unpredictable, when essayed, soon, like a great pain, proves unbearable and hence impossible.

Nonetheless, even should everything I have so far said be agreed to, certain misapplications of the term "cause" can still drive us back

into the hideous embrace of determinism or indeterminism and hence amorality. It is easy, in a philosophically careless reverie, to say, for instance, "I am the cause of my actions." If taken to mean anything more than that I am responsible for my actions—if taken at face value to mean that I am literally the cause of my actions and they an effect, this statement, in spite of its innocuous appearance, ineluctably commits one to determinism. For in construing myself as a causal agent with respect to my actions I construe myself as a causal agent with respect to my parts and that is to place myself formally on the same plane of power. Thus, if I can affect them causally they can affect me, as a person, causally. The next move is to say, of course, that they do and hence that I as a person am no more than a transmission link in causes and effects. I shall then want to intone that deadly chant, "There but for the grace of God (and a favorable environment) go I."

The most insidious misapplication of the term "cause," however, has its source, I would contend, in our ordinary speech and it is this source, I believe, that leads Hospers, quite against his will and good sense, to adopt determinism and hence the notion of absolute moral equality. I say, "against his will," because though Hospers wants to maintain that, as the only alternative to indeterminism, what we are and what we do must be held to have causes, he strives mightily to sustain the claim that we must distinguish between two kinds of causes: those that compel and those that do not. Thus, he says, concerning his decision to take a holiday in June instead of August: "Doubtless my decision was caused (would anyone wish to deny it?), else my long process of reflection would be pointless. But was it compelled?" And to the last question he delivers an emphatic "no." (p. 504; see also p. 505) Yet, in spite of this emphatic "no" he finally, as we have seen, abandons ship a few pages later (p. 521) and speaks of our conduct emanating from causes beyond our control, our will itself being "fashioned" by external circumstances. What has happened to lead Hospers first to ascribe causes to all of human conduct and next, after having tried to limit these causes to "non-compelling" ones finally to treat them as "compelling" ones?

In ordinary speech, when asked why we did something or why we made such-and-such a decision we typically say things like, "I decided such- and-such because when I considered so-and-so I realized that I should" or "The thought of his punishment made me change my mind" or "The look on his face caused me to drop the project." Since to be unable to present the above "because," "made mes," and "caused mes" is to convict one of acting or deciding out of mere senseless whim or randomness it is tempting, when addressing the same sort of query to oneself, as one is especially likely to do as a philosopher investigating one's self and one's actions, to give the same sort of answer; that is to say, a causal one. Thus, as a first step in one's "psychiatric-like" investigation, one wants to say that all one's actions and decisions are caused (thus Hospers'

“Doubtless my decision was caused would anyone wish to deny it?”). Nothing could seem plainer. Yet, as I shall now show, nothing could be more mistaken.

Hospers is quite correct in maintaining that there are two kinds of causes, compelling ones and non-compelling ones. In its primary sense, the term “cause” is used to designate grounds of explanation for the occurrence of changes and other happenings where these grounds are impartially accessible to intersubjective detection and apprehension (through a combination of knowledge by observation and knowledge by participation). Let us therefore call such grounds of explanation “public grounds.” Paradigmatically, public grounds are efficient causes or what Hospers describes as “compelling” causes.

Derivatively, the term “cause” (and its cognates) is also used to designate grounds of explanation for a person’s conduct and actions, where such grounds are accessible in the last resort only to the person whose conduct or actions are being explained; and to him, through a knowledge by being (as being in pain I know that I am in pain), they are immediately known. Let us therefore call such grounds of explanation “private grounds.” These private grounds are Hospers’ “non-compelling causes.” They consist of the sorts of items that we entered in upon the person-driver’s psychological map: pains, pleasures, perceptions, feelings, motives, conceived duties, and so on.

The matter is actually more complicated than I am depicting it. Any private ground, for instance, can become a public ground. It does so when it becomes a compelling cause. For our purposes, however, the distinction without its complications suffices. The point of it is that the citation of private grounds to oneself has no first person present tense role to play. I cannot inform myself of what I already know. The first person present tense citation of non-compelling causes is, therefore, logically restricted to the consumption of others. When I cite private “because,” “causes,” “made mes” to other persons I inform them of something they did not already know and in the last analysis could not know, namely, the private grounds of my decisions and those decisions themselves.

Since I cannot meaningfully cite to myself non-compelling causes in my own case, I draw a meaning-blank (as it were) when, as a philosopher, I attempt to. It only seems that I can and even must because, in the present philosophical enterprise, I am treating myself as simply another observational object (which, of course, I am not) or a person external to myself (which I am not).

As nature is said to abhor a vacuum, so, it would seem, does meaning. Since the word “cause” as meaning a non-compelling cause cannot meaningfully be applied to the items of my psychological map for my own consumption (and that in effect is what I am trying to do in the present philosophical enterprise) but “cause” as meaning a public ground or compelling cause can meaningfully be applied in

the present context (as I can meaningfully think to myself, "Can it be that a brain-tumor is causing these dizzy spells of mine?"), "compelling-cause" rushes in to fill the meaning-gap left by Hospers' self-application of "non-compelling cause." Thus, illusion begetting illusion, enter determinism and in its train, among other moral monstrosities, that most hideous of them all, "absolute moral equality."

In order to preserve both good sense and moral responsibility we need, first of all, to refuse to look inwardly upon ourselves as if carrying out some sort of empirical, psychiatric investigation into the parts comprising ourself. We are given grounds for this refusal by the realization that, closer to the truth, the person is a whole which is ontologically greater than the sum of its parts.

If, though, we succumb to the beckoning of philosophic temptation to provide theoretic explanations and hence objectify the self, as we do in speaking of it as an ontologically greater-than-its-parts whole, we must resolutely refuse to speak self-referringly of causes in the context of private grounds. If we do, the distinction between compelling and non-compelling causes, however, justified, will avail us nothing, just as it availed John Hospers nothing.

ON THE FOUNDATION OF NATURAL RIGHTS

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Can one provide a foundation for pre-legal, non-contractual rights? That is, are there any rights of the so-called natural variety and can their existence be demonstrated? The question is a particularly vexing one, for it involves the fact-value dichotomy, the alleged logical barrier to the derivation of normative principles. In this article I will argue that such a foundation can, indeed, be identified and explicated, and will attempt to provide a detailed account of what I consider to be the primary and more problematic aspect of that foundation and a somewhat schematic presentation of its secondary component.

I

Pre-legal, non-contractual rights are moral claims of a particular kind. They are non-conventionally derived claims, the sanction for which is the use of force. That is, they are claims for which the justificatory basis is neither in consent, authority, nor tradition, the status of which permits the exercise of physical coercion in order to exact compliance with their moral requirements. Because they imply coercive sanctions, rights constitute a unique class in the set of moral prescriptions. Consider the distinction between the moral injunction of a rights statement and that of other types of moral rules. I have a right to life which implies that I may forcibly oppose attempts to deprive me of it. Now consider the following moral prescription: "One ought to employ rational decision procedures whenever one considers some important matter affecting one's life." Hence, I ought to consider discursively not irrationally my choice of a career. That I *ought* to do so, however, does not imply that I must. It does not imply that I may be physically compelled to summon my powers of ratiocination and apply them to my vocation concerns. In contrast, my right to life implies not simply that others *ought* not to infringe it but, that

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others *must* not infringe it and may be forcibly prevented from doing so. Rights universally held, then, entail moral imperatives or duties for all moral agents, a more stringent category of moral rule than a simple prescriptive injunction like "one ought to be rational."

Being a constituent of that category of human discourse which prescribes behavior rather than simply describes the behavior of people, assertions of rights confront moral philosophers with the dilemmas attending the demonstration of all prescriptive principles. The principal dilemma is one long associated with the justification of normative statements: the dichotomy between facts and values. As this dichotomy has, since Hume, constituted the central impediment to advances in moral philosophy, it must be resolved by any political theory which aspires to the derivation of moral verities.

Given the formidable nature of this obstacle, much of my article will be devoted to devising its removal. To that end I will, first, set forth an account of the fact-value problem and suggest why it is that a variety of ingenious attempts to resolve it have failed. Next, I will propose a solution to the is-ought dichotomy which will hopefully establish the value of that upon which a major tradition in libertarian rights theory bases its political position. Finally, I will suggest how rights can be derived from that value. Before embarking upon this three-part project it will be useful to delineate the tradition within natural rights libertarian theory from which my own position emerges.

Libertarian theory maintains that each human being has exclusive rights to the use and disposition of both his physical person and those extrapersonal objects justly acquired by him. These rights confer a correlative duty of non-interference with their enjoyment upon all other individuals. The supposition underlying this conception of rights is that all individuals have property in themselves and by suitable means can acquire property in various external objects. These means generally consist in the appropriation of unowned objects by labor and the acquisition of owned objects by being voluntarily given title to them by their present owners. The problem for libertarian political theorists, then, has been to establish that human beings, indeed, have property in themselves and their justly acquired estates.

While a variety of arguments purporting to demonstrate the validity of the libertarian conception of rights have been historically proposed, two lines of paradigmatic argumentation can be discerned. The first, traceable in its nascent form to Locke,¹ has been resuscitated in non-theistic garb by Rothbard and Sadowsky² and appears to take as axiomatic the moral proposition "Each person has exclusive rights of ownership in himself." This, in turn, according to its proponents implies that objects modified by the efforts of one's person become by extension owned as well. If I own A (my person and its efforts) and use it to modify B (any extra personal object) which is unowned, the mixture of that which is owned with that which is not establishes, according to this argument, ownership rights in the latter.

There are difficulties that I find in this argument. First, it asserts rather than demonstrates that one ought to own one's person. But, perhaps, behind this assumption lies an unexpressed argument for it in the minds of its proponents. Perhaps they infer from the fact that human beings are able to volitionally control their bodies, that they morally have a right to exercise such control. And yet, from the mere fact that something does in fact regularly occur, volitional control of one's body for example, we cannot infer that it *ought* to occur. The regularity of earthquakes around the Pacific basin does not imply that they ought to take place. Furthermore, this sort of argument confuses political and metaphysical liberty. After all, the political right of bodily control is somewhat distinct from the metaphysical property of volitional control. For example, I may violate someone's political right of bodily control by assaulting them every time they attempt to use their physical person in a certain way. Yet I do not thereby impair their volitional capacity. That is, they are still able to unforcedly control their bodily movements through the exercise of their own mental faculties. Volitional and political freedom are in this way distinct. Hence, the implicit equation of the fact of volition with the prescription of political liberty in the above argument is erroneous.

There is a second difficulty which arises with respect to this "self-ownership" argument for libertarian rights and it has to do with the justification which this argument develops for the acquisition of rights in extrapersonal objects. Locke, who is the source of the "self-ownership" thesis maintains that by mixing one's labor with unowned resources one has "joined to it something that is his own" and thereby has made it his rightful property.³ Of this argument Robert Nozick has astutely commented:

Why does mixing one's labor with something make one the owner of it? Perhaps because one owns one's labor, and so one comes to own a previously unowned thing that becomes permeated with what one owns. Ownership seeps over into the rest. But why isn't mixing what I own with what I don't own a way of losing what I own rather than a way of gaining what I don't?⁴

The self-ownership argument, then, is defective both in its attempt to defend its initial principle, self-ownership, and in what is said to follow from that principle, rightful appropriation of that with which one has mixed one's labor.

However, there is another argument for rights attributable to Locke. It emerges as the major competitor to the "self-ownership" argument and has a good deal of *prima facie* plausibility. It is this argument that I shall attempt to strengthen and defend in this article. The moral principle upon which it rests is that for human beings life is a good. From this principle it follows that the means necessary for the realization of that good are themselves good. Self-ownership

and property acquisition and possession are two such means—hence, their instrumental goodness. These two instrumental goods are unusual in that they encumber all human beings with certain moral duties toward others. That is, each person has a duty toward his fellows to refrain from inhibiting their liberty generally, their acquisitive activities specifically, and their use of justly acquired objects. And this duty is derived from the legitimate claim of each person to what is required for life. Such a claim is appositely called a right in that it defines the moral boundaries of social intercourse for all human beings and so is legitimately claimed by each human being.

While the life argument was expounded from a theistic standpoint by Locke, its first systematic non-theistic statement (if we exclude Grotius) was presented by Herbert Spencer.

Animal life involves waste; waste must be met by repair; repair implies nutrition. Again, nutrition presupposes obtainment of food; food cannot be got without powers of prehension, and, usually, of locomotion; and that these powers may achieve their ends, there must be freedom to move about. If you shut up a mammal in a small place, or tie its limbs together, or take from it the food it has procured, you eventually, by persistence in one or other of these courses, cause its death. Passing a certain point, hindrance to the fulfillment of these requirements is fatal. And all this, which holds of the higher animals at large, of course holds of man.

If we adopt pessimism as a creed, and with it accept the implication that life in general being an evil should be put an end to, then there is no ethical warrant for these actions by which life is maintained: the whole question drops. But if we adopt either the optimist view or the meliorist view—if we say that life on the whole yields more pleasure than pain; or that it is the way to become such that it will yield more pleasure than pain; then these actions by which life is maintained are justified, and there results a warrant for the freedom to perform them. Those who hold that life is valuable hold, by implication, that men ought not to be prevented from carrying on life-sustaining activities. In other words, if it is said to be 'right' that they should carry them on, then, by permutation, we get the assertion that they 'have a right' to carry them on. Clearly the conception of 'natural rights' originates in recognition of the truth that if life is justifiable there must be a justification for the performance of acts essential to its preservation; and therefore, a justification for those liberties and claims which make such acts possible.⁹

Now, this argument of Spencer's can be analytically divided into two components. The first component deals with the issue of life's goodness, its worthiness as an object of human action. The second component purportedly deduces the instrumental values, including rights, required to further life. The principal focus of this article will be on the former as it is epistemologically prior to and therefore is presupposed by the latter.

II

As stated by Spencer, the "life" demonstration of rights takes the form of a hypothetical argument. *If*, Spencer contends, we consider life to be an evil, *then* there is no moral sanction for the actions and institutions required for the support of life. *If*, on the other hand, life is good, *then* the necessary conditions for its maintenance are good as well:

Clearly the conception of 'natural rights' originates in recognition of the truth that if life is justifiable, there must be a justification for the performance of acts essential to its preservation; and therefore, a justification for those liberties and claims which make such acts possible.⁹

Is life "good" or "justifiable"? On this question Spencer was silent. Others have not been.

The most famous of contemporary libertarian proponents of the "life" position is the novelist Ayn Rand. Rand purports to have produced an argument demonstrating that man's life is not only a moral value, but the highest moral value, the one which establishes the positive or negative value of all else. Joining Rand in her conclusion, but differing with her as to its basis is philosopher Eric Mack. Both of their attempted proofs of the ethical primacy of life bear close scrutiny by those interested in the foundations of natural rights, as both attempt to claim for rights a categorical status not supported by Spencer's argument.

Now, the claim of Rand and Mack to have demonstrated the normative value of life (and thereby to have implicitly provided a foundation for rights) has consequences beyond the ones obvious for political philosophy. In putatively providing such a demonstration, both purport to have resolved the dilemma posed for moral philosophy by David Hume. Hume, in a famous passage from his *Treatise of Human Nature*, alludes to the logical impediment to any possible deduction of moral principles from non-moral, i.e., factual statements.

In every system of morality, which I have hitherto met with, I have always remark'd, that the author proceeds for some time in the ordinary way of reasoning, and establishes the being of a God, or makes observations concerning human affairs; when of a sudden I am surpriz'd to find, that instead of the usual copulations of propositions, is, and is not, I meet with no proposition that is not connected with an *ought*, or an *ought not*. This change is imperceptible but is, however, of the last consequence. For as this *ought* our *ought not*, expresses some new relation or affirmation, 'tis necessary that it shou'd be observ'd and explain'd; and at the same time that a reason should be given, for what seems altogether inconceivable, how this new relation can be a deduction from others, which are entirely different from it. But as

authors do not commonly use this precaution, I shall presume to recommend it to the readers; and am persuaded, that this small attention would subvert all the vulgar systems of morality, and let us see, that the distinction of vice and virtue is not founded merely on the relations of objects, nor is perceiv'd by reason.⁷

As conventionally understood, this passage asserts the impossibility of deducing a moral conclusion from non-moral premises. It suggests that a conclusion which states "what ought to be the case" cannot be deduced from a premise which merely states "what is the case," as the former substitutes for the copula "is," wholly different connective phrase, "ought to be," one not contained in the premise. But this is to violate a basic canon of logic which does not permit (with trivial exceptions) sentential elements to appear in a conclusion, that were not contained in the premises of an argument. Thus, from the premises "All human beings aspire to be happy" we cannot infer the conclusion "All human beings ought to aspire to be happy" without adding another premise to the effect that "All human beings ought to aspire to those things that they aspire to be." Without this additional premise there is no logical warrant for the transition from what men do in fact desire to what they ought to desire. But, such an additional normative premise is itself unproven, and, if we are to agree with Hume, cannot be deduced without the support of some further normative principle of greater generality. This further normative principle, then, would require demonstration, and so on to infinity. Hume's dilemma, then, apparently constitutes a significant obstacle to the possibility of acquiring moral certitude on any matter. Without its resolution the possibility of providing demonstrable foundations for human rights is nugatory. If Rand and/or Mack have succeeded in deducing from non-normative premises that life is the highest moral value for human beings they will have dispelled Hume's charge that moral philosophy cannot rest upon factual foundations. Furthermore, their conclusion can be conjoined to Spencer's deduction of the necessary conditions of life in order to yield, possibly, rights of a libertarian kind. The importance, then, to natural rights theory of establishing the moral primacy of human life cannot be overstated. It remains for us to consider the two arguments which purport to have done so.

Mack's argument⁸ is made in behalf of the following normative proposition:

The moral good with respect to each human being, is the successful performance, and the results of the successful performance of those actions that sustain his existence as a living thing.⁹

The argument consists of six parts which can be represented by the following conclusions:

- 1) Certain things or processes have natural functions.
- 2) The natural function of valuation in living entities is to preserve the life of the entity.
- 3) Hence, the process of valuation functions well if it succeeds in sustaining the life of the entity.
- 4) Valuation functioning well is good with respect to any entity, and so, life sustaining valuation is good with respect to any living entity.
- 5) If, the standard of valuation is *chosen* by a given entity then the resulting good or evil is a moral good or evil.
- 6) For man, the moral good, then, is valuation leading to the preservation of his life.

The implication of (6), then, is that every human being ought to guide his or her goal-directed actions by the standard, "that which is conducive to the preservation of a human." And so, Mack has produced an argument which moves from non-moral premises to moral conclusions. Is this argument a sound one?

There are two junctures at which the argument can be challenged. First, there is Mack's contention that some things have natural functions and that valuation is among the phenomena that has them. We will deal with this contention last. Second, there is the assertion that *if* valuation, V, has some objective function, F, and if valuation must be performed voluntarily, *then*, individuals ought to choose to use V in order to fulfill F. We will examine this second position closely as it represents the pivotal moment in the argument, the point at which an "is" becomes an "ought."

Now, on what grounds does Mack argue that if valuation has an objective function that function ought to be performed? He reasons as follows:

Th. IV. Goal-directed actions are performed well if they satisfy the requirement for, the need of, acting successfully in order to remain a living thing. The standard for goal-directed actions is the satisfaction of this need.

Th. V. The satisfaction of this need is good with respect to the acting organism. That is, the result of valuation functioning well with respect to any living entity is simply that which is good for that entity. This is obvious by the very meaning of the concept *valuation functioning well*.

Th. VI. Performing successfully the actions that sustain its life is that which is good with respect to any given organism.¹⁰

The crucial sentences in this segment of the argument are those which appear in Theorem V, for it is in this passage that Mack lays the foundation for his later normative claim that one *ought* to use valuation according to its natural function. That foundation consists in the assertion that the "satisfaction of this need is *good*" (emphasis

added) and this "is obvious by the very meaning of the concept valuation functioning well."¹¹ The argument, then, is that (1) if one must choose one's valuation, and (2) if one ought to choose the good, and (3) if the good is valuation performing its natural function (i.e., sustaining life), then (4) one ought to employ valuation so as to sustain life. But, if the good is that (for a volitional being) which one ought to choose, then the equation of "valuation functioning well or valuation performing its natural function" with "the good or that which one ought to choose" is a question begging one. For Mack argues that a volitional being ought to employ valuation's natural function because it is good, which is simply to say that a volitional being ought to employ valuation's natural function because he ought to employ the valuation's natural function, an obvious tautology.

Contrary to Mack's claims, it is not "obvious" that for any entity valuation functioning well *means* "that which is good for that entity."¹² That is, it is not obvious that because F is a natural function of process P, that P ought to be used to perform F. The latter normative prescription only follows from its factual antecedent if the former is combined with the moral assertion "one ought to employ any process, P, so as to enable it to perform its natural function, F." This unstated moral premise is necessary if Mack's argument is to be a valid one. But, of course, its explicit addition to the argument requires that its truth must be established first if it is to provide support for Mack's conclusion. Mack, then, has *not* devised a sound argument to support the moral goodness of life.

The other weakness of Mack's argument consists in his claim that there are manifest natural functions for some phenomena and that valuation is one of those phenomena which has such a function. Natural functions, according to Mack, can be

...determined by the requirement which accounts for the existence of that thing. The requirement accounts for the existence of something when the existence of that thing is *necessary* (emphasis added) to the satisfaction of the requirement.¹³

Now, to say that X is necessary for Y is simply to say that if Y is realized, then X *must* have been present for Y's realization. Hence, the presence of Y entails X. It is important to keep this in mind because Mack next goes on to argue that:

Prop. II With respect to each living thing, it is the fact that remaining in existence as a living thing (not merely as a collection of dead cells) requires the successful completion of numerous processes that explains the existence of valuation.¹⁴

But is valuation, "the process of pursuing and maintaining goals," a *necessary* condition of life? Does the presence of vegetable life imply the capacity to evaluate various potential ends by vegetation? Obviously

not. In fact, while it is difficult scientifically to identify precisely those constituents and processes that are the *sine qua non* of life, it is clear that a capacity to evaluate goals is not among them, otherwise such a capacity would be present in all forms of life. Hence, a natural life preserving function or goal for valuation cannot be established on Mack's criteria. And so, Mack is unsuccessful both in establishing that there are natural ends of choice making and in demonstrating that men ought to pursue them.

The novelist-philosopher whose ethics provided the inspiration for Mack's efforts in moral philosophy is Ayn Rand. Her ethical philosophy was developed prior to Mack's, but her argument for it lacks the clarity which distinguishes its successor.

Rand's ethics¹⁵ is an attempt to demonstrate that survival as a rational being is the highest moral value for persons and, therefore, that all other values ought to be instrumental to its achievement. Specifically she contends that for each human being his own life ought to be the goal of his actions, and that the means to be used in pursuit of that goal should be determined by the standard of "that which is required for the existence of man qua man, i.e., qua rational animal." As reason is the unique instrument available to human beings providing them with a productive capacity far greater than that of lower order animal species, rational productive action is the principal mode of conduct that ought to be employed by human beings in the pursuit of survival. Rational productive action requires rights to freedom and property, which are the political elements of Rand's libertarianism. Rand alleges that the argument that she makes for these normative conclusions bridges the chasm between facts and values. The order and statement of the steps in this argument are not without ambiguity and, therefore, we will propose two versions of Rand's demonstration, both of which seem faithful to her explication.

Both versions share the same starting point. Rand poses the question "What are *values*? Why does man need them?"¹⁶ A value, for Rand, is merely the purpose or goal of an action. Values metaphysically presuppose an entity capable of initiating action. An entity whose movements are strictly the result of mechanistic causation could not have values. Furthermore, goals are possible only where alternatives exist. By alternatives Rand seems to mean states of affairs which can make a difference to or affect an entity. Further, "there is only one fundamental alternative in the universe: existence or non-existence—and it pertains to a single class of entities: to living organisms."¹⁷ The meaning of "fundamental," here, is unclear and gives rise to the ambiguities in and varying interpretations of Rand's argument.

What Rand seems to be saying is that without life an entity could not be affected in any ultimate sense by the outcome of any of its actions. That is, for an immortal entity all outcomes will affect it equally since none of them will threaten its existence. Without

alternative outcomes to choose between, the entity could not be *motivated* to formulate goals, as their consequences are for him indistinguishable. As life, then, is a necessary condition of valuation, *i.e.*, the formulation and ordering of goals, it ought to be the object of all goal seeking activity for mortal entities. There is a passage which seems to support this interpretation:

...try to imagine an immortal indestructible robot, an entity which moves and acts, but which cannot be affected by anything, which cannot be damaged, injured or destroyed. Such an entity would not be able to have any values; it would have nothing to gain or lose; it could not regard anything as *for* or *against* it, as serving or threatening its welfare, as fulfilling or frustrating its interests. It could have no interests and no goals.¹⁸

Rand seems to be arguing here that life or mortality is a necessary condition of preference, that conscious entities *could not* form a preference for one state of affairs over another if they were not mortal. This apparently is because, if nothing could affect its own future existence an entity would necessarily be apathetic to all future states of affairs. But, this seems to imply that for mortal, volitional beings all preferences are formulated only in terms of their bearing upon one's moral existence, because it is only *possible* to formulate preferences with respect to such a standard. But this, as a factual statement, seems false—skydivers, racing car drivers, soldiers of fortune being a few notable exceptions. And if it were true, it would imply the presence of a mysterious psychological propensity towards survival that would render moral prescriptions superfluous. This, then, is the first version of Rand's argument, the version which inspired Mack. An abbreviated statement of it is as follows:

- 1) The mental activity of valuation (the formulation and ordering of preferences) is impossible without moral existence.
- 2) Therefore, one's own mortal existence ought to be the criterion of all valuation.

Clearly, the premise of this argument does not entail its conclusion. To make this a valid argument, the premise "All human beings ought to engage in valuation" would have to be added.

However, another interpretation of Rand's argument is supported by a passage from her essay, "Causality and Duty."

Life or death is man's only fundamental alternative. To live is his basic act of choice. If he chooses to live, a rational ethics will tell him what principles of action are required to implement his choice. If he does not choose to live, nature will take its course. Reality confronts man with a great many "musts," but all of them are conditional: "You must, if—" and the "if" stands for man's choice: "—if you want to

achieve a certain goal." You must eat if you want to survive. You must work, if you want to eat. You must think, if you want to work. You must look at reality if you want to think—if you want to know what to do—if you want to know what goals to choose—if you want to know how to achieve them.¹⁹

This "conditional" version of Rand's argument has a good deal to recommend it. In the first place, it seems to neatly circumvent Hume's critique. It is of the form, X is instrumentally necessary for the instantiation of Y, therefore if one wants Y then one ought to seek (in order to be consistent), X. The moral prescription to seek X is not categorical, but is conditioned upon one's desire for Y. Therefore, the importation of an additional unproven moral premise is unnecessary. If this is, indeed, Rand's argument, and several commentators have so interpreted her,²⁰ it represents a clearly distinguishable second demonstration of the life position. Moreover, it seems to have an advantage in addition to its effectiveness in answering Hume. While its prescription is not categorically and, therefore, apparently not universal in scope it is nearly so. That is, while it does not unconditionally instruct all human beings, whatever their situation and aspirations, to sustain life—the vast majority of persons would apparently be so instructed. The death aspiring minority will be continually eliminated and, so, will not intrude greatly upon the universal applicability of the doctrine.

To the extent that Rand embraces a conditional variant of her argument, it seems to be of the following mode: if one desires life, then one ought to seek its necessary conditions (not, if one has any desires then one ought to seek life and its necessary conditions). But, if this is Rand's argument, then its limited applicability does seem to entail problems. For, its moral mandate applies only to those who choose life. And if human rights are said to derive from the moral goodness of life, then only those human beings who desire life have rights, a conclusion that Rand and all libertarians would find abhorrent. For if rights are not universal, then may not the death aspiring minority have their property seized, their freedom of speech abridged, and their lives terminated by others. If rights derive from an aspiration for life, then the absence of the later would seem to signal the corresponding evanescence of the former.

While one crucial problem in the history of attempted justifications of ethical propositions, the is-ought problem, seems to have been dispelled by this conditional variant of Rand's argument, others emerge. The solution would seem to lie in the possibility of uncovering a conditional argument that possesses the universality of its categorical counterparts, so that life, while a conditional or instrumental moral value, is one that can be said to hold for all living human beings.

III

How is one to find such a conditional argument? Perhaps by first investigating what properties it must have in order to imply the requisite universality. If the consequent of such an argument is to be "...then, one ought to value life" and is to apply without exception to all human beings, the condition "if one _____s X," must be one which is fulfilled by all human beings. Clearly, then, some invariant element in human activity must be sought which requires life as its necessary means. Moreover, this element must be such that its presence would entail the normative consequent "...one ought to value life." For there are myriad constraints in the human condition the presence of which require life, but do not imply the moral obligation of sustaining life. All living human beings are capable of conceptualization, but this invariant aspect of being human does not imply that all persons *ought* to seek the necessary ontological conditions of rationality, unless conditions of those characteristics which are universal to the species." Clearly, the missing element in the antecedent portion of the argument must not require an additional moral premise of this kind. What sort of element will not require such a premise? One that is teleological in nature.

If the element in the antecedent portion of the argument is teleological, that is, if it is a purpose, or goal for which life is a necessary requirement, then if one seeks that goal it logically follows that one ought to seek its supportive conditions as well. Moreover, if the injunction to sustain life is to apply universally to human beings, the goal mentioned must be universally sought. While it is unlikely that there is any goal universally shared by humanity, goal-seeking itself is a universal element in the human condition and one that obviously requires the existence of the mortal agent. And this leads us to the following argument:

- 1) All values, i.e., goals presuppose the existence of a valuer which, therefore, is a necessary condition of having goals.
- 2) Human existence is a mortal, i.e., conditional state, which requires the successful completion of certain actions, the realization of certain goals.
- 3) If any human being chooses any goal, he also ought to value life as its most general necessary condition and to attempt by the requisite actions to sustain it.

If we can agree that all human action is necessarily teleological, then the universal possession of goals by human beings is thereby demonstrated. And this implies a certain universal prescription for the attainment of goals. That prescription will include the initiation and continuation of activity that will maintain the life of the actor.

IV

An argument which moves from the acknowledged existence of some state of affairs, X, to the conditions necessary for its existence, C, in order to demonstrate the previously unrecognized presence of such conditions is called a transcendental argument. If the universal instantiation of goal-seeking in human activity can be demonstrated, then, it may be possible by transcendental argumentation to define the conditions of goal-seeking which must be realized by all human beings if they are to fulfill their goals.

The construction of such an argument has been the project of the contemporary moral and political philosopher, Alan Gewirth.²¹ He has contended that all action, i.e., goal-seeking activity, has certain necessary conditions which enable that activity to take place. These he characterizes as freedom and basic well-being. As each agent implicitly views his goals positively (as good, in a non-moral sense), he must in logical consistency view the necessary conditions of their realization positively as well. This involves his claiming them as rights, according to Gewirth. But, the basis of this claim is one that applies equally to all other agents and, therefore, every agent must recognize the legitimacy of this claim when it is made by others. Hence, Gewirth concludes from certain facts concerning the generic properties of human action, that all actors have rights. Thus, he argues that all agents ought to refrain from interfering with the freedom and basic well-being of others.

There are obvious flaws in Gewirth's argument which we will identify. However, its significance as an advancement in ethical justification lies in its attempt to find in intrinsic qualities of all human action a basis for normative political principles. Unfortunately, because Gewirth does not argue for these principles conditionally his demonstration is acutely damaged. That is, he does *not* argue that *if* human beings have ends that they desire, *then* they ought to attempt to secure the conditions of their realization. Rather, he argues that human beings have goals which they implicitly *view* positively. This must lead them to the implicit *endorsement* of the fulfillment of the instrumental conditions of these goals and to *claim* these conditions as rights. Now, Gewirth does not provide a cogent reason for labeling these instrumental conditions of goal-seeking, rights, but in any case has only demonstrated that they must be *claimed* as rights not that they *are* rights. Had he argued that all human beings ought to seek the conditions of action because they universally seek the fruits of action, he could have successfully contended that he had derived a normative statement of universal scope. However, his attempted transformation of a perceived good (or positive attitude) into a categorical good is subject to the Humean criticism that a conditional argument could have averted.

V

Having examined the various flawed efforts to derive a universal normative statement which will provide a ground for rights, and having identified the sources of those failures, we will try to reconstruct a valid argument (or at least the schema of such an argument) for natural rights. First of all, if it is acknowledged that human action, as distinguished from reflexive movement is goal-seeking in nature, it must also be granted that for any particular goal to be realized its conditions must be antecedently or contemporaneously realized. Now, these conditions will vary depending upon the substance of the particular goal sought. What will not vary, however, are those conditions which are required for the realization of *any* goal, whatever its content. For these are linked to those invariant properties of action which distinguish it from reflexive movement. Among these conditions are ones which can be obtained through action and others which cannot. The existence of space and time, for example, are necessary conditions of human action but not ones that may be realized through human action. Moreover, among those conditions which may be obtained through action are ones which presuppose the realization of other, more fundamental ones by the actor. Of all of those conditions necessary to the realization of human ends which may be obtained through human activity, the most fundamental is the existence of the actor. For although the realization of goals requires opportunity, location, mobility, etc., all of these, as well as countless others, require the existence of the actor in order to be realized. This condition is ontologically prior to the rest. A capacity for movement, for example, presupposes the existence of the mobile entity.

The existence of a human being is conditional, its life requires the successful completion of certain actions. Those include the consumption of food, medicine, and other sources of bodily nutrition and repair. But, the consumption of these, first, requires the production of the same. Such production consists in the transformation of non-human resources into consumable ones. But, this requires the opportunity to mix one's labor with such resources and to keep what one has transformed, both its consumable and capital portions. Other human beings can prevent one from completing these processes by murder, injury, coercive interference or theft. Therefore, these processes must be shielded from such obstruction.

All of these requirements of mortal existence are realizable through human action, and therefore, if it is the case that mortal existence ought to be sought by all human beings, it follows that these requirements of mortal existence ought to be sought as well. Should mortal existence be universally sought by human beings?

If human beings generally do things by preference, if their actions or even their inactions are necessarily selected by them so that either type is the outcome of some intention, then the following conditional argument must be true:

1. If human beings maintain preferences of any kind, then they ought to value life, as the fundamental, necessary instantiatable means to preference realization.
2. All human beings intermittently prefer some states of affairs to others.
3. Therefore, all human beings ought to value life.

This argument has the obvious advantage of neatly avoiding the invalid derivation of categorical moral principles from categorical statements of fact. For it maintains only that *if* one has preferences, then one ought to seek its requirements. And yet, the conditionality of the argument does not imply ethical relativism, as preference is an unavoidable feature of being a volitional entity, so that its conditions ought to be sought by *all* such entities, i.e., all human beings.

Does this argument establish the truth of its conclusion? It is clearly a valid argument. IF its soundness is to be called into question, then one must challenge the truth of either its major or minor premise. One can imagine the truth of the major premise being impugned in the following way. The major premise, it could be argued, has not itself been established. In order to establish it, one would have to deduce it from the following normative premise. "If one prefers something, then one ought to want (or value) its necessary conditions." Without such a further premise the consequent of the major premise of our argument—"one ought to value life..."—cannot be inferred from its status as a necessary condition of preference realization and from the intermittent presence of preferences. Moreover, it could be argued, such a further premise itself stands in need of demonstration as it is (a) not self-evident, and (b) a conditional statement the factual antecedent of which is said to imply its normative consequent, a manifest violation of Hume's injunction against the deduction of an "ought" from an "is."

To this criticism I make the following reply. The further premise "If one prefers something, then one ought to want (or value) its necessary conditions" is a self-evident rule of inference. To say one can consistently be indifferent or antagonistic toward the necessary means of satisfying one's preferences, is to say that one has either abandoned that preference or simply has no grasp of the meaning of the infinitive "to prefer." To hold a preference requires that *in order to be consistent one ought to prefer the necessary means of realizing it as well*. Hence, an obvious rule of consistency in any logic of preference is that "he who prefers X, ought to want Y if Y is a necessary condition of obtaining X and he is aware of this fact."²² Such a rule is a self-evident axiom of such a logic, I would maintain.

Now, preferences have necessary conditions which vary with their specific contents. However, any preference, whatever its contents, requires the existence of the agent in order to be realized. The agent's existence, therefore, is the necessary condition of all other necessary

conditions of realizing specific preferences. Its value is conditional only upon the presence of preference itself. If any entity has preferences, at any time, the instrumental value of its life follows. Therefore, the *value* of life follows from the *fact* of preference alone. It is a value not implied by some further value. In this way Hume's dilemma is resolved.

Thus, the logic of preference enables us to bridge the is-ought gap. The fact that preference as such implies the instrumental value of life allows the deduction of a universally applicable "ought." As all potential moral agents have preferences, as the ability to prefer is that which essentially characterizes a moral agent, life must be a value for every such agent, a universal value. For mortal beings, it is the fundamental necessary condition of preference realization, the necessary condition of all other necessary conditions. Hence, it is the value which imparts an ordinal ranking to all others by implication.

Now, it may be alleged that there is at least one type of preference that fails to presuppose life as a necessary condition for its realization. A suicidal aspiration, for example, might seem to contravene the life-as-a-necessary-condition-of-preference-realization thesis. But, obviously an agent *must* exist in order to realize his death. Hence, the death aspirant provides no counterexample to my thesis.

The factual premise that "All human beings intermittently prefer some states of affairs to others" I take to be a generally non-controversial proposition, logical and psychological behaviorists to the contrary notwithstanding. And so, given the validity of the argument and the truth of its premises, we can assert that its conclusion "All human beings ought to value life" is true.

The remaining question, then, is can rights of a libertarian kind be deduced from the universal value of life? I would contend that they can. However, a detailed argument which would deduce them from life's universal value is beyond the scope of an article, as it would require at least the space of a monograph for its explication. Therefore, we can only sketch the shape and substance of such an argument.

Life requires nutrition and repair for its maintenance. But these must be discovered and produced by human intelligence and action. Hence, the production of life's requirements implies the necessity of self-ownership, i.e., the ability to use one's physical capacities to engage in productive activities. Further, it presupposes both the opportunity to transform natural resources into such requirements and the ability to use and dispose of what is transformed. Thus, the production of life's requirements by human effort implies that the following conditions be realized.

- 1) The absolute control of each person over his physical self.

- 2) The ability to employ one's physical efforts in the transformation of unowned natural resources.
- 3) The ability to use and dispose of the transformed resources.

Since these conditions are all instrumental to the ultimate good, life, their realization is itself a good. But it is a good of a special kind, in that it is a good which can only be fulfilled by every individual with the forbearance of others. Such a good, then, represents a claim which each individual holds against other, a claim whose realization is necessary for the achievement of all other goods. Such a social claim, the moral legitimacy of which derives from its being a means to the attainment of any other good, we call a right. And the three conditions enumerated above summarize the rights of human beings. As they are logically derived from certain propositions about human nature, they may be appositely called *natural* rights.

It may be asked whether the moral claims embodied in these natural rights apply only to human beings, for it can be argued that animals are mortal, that higher species of animal life can form preferences and exhibit volitional behavior. I would deny that animal life as we currently understand it involves such rights, for the conceptual powers of even highest orders of animal life are clearly not acute enough to grasp arguments and, thereby, to learn of and be motivated by the justificatory grounds for moral injunction.²⁵

A major objection to rights which are derivative from the value of life, is that perhaps they are only exercisable when they are life-serving, interferences with them being sanctionable if their exercise is either (1) life threatening or (2) irrelevant to the support of life. This argument goes as follows. If rights are social conditions necessary for the extension of life, then their exercise may be restricted to those practices which contribute to the furtherance of life.

This criticism fails for two reasons. The first is epistemological. The argument assumes omniscience. That is, it supposes that someone is always able to know the motivation and ultimate consequences of any action, so that its outcome can be foreseen and prevented if it is not a life supporting one. But, there is not an omniscient human observer (indeed all human beings are potentially fallible), and therefore we can never be certain of either the intention behind or all of the outcomes of human actions. Hence, on epistemological grounds alone there is no justification for the circumscription of rights. Furthermore, *who* could do the circumscribing. Anyone permitted to do so has either, thereby, acquired a limited title to what has not been transferred to him voluntarily, and so becomes an exception to the rules of legitimate appropriation, implying his unproven moral superiority. Or the individual is using what does not belong to him, and so is a criminal interloper.

A possible objection to the doctrine that rights are universally held is the contention that if rights are justified by the egoistic injunction

to preserve one's life, this injunction may also be used to justify the violation of rights when, for example, the best means available to someone, A, to survive, at some point in time, includes the violation of someone else's, B's, alleged rights. That is, the same injunction justifies two opposed actions on the part of A and B. More concretely, if one has cancer and someone else has a drug enabling its cure with which he will not voluntarily part, why not, on good survivalist principle, steal it from him? That is, if X's self-interest requires the denial of Y's rights, in what sense can the ethics of self-interest be said to provide a basis for the politics of equal rights? The answer is clear: if Y's justly acquired property may be stolen from him, then X's may be stolen from him, thereby undermining the necessary conditions of the latter's own self-interest. Furthermore, the doctrine of survivalist egoism enjoins each to seek to survive, it does not enjoin success in that search, for such an injunction is not universally realizable. If, the world's greatest medical researcher, John Smith, contracts a disease for which there is no known cure, and the criterion of goodness is *successful* life preservation rather than *attempted* life preservation, his failure to produce a cure in time to save his own life would entail a moral deficiency on his part, a manifestly absurd imputation. Hence, each is counseled to seek the necessary conditions of survival and each has a right to the necessary social conditions rendering that search possible. Moreover, the attribution of the same rights to all human beings is made on the same basis for each human being: that each has preference; that each is mortal; that each must produce the means of supporting that mortality; that each must have access to the material of production; and, that these require a social condition of unhindered appropriation and property use. If each of these requirements is true of some entity in virtue of its characteristics, then it applies to all entities possessing like characteristics.²⁴ To deny it to entities sharing those characteristics would constitute a logical inconsistency.

CONCLUSION

Rights, then, are demonstrable moral requirements of human nature. Man's mortality, his ability to seek ends and rank them, and his capacity to form concepts and grasp arguments, combine to imply the value of his life and the consequent value of its necessary conditions. Among these conditions are the claims of forbearance which each person holds against his fellows, claims whose realization is necessary to enable him to secure the means of human survival. Such morally legitimate claims are the natural rights of humankind.

1. John Locke, *The Second Treatise of Government* (Indianapolis: Bobbs-Merrill, 1952), V, p.27.

2. Murray Rothbard, "Justice and Property Rights," *Property in a Humane Economy*, ed. Samuel L. Blumenfeld (LaSalle, Ill.: Open Court, 1974), pp. 106-108; and James A. Sadowsky, "Private Property and Collective Ownership," *ibid.*, p. 86.
3. Locke, *The Second Treatise*.
4. Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), pp. 174-175.
5. Herbert Spencer, "The Great Political Superstition," *The Main Versus the State*, ed. Donald McCrae (Baltimore: Penguin, 1969), pp. 170-171.
6. *Ibid.*, 171.
7. David Hume, *A Treatise of Human Nature* (Oxford, 1888), pp. 269-270.
8. Eric Mack, "How to Derive Ethical Egoism," *The Personalist*, 52 (Autumn, 1971), pp. 735-743.
9. *Ibid.*, p. 737.
10. *Ibid.*, p. 763.
11. *Ibid.*
12. *Ibid.*
13. *Ibid.*
14. *Ibid.*
15. Ayn Rand, "The Objectivist Ethics," *The Virtue of Selfishness* (New York: The New American Library, 1964).
16. *Ibid.*
17. *Ibid.*
18. *Ibid.*, p. 16.
19. Ayn Rand, "Causality and Duty," *The Objectivist*, 9 (July 1970), p. 4.
20. Douglas Den Uyl and Douglas Rasmussen, "Nozick on The Randian Argument," *The Personalist*, 59 (April 1978), p. 191; and George H. Smith, "Human Rights and Human Liberties," *Reason*, 8 (November 1976), p. 46.
21. Alan Gewirth, *Reason and Morality* (Chicago: University of Chicago Press, 1978).
22. Max Black has made an analogous point in "The Gap Between 'Is' and 'Should'," *The Is-Ought Question*, ed. W. D. Hudson (New York: St. Martin's Press, 1969), pp. 106-107.
23. Ellen Paul, "The Time-Frame Theory of Political Legitimacy," *The Personalist*, 60 (April 1979), pp. 151-161.
24. Gewirth, *Reason and Morality*.

LIBERTY, EQUALITY, AND NEUTRALITY

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There is in fact, no recognized principle by which the propriety or impropriety of government interference is customarily tested. People decide according to their personal preferences. Some, whenever they see any good to be done, or evil to be remedied, would willingly instigate the government to undertake the business, while others prefer to bear almost any amount of social evil rather than add one to the departments of human interests amenable to governmental control.

John Stuart Mill, *On Liberty*

Governments are by definition institutions which seek to influence human behavior by violent means. The fundamental problem for political philosophy is to ascertain the moral constraints on attempts to influence how people act by means of violence or political thought in the tradition of classical liberalism is the conviction that there are stringent moral restrictions on the state's use of force to determine how people behave. Libertarians believe that virtually every existing political regime is morally illegitimate in virtue of violating moral constraints on the use of violent force. In contrast, most political theorists today regard the libertarian attempt to revive the traditional liberal call for more stringent constraints on the uses of state power as naive, benighted, and reactionary.

I believe that an adequate case for libertarianism cannot be made until the moral foundations on which it relies are brought into view and closely examined. My belief is that when the implicit principles on which libertarianism differs from the current consensus in favor of welfare statism are made explicit it will become clear that it is not libertarians, but proponents of the interventionist welfare state

of modern "liberalism," who have abandoned the moral ideals of classical liberalism.

My aim in this article is dialectical, insofar as I attempt to show that those who accept the equalitarian ideals of classical liberalism are rationally committed to accepting libertarian constraints on government. I do not address the question of whether the liberal belief in human moral equality can itself be rationally grounded. The argument I construct here will make no headway against those who systematically reject the tenets of liberalism. But there are, I believe, many people who still accept the liberal conception of equality even though they have rejected many of the other liberal ideals, such as radically limited government, open markets, and the rejection of paternalism and nationalism. It is to these individuals that the argument here is primarily directed.

OBLIGATIONS TO HELP WITHOUT RIGHTS TO BE HELPED

In order to examine the fundamental differences between libertarianism and its critics I will focus upon a range of cases on which libertarians and supporters of the interventionist state typically disagree. These are cases in which what someone does is morally wrong and harmful to others, but it does not involve violence. Among these are cases in which one person ought to come to the aid of another but refuses to do so. These include situations which are typically used to illustrate the duty to rescue, e.g. Jones sees that Marvin is drowning, knows he can rescue him at no significant cost or risk to himself, but refuses to do so, thereby harming Marvin by inaction. Other cases of this kind involve less immediate need, e.g. Marvin belongs to a group of people identifiable as desperately poor, while Jones is in a very high income group. Jones' group could easily provide economic assistance to people like Marvin, but they refuse to do so, choosing instead to let them suffer rather than forego needless luxuries. Another kind of case is that in which an employer refuses to pay his workers a decent wage, leaving them no alternative but to work for subsistence wages, even though he could easily provide them with a reasonable wage. (In what follows I will speak of duties and obligations interchangeably, in either case meaning simply what someone strictly ought to do, all things considered.)

With cases of these kinds in mind, the advocate of the interventionist state contends that it is at least sometimes morally permissible to force people, by the threat of physical violence and, if that doesn't work, by violence itself, to do what they ought to do for others and to refrain from doing to others what they ought not to do to them, even though they have not themselves engaged in violence. Libertarians typically insist that resorting to violence is morally wrong in these cases. This conflict has far-reaching consequences for political theory, for from these two viewpoints arise conflicting conceptions

of the moral propriety of the state's taking a positive role in the promotion of welfare, both by regulating the marketplace and by taxing some people for the benefit of others.

Why shouldn't the state enforce moral duties to help others and to refrain from harming them? Some libertarians say that it is morally wrong for governments to resort to force against those who fail to do what they ought to do for others because, strictly speaking, there are no duties or obligations involved in these cases. On this view, it may be morally good for Jones to help Marvin when Marvin is in serious trouble, and it may be good for the employer to cease from exploitation and increase his employee's salaries, but these are not instances of an obligation to help. Eric Mack states that an individual's "obligation is fulfilled in *not* coercing others. He needn't perform any positive act in order to fulfill his natural obligations."¹ Robert Nozick holds that whatever does not properly concern those who wield the guns of the state is a matter of compassion, not obligation. For example, Nozick's discussion of property acquisition suggests that someone who invents something needed to save another person's life is under no moral obligation to make it available to him.² Another libertarian writer tells us that "a person does not have a duty to help other"³ and that such compassionate acts "exceed the requirements of morality."⁴ Helping those who are in great need or danger, and treating people in a humane manner, are supererogatory, matters not of duty or obligation but of charity. As such, these actions are seen as laudable, but not violently enforceable.

The problem with this account is that it is contrary to what many individuals regard as their most secure moral intuitions. If Jones walks by, letting Marvin drown simply because he doesn't care, or because he doesn't want to get wet, we do not regard him as merely having failed to do something praiseworthy. We would treat him as having done something evil, something he had a strict obligation not to do.⁵ We would not respond by withholding praise; we would think it appropriate to punish him in some way (e.g. ridicule or ostracism), even if we would not resort to violence in dealing with him. Of course it is conceivable that a powerful ethical theory will convince us our intuitions in this case are mistaken, and that Jones has no duty to come to Marvin's aid, but as I hope to show below, there is no need, so far as libertarianism is concerned, to abandon these intuitions.

Not every instance in which someone could come to the aid of someone else is a case of strict moral duty; there is a distinction between the obligatory and the supererogatory. There is reasonable disagreement about what risks and costs one is morally required to bear for the sake of others, about the relevance of a victim's responsibility for the plight he is in, and about the significance of the proximity to us of the individuals who need help. But there are perfectly clear cases in which we would have a moral duty to help

someone. The blanket denial of these obligations is too high a price to pay in defense of the libertarian conception of how the state's use of force ought to be restricted.

Fortunately, the defense of the libertarian view does not require the denial of these obligations. What leads some libertarians to this untenable position is an assumption which they share with their critics. This is the widely-held assumption that if someone has a moral duty to do something for the benefit of another person, then the prospective beneficiary possesses a corresponding right against him.⁶ So if Jones has a strict moral duty to help Marvin, then it is assumed that Marvin has a moral right against Jones for Jones to help him. On this assumption, if Jones lets Marvin drown, or go hungry, etc., then he is violating Marvin's right. Since it is the role of the state to defend people from those who would violate their rights, it follows that the state is morally justified in intervening against Jones, forcing him to do what he ought to do for Marvin. In order to avoid this conclusion, libertarians often refuse to acknowledge that Jones has a duty in this situation. For if they did, they would be unable to avoid a proliferation of welfare rights and the burgeoning government apparatus needed to secure them.

If we are to successfully defend libertarian constraints on government we must reject the assumption that if there are obligations to help there are always corresponding rights to be helped. Libertarians must find a way to deny that there are rights of this sort without denying that there are obligations to help.⁷ Although it is widely accepted that obligations entail rights there are, I believe, no good reasons to accept this assumption.

Consider what we mean when we say that someone has a moral right to be helped. If Marvin has a right against Jones for Jones to perform some act *x* for the benefit of Marvin, then it may be morally permissible for Marvin (or someone acting on his behalf, such as a government official) to use violence to make Jones do *x*. The concept of a right involves the idea of a permission to do something, viz. resorting to violence in one's dealings with human beings, which is generally prohibited. In rejecting the claim that there are rights to be helped the libertarian can simply reject the supposition that the fact that Jones ought to do *x* is sufficient justification for making an exception to the general prohibition on violence as a method of influencing human behavior.

Some thinkers have held that strict obligations or duties do imply rights and that this is somehow derivable from the concept of obligation itself. According to John Stuart Mill, who made what is probably the clearest statement of this view:

it is part of the notion of duty in every one of its forms that a person may rightfully be compelled to fulfill it. Duty is a thing to be *exacted*

from a person, as one exacts a debt. Unless we think that it may be exacted from him, we do not call it a duty.⁹

On this account, to assert that someone ought, in the strictest sense, to do something is to imply that he is properly subject to violent sanction if they are needed to make him do it. Mill believes that it is often inconvenient, inexpedient, or dangerous to place the power to enforce duties in the hands of the state, but he makes it plain that he has no objection in principle to the violent enforcement of moral obligations.⁹

Mill argues that the concept of moral obligation arose out of legal obligation, and it is apparent that he supposes moral duties to be in many respects similar to legal obligations.¹⁰ The analogy between what one ought, legally, to do and what one ought, morally, to do would provide a basis for the violent enforcement of moral duties. For the concept of a legal obligation does involve the concept of its enforcement. If a government promulgates a law, thereby creating a legal obligation for certain people to do certain things, it commits itself to forcing them to do those things. So, if Jones has a legal obligation to do something for the benefit of Marvin, then typically Marvin has a legal right against him, and this implies that it may be legally permissible for the government to force Jones to help Marvin. If moral duties were perfectly analogous to legal duties, it would be morally permissible to violently force people to do what they ought, morally, to do.

However, there is no reason to believe that moral duties so closely resemble legal duties. Those who, with Mill, hold that the concept of duty or obligation, whether it is legal or moral, includes the concept of its enforceability, often point to the fact that if someone ought, in the strictest sense, to perform some action, they are saying that his doing it is not optional but mandatory. Alan Gewirth is a contemporary moral theorist who appeals to the mandatoriness of strict moral obligations to support the conclusion that it is right to enforce them. He tells us that there are many morally valuable actions which can be characterized as preferable, praiseworthy, fitting, gracious, generous, or supererogatory but "they are at the option of the agent" rather than "strictly required of him."¹¹ As Gewirth sees it, to assert that it would be morally wrong to force Jones to help Marvin is to implicitly admit that he doesn't *have to do* it, that this act is not really strictly obligatory for him.

But the inference from the mandatoriness of moral obligations to their enforceability does not hold. There is no inconsistency in holding that, all things considered, Jones ought to come to Marvin's aid, and also that it would be morally wrong to force Jones to do so. Suppose that our threatening to shoot Jones is, in the circumstances, a necessary condition of his deciding to help Marvin, but we inform him that although he ought to help Marvin we will not resort to

this as a means of getting him to do so. We would be letting him know that, in one sense, his doing what he ought to do is optional, insofar as we are refraining from doing something that would force him to do it. In this situation there is a sense in which his doing what he ought to do is not mandatory, not required of him; it is up to him whether or not he will help Marvin. But it does not follow from this that Jones' doing it is optional or not mandatory from the point of view of morality.

Consider an imaginary situation drawn from another normative realm. Suppose there is some proposition that Jones ought to believe, in the sense that he has very strong evidence for it and no evidence against it; we may say that he ought, in a logical or epistemic sense, to believe it. Suppose that for some reason Jones refuses to accept this proposition, but we have available some sort of mind control technique, by means of which we can make Jones believe what he ought to believe. If we choose not to employ this method we do not thereby commit ourselves to the view that his believing it is optional for him from an epistemic point of view. In general, we do not give up a claim about the strength of someone's reasons for doing something when we refuse to do something that is likely to influence him to do it. The appeal to the concept of obligation does not support the contention that if someone has an obligation to do something then it is morally permissible to force him to do it, even when this is the only way he can be influenced to do it. The meaning of the moral "ought" does not force the libertarian to choose between accepting welfare statism and denying that sometimes we ought, in the strictest possible sense, come to the aid of those who need help.

Some libertarians may suspect that even if positive obligations do not have rights corresponding to them admitting the existence of moral duties to help people amounts to accepting the doctrine that "all men must live for the good of others," i.e., the tragically popular moral code of altruism, according to which it is the epitome of virtue to sacrifice oneself for others, especially if the "others" in question happen to be one's people or nation. A main theme of Robert Nozick's *Anarchy, State, and Utopia* is that individuals are not morally required to sacrifice themselves for others; we are only obligated to refrain from using others as means to achieve our ends.¹² And Eric Mack tells us that to admit positive moral duties is to admit that some people belong to "the domain of objects which simply exist as possible material for the use of this or that contingently determined individual," as though they were resources for others to exploit.¹³

But it is not obvious that acknowledging moral duties to aid others commits us to an ideology of self sacrifice once we have allowed for the possibility of duties without corresponding rights. There is a great difference between saying that Jones ought to inconvenience himself, or bear some small cost, in order to save Marvin's life, and saying he ought to make Marvin's welfare his primary aim in life,

placing Marvin's overall good ahead of his own. The oath with which Ayn Rand concludes John Galt's speech in *Atlas Shrugged*: "I swear—by my life and by my love of it—that I will never live for the sake of another man, nor ask another man to live for mine"¹⁴ is not compromised by the admission that there are duties to rescue, as long as we recognize that these duties have strict (even if imprecise) limits imposed by the fact that each human being lives, and is responsible for, his own life.

In accepting that there are moral constraints on what people do to one another libertarians already accept that morality sometimes demands that we make sacrifices, bear costs, and allow ourselves to be inconvenienced. Someone may, for example, discover that a project to which he is deeply committed and to which he has devoted considerable resources cannot be completed without violating someone's rights. Jones discovers that, because of a surveying error, his almost-completed factory stands on land belonging to Marvin, who exercises his property right and insists that it be torn down. There is nothing in the notion of a moral duty demanding sacrifices for the sake of others that renders it "altruistic" in any interesting way. Libertarians who base their views in ethical egoism will tell us that one does not do one's moral duty for the sake of others, but ultimately for one's own sake. But acting in accord with a positive duty can be for one's own sake in the sense required here, just as one can develop such virtues as magnanimity and generosity for one's own sake.

We can agree that people ought to help those who are in need while disagreeing as to whether it would be right to do what is, in the circumstances, necessary to make them provide that help. On the assumption that governments are institutions that claim and exercise monopolies on violent sanctions against evildoers, a disagreement as to whether an action morally warrants a violent sanction constitutes a disagreement about the moral restrictions on the activities of the state. Libertarians are not usually pacifists, but accept that we are sometimes morally justified in resorting to violence against individuals who engage in morally wrong activities. But libertarians believe that there are relatively few kinds of action that morally warrant the violent sanctions that governments monopolize. Supporters of the interventionist welfare state believe that it is permissible for governments to impose violent sanctions against a wide variety of malefactors, including many of those who would otherwise fail to do what they ought to do for other people. The disagreement between libertarians and their opponents is fundamentally a disagreement about how violent, and thus government, sanctions can be morally justified.¹⁵

NEUTRALITY

How can disagreements about whether wrongful actions justify violent sanctions be resolved? There are, I believe, two basic approaches to the justification of violent sanctions. First, the attempt to justify the use of violence against someone can take a *consequentialist* form. On accounts of this kind, whether it is permissible for the state to force someone to perform some act that he strictly ought to do for the benefit of some other person depends on the consequences of the state's forcing him to do it. For example, whether it is morally right for the state to use violence to force Jones to save Marvin's life depends on a comparison of the effects of letting him refrain from helping Marvin and the consequences of forcing him to perform the rescue.

The badness of consequences can be compared on any number of bases, but the most reasonable consequentialist theory of sanctions is one which weighs consequences in terms of harm inflicted on persons. A harm-oriented consequentialist view of sanctions has an initial plausibility, for consequentialist considerations of this sort cannot reasonably be ignored in an inquiry into moral constraints on what governments do when they intervene against wrongdoers. It would be wrong to bomb a building full of people when this is the only way to prevent the murder of one of its inhabitants. In this case the harm the sanction imposes is too great relative to the harm it prevents for it to be morally acceptable. Even in cases in which only the prospective wrongdoer would be harmed by the sanction, it may be morally wrong to do what is necessary to prevent the wrongdoing. For example, if Marvin owes Jones \$100 and the only way we can make him pay his debt is by torturing him, it would be morally wrong to impose the necessary sanction.

However, there are many situations in which the imposition of a violent sanction minimizes harm, and it may seem to be morally justifiable for the state to force some people to do what they ought to do for others on the ground that the harm it does them is outweighed by the harm it prevents.¹⁶

The second basic approach to the moral justification of violent sanctions is one we can think of as *categorical*. On a categorical account of sanctions whether it is permissible for the state to use its violent methods to make someone do something he ought to do depends not only on the relative consequences of his being forced to do it and of his being allowed to refrain from doing it, but also on the type of action being prevented or permitted. Operating on a categorical theory of sanctions a government prohibits acts of certain kinds, threatening violence against anyone who engages in them under certain conditions. An action's belonging to a prohibited category is a necessary condition of its being subject to state intervention.

I believe that a categorical approach to sanctions is the implicit foundation of libertarian constraints on the activities of governments. Libertarians typically hold that an act's being violent is a necessary condition of its being properly subject to the state's interdiction. For libertarians, the harm that an act causes is not of primary importance in determining whether it is morally permissible for governments to intervene against it. Actions that involve neither violence nor the threat of violence are seen as exempt from state action, no matter how harmful they are. Actions that involve violence are *prima facie* subject to violent sanctions, even if they would have overall good consequences. On the libertarian view the state may intervene against those who engage in acts of violence but it may never intervene against those who merely do harmful things to themselves or others, either by commission or omission, even when those acts are things they ought, in the strictest sense, not to do.

Libertarianism's focus on violence, and its correlative lack of support for state intervention against a wide range of morally wrong harmful actions, makes it appear in the eyes of many a simplistic, primitive doctrine, held only by those who are oblivious of, or insensitive to, the harm that can be caused by means that do not involve violence, especially on the part of those in possession of economic or social power. In claiming that the state ought to limit itself to acting only against violence, the libertarian is insisting that it stand by and allow evil actions to be done, even if they are nonviolently coercive or inflict serious harm on the innocent. Given magnitude of the harm that governments (allegedly) can prevent merely by threatening to do violence to anyone who engages in certain kinds of morally wrong actions, many find it incomprehensible that any thoughtful person would insist that the state should be restricted to the interdiction of violence.

Nonetheless, there is at least one good reason to reject any consequentialist view of sanction. The consequentialist approach to justifying sanctions is incompatible with the traditional liberal idea of the state as neutral with respect to competing conceptions of the human good. If the state were to impose sanctions with a view to realizing a particular conception of the good it would clearly have deviated from moral neutrality. Those who accept that ideal of the good would regard the state as their ally, while those who have conflicting visions of the good would regard it as an enemy. Every attempt to justify sanctions on the basis of consequences requires abandonment of the liberal ideal of neutral government.

Although this is obvious when the state pursues perfectionist aims, it may not be obvious in other cases, such as when it aims at minimizing harm. But even the goal of minimizing harm requires that the state take sides with respect to the conceptions of the good held by its citizens. When a government considers intervening against someone, e.g. Jones, to force him to do what he has a duty to do for someone

else, e.g. Marvin, it must determine whether the harm it would thereby impose upon Jones is greater than, less than, or equivalent to the harm Jones would impose upon Marvin if he were allowed to refrain from doing what he ought to do. The harms in question must be commensurable, otherwise it would be impossible to rank them. The consequentialist approach to sanctions presupposes at least an ordinal scale on which the harms that are inflicted on one person can be compared to those inflicted on another.

As traditionally conceived a harm is an invasion of an interest. Therefore, a ranking of harms presupposes a ranking of interests in terms of their importance. In our example Jones has an interest in going about his business as he pleases, without being forced to help Marvin, while Marvin has an interest in staying alive and, in this situation, an interest in Jones rescuing him, even if he must be forced to do so. Most of us would have no difficulty in ascertaining which of the two harms is greater. We find it obvious that the state harms Jones less when it forces him to save Marvin's life than Jones harms Marvin when he refuses to rescue him and by inaction causes him to die.

Making a judgment as to whether one harm is as bad as another and indeed, whether something that is done to someone really is harmful, rather than merely something he dislikes, requires a view about what sorts of things really are in someone's interests. A conception of what can, and what cannot, be in a human being's interests presupposes an idea of what a person ought to want, irrespective of what he actually wants. In turn, a conception of what a human being ought to want is tantamount to a conception of what is good for him as a human being. A general notion of human interests amounts to a conception of the human good. Therefore, determining whether someone is harmed and, if so, whether he is harmed as much as someone else, presupposes at least an implicit vision of the good for man. Making comparative judgments about the harmfulness of actions is incompatible with adopting a position of neutrality toward competing conceptions of the good.

However, the state can exemplify neutrality only in its defense of the overall framework of liberal society. As noted above, consequentialist considerations cannot reasonably be ignored by agents of the state as they use violent methods to control the behavior of those who initiate violence. Given finite resources, a government may sometimes have to judge that a particular intervention is not worthwhile. In other situations, a judgment may have to be made as to which of two (or more) prohibited actions should be dealt with. In either sort of case the state must apply some conception of the good if it is to make a rational decision.

I suspect that it is the fact that governments cannot avoid making comparative judgments about violent acts that makes some sort of democratic procedure morally necessary. Ultimately, it is individuals

who devise and operate the mechanisms which defend and maintain the neutral framework, but it is not feasible for everyone in a society to become directly involved in the activities of government. Democratic forms allow all those who want to have a say in how the state acts in situations where some ideal of the good must be taken into account.

As private individuals we ought not to be neutral toward the various conceptions of the good. We ought to try to find out what sort of life is worth living and try to live it, and we ought to try to influence others to pursue the good, so long as our efforts remain within whatever limited morality imposes on the pursuit of the good. People have often found it worthwhile to create institutions to facilitate their attempt to realize the good as they conceive it. Governments came into existence as institutions dedicated to realizing the good by violent means. The particular conception of the good pursued depended on who had control of the state's coercive apparatus. Governments, by and large, have been mechanisms for realizing whatever vision of the good those in power thought worth realizing. Historically the officially proffered perfectionist, religious, or altruistic aims were not, of course, always those the state really promoted; often the state became a tool for achieving what the ruling elite saw as good for itself. But it was widely assumed that if someone knew the good and acquired the means to regiment other people in pursuit of it, then it was right for him to do so. If we are convinced that we possess the correct vision of the good for man, why should we hesitate to actualize it, even if doing so involves violent coercion? Why should the state be morally neutral when it can be such an effective means of actualizing the good? In what follows I argue that the liberal conception of *equality* requires that we refrain from using the state to realize the good.

EQUALITY

The idea that governments ought to be morally neutral is, I believe, the essence of liberalism as classically conceived. In contrast to the idea of the state as the consummate vehicle for organized attempts to realize the human good, liberalism gave up the idea of a substantive moral goal for governments and replaced it with the idea of the state as sustaining a neutral framework within which a multiplicity of responsible individuals peacefully (i.e. nonviolently) pursue their disparate conceptions of the good. Governments maintain the framework by using, or at least threatening to use, violence against those who resort to violence in the course of pursuing whatever ends they think worth pursuing.¹⁷ This is all the neutral state does; it assiduously avoids taking sides in favor of, or against, any particular conception of how human beings ought to live their lives. Anyone who advocates that governments impose violent sanctions in order to minimize harm at least implicitly rejects the classical liberal conception of the state as morally neutral.

The libertarian call for restricting the activities of governments to the interdiction of violence can be construed as an insistence that they maintain strict neutrality toward the various visions of the good individuals seek to realize. Libertarians believe that governments ought to intervene only against those who use violence as a method to influence human behavior. The libertarian state, taking a categorical, violence-prohibiting approach to sanctions, would allow some citizens to harm others, taking action only when someone initiates violence. A government acting in accord with libertarian constraints would be indifferent to the fact that it could minimize harm or maximize the good by forcing Jones to rescue Marvin, or by taxing people at Jones' income level and giving the proceeds to people at Marvin's level, or by demanding that Jones pay his workers a specified minimum wage. A government's adoption of a position of neutrality effectively keeps it from trying to make the world a better place. Neutrality ensures that all the state can do is try to keep peace. Realizing that this is what the concept of state neutrality involves, many have rejected the liberal idea of a neutral framework for the pursuit of the good as variously conceived and have returned to the concept of the state as taking an active role in minimizing harm and promoting goodness. Those who reject this central tenet of classical liberalism perceive libertarianism, which alone still insists that the state ought to restrict itself to keeping the peace, as a morally unacceptable doctrine.

What can be said in defense of the ideal of government neutrality? I do not assume that it is possible to derive libertarian constraints on the state from some fundamental moral principle, or from some apodictic nonmoral foundation, thereby demonstrating that acceptance of the moral neutrality of government is rationally inescapable. The most I hope to show is that the libertarian conception of the moral limits on violent sanctions comports with other beliefs to which we are deeply attached. I will conclude by suggesting that a government's neutrality with respect to its citizen's varied attempts to realize the good is alone compatible with the moral equality of human beings.

Libertarians are not famous for their support of egalitarian causes, so it may seem incongruous to assert that libertarianism is at bottom an egalitarian outlook, but I believe it is.¹⁸ Indeed, the strongest consideration in favor of restricting governments to keeping the peace by categorically prohibiting violence lies in the fact that this alone is compatible with accepting the fundamental equality of all human persons as moral agents. Classical liberalism sprang from the realization that each person is, and ought to be treated as, someone who forms a conception of the human good and seeks to realize it. Most people at most times have, of course, rejected the liberal idea of equality, evading the facts about individual human agency and acting as though individuals are resources for the pursuit of what is *really* good, whether or not they agree that it is worth realizing.

Advocacy of government neutrality should not be confused with skepticism or relativism with respect to the good life for human beings. Since the most important defenses of libertarianism are grounded in Aristotelian versions of ethical egoism, it is worth noting that nothing I have said here implies that the ontological and epistemological foundations of ethical egoism are mistaken: perhaps there is a human nature which we can know and from which we can draw conclusions about how human beings ought to live their lives.¹⁹ The fact that there is, at least at a high level of generality, a human good does not imply that it is morally permissible for those who know it to employ whatever means happen to be necessary to bring others into conformity with it. The necessary actions, e.g., violent ones, might themselves be inconsistent with realizing the human good in one's own life. Further, means that at first seem necessary to make others do what they ought to do might, on reflection, turn out to undermine the moral qualities they are intended to inculcate.²⁰

It should be noted that a morally neutral government's categorical prohibition on violence does not presuppose that the concept of violence is morally neutral, as though it were a purely descriptive concept with no normative significance. The argument with which we are concerned here is between libertarians and others who share the assumption that violence requires moral justification, but disagree about how to justify violent sanctions against violence. We should also note that the concept of violence suffers from the imprecision characteristic of any concept applicable to the complexities of human life. There may be reasonable disagreement about whether a particular action actually involves violence.²¹ But neither the fact that the concept of violence has a normative aspect, nor the fact that it is imprecise, undermines my dialectical attempt to justify libertarian constraints on the state by appeal to the connection between a categorical prohibition on violence and liberal equality. For, in the context of political argument, generally there is a background of shared descriptive and normative judgement. For example, libertarians and their opponents disagree on whether the police may break down Marvin's door and confiscate his cocaine, but they agree that the state's action in this situation is violent and that it requires moral justification.

Although most nonlibertarians pay lip service to the idea of equality it is, on reflection, evident that those who reject libertarian constraints on the state are in a crucial sense inegalitarian. Once the inegalitarianism of contemporary welfare statism is made explicit it may become more difficult to accept. Imagine one person saying to another: "You and I are equals, insofar as we are both moral agents, beings capable of forming conception of the good and acting on them. So far as I am concerned you may form whatever idea of the good you can and strive to realize it...but of course I will not permit you to do anything wrong!" It is obvious that the speaker does not grasp the idea of the equality of human persons as moral

agents. His mistake is analogous to that of someone who asserts that all persons have an equal right to free speech but then tells others they may form and express whatever opinions they please, just so long as they utter no falsehoods. This individual does not really accept, or does not really understand, the equal right to speak. Similarly, those who believe that the state should prevent people from doing evil or that it should try to make them do good, cannot at the same time accept that all human beings are equal pursuers of the good.

When we admit that each human being is equally entitled to seek the good as he conceives it we do not thereby commit ourselves to letting others do exactly as they please. One person's vision of the good may involve serious harm to other people, either because he sees this as inherently worthwhile, or because he sees this as a means to ends he considers worthwhile. Accepting moral equality among persons does not commit us to passivity in the face of evil or harmful actions. Admitting equality commits us to *reciprocity* in our dealings with one another. In general, we ought to try to avoid harming other people although, given a plurality of conflicting conceptions of the good, this is not always possible. Moral equality requires that we restrict ourselves to aiming at harm only to those who harm others. Each person, conceiving of himself as one among equals, may mete out harm to those who harm, judging by his own rights whether the harm he imposes upon them is morally appropriate. For example, it is generally wrong to insult people, but the fact that someone has insulted you may give you dispensation to insult him. It is generally wrong to aim at driving a competitor out of business, but if someone is driving you out of business it may then be permissible to respond in kind. It is generally wrong to coerce people, to force them to do things they have no good reason to do, but a coercive response to coercion may be morally proper.²²

Libertarianism is best understood as the application of the moral principle of reciprocity to matters of violence, which is to say, to the realm of politics. It is, in general, morally wrong to introduce violence into our relations with other human beings, but when others initiate violence we may be morally justified in responding violently. I express my moral equality with other people by refusing to claim special justification for the use of violent means against them. Anyone who insists that it is permissible for him to initiate violence against others while maintaining that others are not justified in employing violence against him implicitly denies that other persons are his equals as moral agents. He claims privileged access to a category of often decisive methods for influencing human action. Any government which violently intervenes against those who are not themselves engaged in violence implicitly denies the moral equality of those against whom it acts.

Although Jones ought, in the strictest sense, to help Marvin, rather than harming him by callous inaction, it would be wrong to violently

intervene against him, since this would be a departure from reciprocity, and thus from treating him as our moral equal. Although the employer may have a moral duty to stop exploiting his workers and provide them with a reasonable rate of pay, he is not engaged in a violent activity and thus ought not to be subjected to the state's violent intervention, for he is our equal *qua* moral agent, even though as a person he may well be morally worse than others. This does not imply that it would be morally impermissible to harm wrongdoers who are nonviolently harming others. On occasion it may be permissible or even obligatory to try to force nonviolent evildoers to do what they ought to do or to desist from what they ought not to do, as long as we do not resort to violence. Libertarian constraints on violence should not be confused with moral constraints on harming people or with moral constraints on coercion in general, although these constraints have a common root in the principle of reciprocity, and thus in the liberal idea of human moral equality.

CONCLUSION

What initially appears as a rather limited and arbitrary libertarian focus on violence on examination reappears as a recognition of the moral requirement that governments adopt a position of strict neutrality with respect to the conceptions of the good their citizens embrace. The state can, and often does, threaten individuals with violence and thereby keep them from pursuing the ends that seem best to them in order to channel their efforts toward the realization of ends that others—kings, dictators, bureaucrats, democratically elected legislators—consider worthwhile. When it does this it fails to accord human beings equal status as moral agents. Despite appearances, libertarianism alone today stands for the traditional liberal ideal of a community of moral equals.

1. Eric Mack, "In Defense of 'Unbridled' Freedom of Contract" in *The Main Debate*, ed. Tibor R. Machan (New York: Random House, 1987), p. 429.
2. Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), p. 248, n. 48.
3. Lansing Pollock, *The Freedom Principle* (Buffalo: Prometheus, 1981), p. 103.
4. *Ibid.*
5. The fact that two acts are equally contrary to duty does not entail that they are equally bad; some violations of duty are worse than others.
6. Joel Feinberg, in *Social Philosophy* (Englewood Cliffs, NJ: Prentice-Hall, 1973) notes that there are duties that lack corresponding rights, but the cases he has in mind are not relevant to the crucial range of cases considered in this article. He cites examples of "imperfect" moral duties, such as duties of charity, which "require us to contribute to one or another of a large number of eligible recipients, no one of whom can claim our contribution as his right." (63) My point in this article is that there can be 'perfect' duties to definite individuals who have no corresponding rights against those who have the duties. A point essentially similar to the one I make here is implied by a question John Hospers poses in *Human Conduct* (New York: Harcourt Brace

Jovanovich, 2nd ed., 1982) where he asks "Perhaps you ought to help out a friend in need; but does the friend have a claim on you? Can she claim your help as her right?" (245) Hospers' use of a friend in this example might suggest that there is a duty only because of a special relationship to the individual in need. My view is that one could have a duty to help a total stranger. A clearer exception to the consensus in favor of the inference from general, perfect duties to rights is Judith Jarvis Thomson. See her "A Defense of Abortion," reprinted in *Rights, Restitution, and Risk*, ed. William Parent (Cambridge: Harvard University Press, 1986), p. 13.

7. "Special" rights and duties arising out of an individual's voluntary actions are not at issue here. Libertarians accept that if, e.g., someone has borrowed money from Jones and thus has acquired a duty to pay it back to him, then Jones has a corresponding right to be paid back.

8. John Stuart Mill, *Utilitarianism* (Indianapolis: Bobbs-Merrill, 1957), p. 60.

9. *Ibid.*, pp. 60-62.

10. *Ibid.*, pp. 59-60.

11. Alan Gewirth, *Reason and Morality* (Chicago: University of Chicago Press, 1978), pp. 67, 228.

12. Nozick, *op. cit.*, pp. 33-35.

13. Mack, *op. cit.*, p. 428.

14. Ayn Rand, *Atlas Shrugged* (New York: Random House, 1957), p. 1069.

15. Libertarians as well as defenders of the interventionist state are guilty of obscuring this central issue. Libertarians often say that the state ought to restrict itself to intervening against those who initiate force or coercion, but when they say this they are tacitly stipulating that "force" or "coercion" denote only acts of physical violence (or the threat of violence). Critics are quick to point out that there are ways of coercing people that do not involve violence. For example, Stephen L. Newman writes that libertarians exhibit a "curious insensitivity to the use of private authority as a means of social control," *Liberalism At Wit's End* (Ithaca: Cornell University Press, 1984), p. 45. Newman goes on to ask: "When the price of exercising one's freedom is terribly high, what practical difference is there between the commands of the state and those issued by one's employer?" *ibid.*, pp. 45-46. Libertarians should recognize that the main problem of political theory is not the general question of the permissibility of coercion, but the specific question of the limits of violent coercion.

On the other hand, supporters of the interventionist state should recognize that whatever government *qua* government does is violent. When they are not seeing coercion everywhere, they tend to forget that the legal means by which the state forces people to do certain things are violent, as though promulgating a law which makes provision for the use of violent force against those who disobey it is essentially dissimilar to pointing a gun at someone and demanding that he act in a certain way. Building on a distinction drawn by Alan Gewirth (*op. cit.*, p. 305) we can say that the state is not necessarily always violently coercing, but it is always violently coercive.

16. A developed theory of sanctions would not necessarily accord the harm inflicted on a wrongdoer the same weight as the harm he inflicts on the innocent. It might be proper to severely discount harm to the guilty relative to harm the guilty do to the innocent; e.g. it might be permissible to shoot and kill a rapist although the harm the state thereby inflicts on him is greater than the harm he intends for his victim. I am assuming that even a consequentialist approach to sanctions could be developed within a framework of deontological permissions and prohibitions, and is not necessarily part of a thoroughgoing consequentialism.

17. Michael J. Sandel, a critic of liberalism, provides a clear characterization of it in terms of the neutral framework in his *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1982), p. 1:

society, being composed of a plurality of persons, each with his own aims, interests, and conception of the good, is best arranged when it is governed by principles that do not *themselves* presuppose any particular conception of the good.

18. Although libertarians have generally left egalitarian arguments to statists, the

moral significance of equality has been a minor theme in expositions of the libertarian position. Tibor Machan, writing in *Human Rights and Human Liberties* (Chicago: Nelson Hall, 1975) points out that when a government keeps people from pursuing their ends and redirects their efforts and resources to ends it selects, it violates a principle of equality every legal system ought to embody. (p. 263) Murray Rothbard writes: "the libertarian...insists on applying the general moral law to everyone, and makes no special exemption for any one person or group," including agents of the state *For A New Liberty*, (New York: Collier, rev. ed. 1978), p. 24. And, in defense of the claim that there are natural moral rights, Eric Mack writes "among individuals there are no natural moral slaves and no natural moral masters...there is a moral equality among persons" ("In Defense of 'Unbridled' Freedom of Contract," p. 427).

19. For this kind of derivation see Eric Mack, "Individualism, Rights, and the Open Society" in *The Libertarian Reader*, ed. Tibor R. Machan (Totowa, NJ: Rowman and Allenheld, 1982) and "How to Derive Libertarian Rights" in *Reading Nozick*, ed. Jeffrey Paul (Totowa, NJ: Rowman and Littlefield, 1981). (I hope that those who cannot overcome their scruples against this type of argument may be moved by my appeal to the ideal of liberal equality.)

20. An argument for this latter point comprises Douglas Den Uyl's "Freedom and Virtue" in *The Main Debate*, ed. Tibor R. Machan (New York: Random House, 1987).

21. In any event, the concept of violence has the virtue of being less imprecise than other concepts to which libertarians appeal, e.g. coercion, force, aggression.

22. Nothing said here implies that a morally good person would generally operate on a principle of strict reciprocity, retaliating against anyone who harms him. In a decent human society of the sort libertarianism could help make possible many people would be forbearing, forgiving, and magnanimous, not always paying back evil for evil. But it is worth remarking that recent evidence suggesting that, in game-theoretic terms, a simple 'tit for tat' strategy is the optimum route to peace and social stability, cf. Robert Axelrod, *The Evolution of Cooperation* (New York: Basic Books, 1984).

BRAINWASHING, DEPROGRAMMING AND MENTAL HEALTH

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Some years ago a journal enjoying a wide circulation in Britain among doctors in general practice (GP's) published a news item under the characteristically arresting headline: "GP warns on the menace of the Moonies." Between the opening paragraph, addressed to "fellow doctors who are called to deal with the victims of the cult religion," and the conclusion, giving particulars of "the organization set up to help the families of young people caught up in cult religions," this anonymous GP is quoted as saying, among other things: "My daughter was recruited two years ago, when she was only 17 and on holiday in America... The whole thing is desperately difficult because I just don't know what to do. Trying to disillusion a convinced Moonie is as hopeless as trying to convince a devout Catholic that transubstantiation is rubbish." (*Pulse*, 16/V/81)

True, no doubt, only too true. Certainly I myself do not propose, either here or elsewhere, to challenge this doctor's implicit assessment of the cognitive status of the teachings either of the Unification or of the Roman Catholic Church. (A fine one I would be—resent Vice-President of the Rationalist Press Association and hailed by Jerry Falwell as a leading philosophical atheist—to attempt any such thing!) I too should be just as concerned as the anonymous GP, were either of our own two daughters to become converted to any religion at all; whether one of the new "cult religions" or one of the older and, I suppose—odd though this sounds—non-cult kind. But the questions for us here and now are altogether different. Why should it be thought that such conversions, however regrettable, present any sort of medical problem; and are there circumstances in which it really is or would be proper for doctors or for psychiatrists, acting in their professional capacities, to try to change the religious or irreligious beliefs of their patients?

WHAT IS BRAINWASHING?

That same issue of *Pulse* provided the merest hint towards some answer to the first of our two questions. For the news item from which the previous quotations were taken refers readers to a later feature: "How GP's Can Help the Mind-Thief Victims." When, however, we turn to that we find that the psychiatrist author, John Gleisner, confines himself to a significantly more limited question: "How do you cope with a young person who presents in the surgery saying he or she has been brainwashed?" Gleisner's answer refers in the main to one particular case coming to "a therapist who helps disturbed people at a community mental health centre near Manchester"; and this patient, Christine Nixon, gives her own story elsewhere in the same issue.

(a) This case is very different from that of the anonymous doctor's daughter. The complaint and the problem there arose from and for the father: the daughter was not complaining about her own condition, did not see it as a problem, and had never asked for any kind of help or treatment, whether medical or non-medical. We thus have opportunity to remark that those who think of themselves as members of helping or caring professions would do well to ask, much more often than they do: "Who is it who actually is complaining, or who actually does see the situation as a problem; and precisely what is *their* complaint, or *their* problem?"

Many problem children, for instance, who nowadays get sent out of class for counselling rather than for punishment, are not problems, or at any rate not perceived problems, for themselves; however serious the all too serious problems which they impose upon their parents, their teachers, or their peers. Many too of those so fashionably categorized as disturbed (passive) might more accurately be described as disturbing (active). Remember the story of the three Boy Scouts assuring their Scoutmaster that they had duly performed their good deed for the day: "We helped a poor old lady across the road." "Surely it didn't need three of you to do that?" "She didn't want to go!"

By contrast, it appears that Christine Nixon did, albeit with some hesitation, bring herself to make a complaint. She complained that "she had been brainwashed." Both she and Gleisner provide in their articles good reason for accepting his (different) judgment on her condition; a judgment which, we should perhaps notice, contains no conjectures about the causes of that condition. "Christine Nixon," he says, "suffered a complete breakdown after a week's course with the Moonies." Yet for us the next question is: "What is meant by 'brainwashing'; and would such treatment—supposing that this girl and others have in fact been subjected to it—justify the application to them, if necessary under constraint, of other treatments designed to secure the reversal of any conversions originally effected by such means?"

(b) That this is indeed the question comes out very clearly from a letter, written by a spokesperson for FAIR, "the organisation set up to help the families of young people caught up in cult religions," and published in another British medical journal, *The Nursing Mirror*. (30/VII/79) Under an appropriate headline, "Beware the 'brainwashing' religious cults," this correspondent argues that "without programming there would be no need of deprogramming!" The letter continues: "The methods used by these pseudo-religious cults are a dangerous misuse of psychology.... There are many reports by...experts in mental health of the effects on the mind caused by a cult's programming and the obvious conclusion to be drawn...is that deprogramming carried out properly and sympathetically, is the only possible way of restoring the individuality of a convert and his ability to think and act freely."

Now I will not, at least on this occasion, dispute the hypothetical contention that—were it once granted that certain people had been converted to new systems of belief when physically confined, and by the use of drugs, violence, starvation, sleep-deprivation or other manifestly improper means—then it might well become licit to employ similar, normally unacceptable means in the attempt to restore the, or their, previous condition. Fortunately that difficult question does not in the present case arise. Certainly the enemies of the various minuscule sets which those enemies like to call "cult religions," or "pseudo-religious cults," are very free with vivid, metaphorical charges of soul-snatching, mental rape, mind-thievery, brainwashing, and the like. They appear nevertheless unable or unwilling to spell out any literal, specific, and suitably scandalous content for all this scarifying abuse.

For example: Ferdinand Mount, a journalist more genuinely critical than most, put a key question in *The Spectator*: "But is there really a distinction in kind between the Moonies' methods of indoctrination and conversion and the methods of recognized religions?" (4/VII/81) He got no answer either from FAIR or from anyone else, neither in private nor published in the Letters Column of his magazine. But I was able to add my own further contribution there: "Like most of those who have attended academic conferences organized and financed by the Moonie cultural foundation I myself have received many letters of private protest. To every one I have replied with an assertion and a question: the assertion, that the conferences which I have attended were all conducted with absolute academic propriety; and the question, what outrageous and peculiar methods of persuasion employed by the Moonies are being denounced as 'brainwashing?'" No correspondent has ever given me a clear and definite answer revealing the basis of the accusation.

There is here, endemic, a crucial equivocation. Where charges are being brought against disfavoured religious ultras, the word "brainwashing" is intended to carry implications of well nigh if not

altogether irresistible pressures; with suggestions of the cruel and unusual techniques employed by the Chinese Communists on helpless prisoners captured in the Korean War. But when evidence is demanded to justify such charges, we find that the word is once more being construed only in its weaker sense—the sense in which it has become commonplace to speak of anyone accepting any item of unexamined and conventional foolishness having been brainwashed into that acceptance.

RELIGIOUS CONVERSION: A FRESHLY IDENTIFIED MENTAL ILLNESS?

Yet we cannot simply leave things there, with a strong warning about the ambiguity of the term “brainwashing”. For in the USA, and to a much lesser extent elsewhere, things have already gone much further. Some people have already made careers out of offering to the anxious families of young converts, in return for substantial fees, their own services as deprogrammers. Consider, for instance, his publisher’s advertisement for Ted Patrick’s *Let Our Children Go*: “Patrick is the man whose profession is the rescuing of brainwashed youngsters from cults like Hare Krishna and Sun Myung Moon. With their parents’ help he snatches them off the street and takes them to a hideout to ‘deprogramme’ them. He almost always succeeds—he has saved more than 1,000—and the youngsters themselves are intensely grateful. Now he tells how he does it.”¹

Mr. Patrick himself, who is not by any standards psychiatrically qualified, and who had been operating without the protection of the law, was in September 1980 sentenced by the San Diego Superior Court to one year’s imprisonment, five years probation, and a fine of \$5,000. According to the *International Herald Tribune* this sentence was for Patrick’s part “in the kidnapping of a 25-year-old Tucson waitress whose family feared that she was controlled by a religious zealot.” Judge Norbert Ehrenfreund ruled: “We must observe the law that makes it a crime to abduct another human being.” Allowing that Patrick had done a deal of good work, the judge insisted nevertheless: “There must be no further deprogramming. That part of his life must exist no longer.” (20/IX/80)

This, however, was by no means the end of the affair. For others have been labouring to secure the protection of the law for the confinement of converts, and for their compulsory subjection to the deprogramming treatment. Some qualified psychiatrists are also arguing that conversions to disfavoured minority belief-systems fall within their own professional bailiwick, and should therefore be diagnosed and treated by and only by themselves and their colleagues. The effort to obtain legal sanction for forcible deprogramming takes the form of either appeals to existing laws, or moves to introduce new laws, under which converts can or could be made wards of some

other member of their families; who then will, or would, with the full backing of the state power, see to it that the convert gets the treatment. This treatment is in fact, to put it mildly, harsh; while everyone, most especially including the patient, must know that, once they have been so confined, there will be no escape either from the legal guardianship or from that harsh treatment until and unless the deprogrammers become persuaded that they have effected a sound and thorough deconversion.

The psychiatric argument is that the original conversion has to be diagnosed as either being, or being the symptom of, a mental illness; a freshly identified syndrome for which someone has suggested the uncomfortable Anglo-Saxon label "faith sickness". Since it is an illness it must be bad for the patient. After all, as Ted Patrick said, when it is all over, "the youngsters themselves are intensely grateful."

By the way: this particular argument does not possess the same force in the present case which it must be allowed to have when deployed to justify the forcible frustration of suicide attempts. For it is, surely, one criterion of the soundness of a deprogramming job that the persons deprogrammed should be content in the belief-system to which they have now reverted. Any Englishman of my generation must, therefore, be reminded of the immortal words of Miss Mandy Rice-Davies, when told of men who had denied her assertions about their sexual activities: "Well, they would, wouldn't they?"

SUITABLE CASES FOR TREATMENT?

It is not, of course, surprising that there are some psychiatrists eager to diagnose unpopular belief systems as symptomatic of such a "faith sickness," and even more eager to offer their services (suitably remunerated) in order to cure even unwilling patients of this alleged affliction. Certainly these are not the only professional workers ready to welcome every chance to extend the area of application of the skills by which they earn their living. So we must not be shy of challenging them to make good their contention that these are indeed suitable cases for psychiatric intervention. (After all, what are experts for—as they often need to be reminded—is to determine the least costly means to secure whatever ends their lay employers may see fit to choose.)

The evidence actually offered is of three kinds. First, it is asserted that the belief-systems of all these peculiarly unloved "pseudo-religious cults" are so irrational and so absurd that no sane person could by any open and above the board programme of persuasion be converted to them. Second, it is claimed that the aforesaid cults have succeeded in developing almost if not quite irresistible techniques of conversion; techniques which, unlike those to which the then new coined label "brainwashing" was originally applied, do not require the physical confinement or coercion of their subjects. Third, it is

maintained that the effect of such improved Mark II brainwashing is to deprive its victims of freewill, making them the zombie creatures of the persons or of the organization effecting this transformation.

(a) Proponents of the first of these three contentions reveal no more than the extreme narrowness of their own experience. For anyone having any familiarity with the fabulous variety and extreme preposterousness of the religious beliefs for which otherwise sane and sensible people have been willing to live and even, if required, to die, must realize that there is nothing in any of these fresh-formed cults which would entitle unbelievers to draw the comfortable conclusion that their converts cannot but have been won by means incontestably illicit. The suggestion that adhesion to any such belief-system constitutes a decisive demonstration of some fundamental unsoundness of mind is reminiscent of nothing so much as that old stubborn, bigoted insistence that any act of or attempt at suicide must be proof positive that—however temporarily—the balance of the agent's mind was disturbed.

(b) The second contention, being of a less sophisticated logical type than the first, seems to be just plain false. No one has been able to cite any technique of persuasion employed by these tiny modern sects for which it is not possible to find plenty of precedents or parallels in earlier times or in other places. Furthermore, our best evidence indicates that whatever methods are in fact current in the Unification Church remain very far from one hundred percent effective.²

(c) The third contention is not of a kind to be expected from psychiatrists or, for that matter, from practitioners of any other psychological discipline.³ Such persons are all much more likely to feel that their cloth requires them to minimize if not to deny the reality of freewill, rather than to promise to restore it to those deprived. Be that as it may, this contention does possess the great merit of direct relevance. For, if it could be made out, it would show these conversions to "pseudo-religious cults" either to be, or to produce, paradigm cases of affliction with mental illness.

Consider first how we must in the present context interpret talk of a loss of freewill.⁴ Presumably it means that the victims of such a loss are, at least in certain respects, like the victims of a paralysis or of St. Vitus Dance. They cannot, that is to say, as the rest of us can, at will move themselves or certain parts of themselves; or, as the case may be, prevent either certain parts of themselves or even their whole bodies from moving. If, furthermore, these victims are said also to be "zombie creatures of the persons of the organization" which has effected "this transformation" from their previous normal condition of being able at will to move or to prevent the movement of those various parts of themselves; then again what this implies, presumably, is that they are not themselves, at least in certain respects, truly agents. Instead they are, as it were, executing irresistible post-

hypnotic suggestions from those dark and sinister persons, or that dark and sinister organization, offstage. (Perhaps there are further implications about glazed eyes and a general woodenness in movement, recalling presentations of "soul-snatched zombies" in horror movies with a Haitian setting. But these extras we may for present purposes ignore.)

If this is indeed the correct reading of the expression "a loss of freewill," and certainly no alternative has been offered here, then the conditions of the victims of such a loss must most closely parallel that of several of Freud's early patients—those, that is to say, who were afflicted with tics and paralyses not attributable to any organic lesions or other physical deformations. What sufficiently justified these patients in reporting sick was this incapacitation, their inability either to move or to stop the movements of certain bodily parts normally subject to the will. What warranted speaking of mental rather than physical disease was the facts: that there were no relevant organic lesions or physical deformations; and that the incapacitations could be accounted for in psychological terms, and sometimes perhaps removed by psychotherapy.

But again, allow that these are the correct readings of "a loss of freewill," and of the other similar expressions applied to supposedly brainwashed converts to "cult religions." And we must emphasize: both that no other readings are suggested; and that it is only in these readings that such converts could become suitable cases for psychiatric treatment—especially compulsory psychiatric treatment. Then we also have to notice that no sufficient reason is ever given to warrant the application of such expressions to these converts. The complaint—which, typically, is made not by the intended patient but by the intended patient's family—is: not that the convert cannot abandon the principles and practices of his or her new "cult religion"; but that he or she most stubbornly and persistently refuses so to do. And that, however deplorable, is a totally different matter.

WHAT SHOULD WE MEAN BY "MENTAL ILLNESS"?

So far, in the previous sections I have been taking two fundamentals for granted: first, that ideas of mental health and mental illness ought to be modelled very closely upon ideas of physical health and physical illness; and hence, second, that actual sickness of either kind must involve discomfort and/or incapacitation in the patient. It is only and precisely as consequences of these two fundamentals that we become entitled to draw certain inferences which are in fact persistently and universally drawn and maintained, both within and outside the medical world, even by many who have long since lost their grip upon the premises needed to warrant these accepted conclusions. It is because, and in so far as, sickness is essentially painful and/or incapacitating that some forms of sickness may become acceptable excuses for failures to perform duties, or even for more

positive delinquencies. Again, and much more to the present point, it is only and precisely if sickness is essentially painful and/or incapacitating that the providers of relieving or curative treatment can normally be presumed to be doing something both desired by, and in the interests of, the patient; rather than, for example, simply advancing their own personal ideals or serving either the interests or the wishes of that many-headed monster Society. Even when the patient genuinely is, in this traditional understanding, sick, whether physically or mentally, the libertarian must scruple to connive in any compulsory therapy: the only exception being where sickness in that particular form constitutes a real and present danger to others.

Once we are fully seized both of these important consequences and of the interpretation of the premises which is required if we are to be entitled to draw such consequences therefrom, then we can see that we absolutely must not tolerate—at any rate in either a penal or a therapeutic context—any definition of “mental illness” not demanding that its patients must be as such substantially incapacitated or otherwise seriously incommoded. Thus it will not do, notwithstanding that it all too often has been and is done, to define the putative mental illness of psychopathy in terms only of dispositions to act in various anti-social ways, with no reference to any debilitating discomfort or relevant incapacitation in the psychopath. When this is nevertheless done it is, or ought to be, obvious: both that psychopathy cannot any longer serve either to excuse or to extenuate such behavior; and that any treatments imposed on the psychopath will have to be justified by reference to the good of others rather than in terms of the Hippocratic duties of the psychiatrists to their patients.⁵

Again, if “schizophrenia” is to be defined similarly, in terms of the harbouring of “reformist delusions,” or of actual conduct offensive to the ruling party and government—conduct perhaps including brave protests against the 1968 reconquest of Czechoslovakia or other more recent manifestations of Soviet imperial policy in Poland, Afghanistan, Ethiopia, Indo-China, or wherever next—then the “deprogramming” treatments inflicted on such schizophrenics certainly cannot be presumed to be either desired by them or even directly in their interests. It is the more necessary to labour such points since many of those playing a leading and honourable part in condemning and resisting psychiatric abuses of individual liberty, both in the USSR and in the USA, have been curiously reluctant to engage with the general questions of the nature and scope of mental health or mental sickness. This is true, for instance, of the authors of both *Russia's Political Hospitals* and *New Religions and Mental Health*.⁶ Urgently and conscientiously concerned to insist that Soviet dissidents are victims not of “reformist delusions” but of totalitarian tyranny, and that converts to unfashionable and perhaps authentically delusive religious belief-systems cannot properly be dealt with as if they were carriers of catastrophically infectious physical diseases, these friends of

freedom and dignity have not taken the time to spell out what makes some condition a mental illness, and as such a suitable case for treatment by the mind-doctors.

In particular they have failed to explicate the relevance and irrelevance of normality. In the commoner understanding normality is absolutely nothing to the point. Sickness can be quite normal, in the sense that most or even all members of a population are so afflicted; just as open dissidence under total socialism is by the same token very much a sacrificial eccentricity. "Disease" however, as opposed to "sickness" or "illness," may be defined in terms of failure to fulfil natural or normal functions; a failure which may well be, in the commoner sense, in fact normal. Most actual specimens of whatever it may be, that is, can be in fact diseased. The Compact Edition of the *Oxford English Dictionary* explains "health" thus: "Soundness of body; that condition in which its functions are duly and efficiently discharged". "Disease" in the relevant sense becomes, correspondingly, "A condition of the body, or of some part or organ of the body, in which its functions are disturbed or deranged."

Certainly this is a viable notion of disease, and one with which it is possible for pure scientists to work without making any disputatious normative commitments. For certainly it is possible to achieve agreements on the function or functions of some organ; and to achieve this even when all available specimens are, through their inability to fulfill that function or those functions, to be accounted defective. (In World War II German technical intelligence, working with nothing but mutilated specimens, succeeded in reconstructing both the blueprints and the operating manual of the US Norden bombsight!)⁷ But if we do admit this notion, then we must never forget that it is, and should remain, not categorically imperative but strictly non-normative. So we have to make a very sharp and very firm distinction: between disease, in this neutral and surely scientific understanding; and the committed concepts of sickness and illness, as already elucidated.⁸

We can at this stage best enforce this point by referring to the sex organs. It can scarcely be denied that their biological function is reproductive. Yet by this neutral criterion every homosexual employment of these organs, as well as every heterosexual employment in which effective contraceptive precautions are taken, becomes diseased. I trust that there is no one who, at this late hour, remains prepared to urge that such a disease is a sickness or an illness; and hence that such employment constitute appropriate occasions for Hippocratic intervention; for the sake, of course, of the suffering or incapacitated patients!

1. Ted Patrick, *Let Our Children Go* (New York: Balantine, 1977).

2. Eileen Barker "Who'd be a Moonie? A Comparative Study of Those Who Join the Unification Church in Britain," in B. Wilson (ed.) *The Social Impact of New Religious Movements* (New York: Rose of Sharon, 1981), p. 66; and compare her "Living the Divine Principle," in *Archives de Sciences Sociales des Religions* 1978.

Eileen Barker reports, on the basis of what appears to be a sufficiently representative sample, that of those who attend Unification Church workshops in Britain—the alleged brainwashing sessions—only a very small proportion persist to become full-time members: "...82% completed the two-day course; 44% started, and 31% completed, the seven-day course. Of the 28% who proceeded to the twenty-day workshop, only 14% graduated (the other half leaving before the course was completed)." Only 18% of those exposing themselves to any of this so ultra-high powered and so inescapably effective "brainwashing" ever signed up as full-time members, an additional 9% becoming part-timers. Another study, by the same independent sociologist, shows that about half of all those who join, on either basis, withdraw within two years—without benefit, if that is the right word, of any compulsory deprogramming.

3. Allow me to present here, in the comparative privacy of a footnote, the shamefully trendy coinage, "psychoperson." This, along with its equally new-minted cousin "socioperson," fills what at least should have been a long felt want. The former term refers indiscriminately to psychotherapists, psychometrists, and practitioners of all the other psychological disciplines, both theoretical and practical; while the latter correspondingly, and with equally indiscriminate abandon, embraces sociologists, demographers, social anthropologists, social workers, and all others trained in or practicing the actual or aspiring social sciences.

4. For further treatment of freewill, in the present understanding of that term, and of the attitudes of psychopersons thereto, see my *A Rational Animal* (Oxford: Clarendon, 1978), especially Chapters 3-4 and 7-9.

5. Compare my *Crime or Disease?* (London: Macmillan, 1973), *passim*.

6. S. Block and P. Reddaway *Russia's Political Hospitals* (London: Futura, 1978) and H. Richardson (ed.) *New Religions and Mental Health* (New York and Toronto: Mellen, 1980).

7. See Christopher Bourse "On the Distinction Between Disease and Illness," in *Philosophy and Public Affairs*, 1975.

8. Compare, finally, "Mental Health, Mental Disease, Mental Illness: 'The Medical Model,'" in Philip Bean (ed.) *Mental Illness: Changes and Trends* (London: John Wiley, 1983).

MOORE: THE LIBERATOR

TOM REGAN

The writings of G. E. Moore at one time were a standard part of the philosophy curriculum, especially in those schools steeped in the traditions of analytic philosophy, broadly conceived. The portrait of Moore then favored (I shall refer to it as the received opinion) depicted him as the defender of common sense, the plain man's (at that time people did not hasten to add, "and the plain woman's") philosopher. After all, had not Moore himself proclaimed that the common sense view of the world is essentially correct? His worries were confined to questions of analysis and did not include matters of substantive truth. Moore knew for certain that tables and chairs are real; he had no deep skeptical angst concerning the furniture of the universe. His demon woke him at night only to ask, "What does it *mean* to say 'Chairs are real' or 'Tables are things'?" He had no dogmatic slumbers, only occasional meta-nightmares.

Moore's ethical writings, we were taught, had a slightly different cast, but only in appearance. His most famous teaching in this field is that definitions of Good commit the naturalistic fallacy. Not only is this claim not part of the common sense view of the world, the very ideas Moore sought to defend—that Good is a simple, unique, unanalyzable, nonnatural property—remain notoriously unclear to pale scholars in their studies, let alone robust ordinary men and women in the streets. So there was, hovering round Moore's ethical philosophy, the hint that he was a thinker who could sometimes unburden himself of the duty to defend common sense.

But even here the received opinion minimized the appearance of Moore's unorthodoxy. His opaque claims about Good were just that—opaque claims about Good. And these were claims offered in the language of conceptual analysis and so could depart from common sense as much as Moore saw fit without compromising his allegiance to the plain men and women of the world. Besides, when, in the end, Moore does set forth his substantive views about what things are good and bad, what acts right and wrong, his judgments are rendered in the name of common sense.

A few things are very good, he maintains. These include the admiring contemplation of beautiful objects and the pleasures associated with friendship. So obvious is it that these are the best of the best that Moore characterizes his view that they are as "platitudinous," the very sort of truth ordinary people accept without the need of argument.

And so for right and wrong, well here we do best (or so the received opinion claims) to follow the rules of conventional morality—the prevailing moral customs of our time and place and position—as every man and woman of common sense would agree. Even if you think that better results would come about if you broke a rule of conventional morality (for example, a rule against stealing or another against sun bathing in the nude) common sense speaks sternly against allowing such naked abandon. We are not to make exceptions to such rules, no matter what.

The cumulative portrait that emerges when the received opinion's views of Moore's ethical and nonethical work are combined, then, is that of a not very imaginative, inspiring or provocative thinker. If, today, students of philosophy spend little if any time investigating Moore's views, whether in ethics or beyond, some might rest comfortably in the belief that the teaching of philosophy is the better for it. Moore was what he was, and not another thing. And what he was (as the Cambridge literary critic F. R. Leavis describes him) was "a disinterested, innocent spirit" who enjoyed what influence he had in spite of, not because of, his substantive views. "Moore," Leavis reports Wittgenstein as having once said, "shows you how far a man can get with absolutely no intelligence whatever." Such a man as this might grudgingly be allowed a place in the dusty footnotes, but hardly in the well polished text, of the history of our discipline.

But all is not well for the received opinion. Dissidents beyond the borders of philosophy have a different view of Moore the man, and Moore the philosopher. The most articulate voices who speak for those artists, writers, thinkers and critics who comprise what has come to be known as the Bloomsbury Group—such men as John Maynard Keynes, Lytton Strachey and Virginia Woolf's husband, Leonard—these voices offer a series of variations on the main theme of Moore, the moral visionary. Here is a quote from Leonard Woolf that is representative.

There have been other groups of people who were not only friends, but were consciously united by a common doctrine and object, or purpose artistic or social. The Utilitarians, the Lake poets, the French Impressionists, the English Pre-Raphaelites were groups of this kind. Our group was quite different. Its basis was friendship, which in some cases developed into love and marriage. The colour of our minds and thought had been given to us by the climate of Cambridge and Moore's philosophy, much as the climate of England gives one colour to the

face of an Englishman while the climate of India gives quite a different colour to the face of a Tamil.¹

Those who echo Woolf's assessment of Moore's influence on Bloomsbury, especially its Cambridge nucleus, also agree with him when he identifies Moore's *Principia Ethica* as the Group's sacred book—Bloomsbury's bible, as it were. Let us allow Strachey to speak for everyone, as he was only too happy to do. I read from a letter of his, sent to Moore, just a few days after *Principia's* publication.

I have read your book, and want to say how much I am excited and impressed by it. I'm afraid I must be mainly classed among "writers of Dictionaries, and other persons interested in literature", so I feel a certain sort of essential vanity hovering about all my "judgments of fact". But on this occasion I am carried away. I think your book has not only wrecked and shattered all writers on Ethics from Aristotle and Christ to Herbert Spencer and Mr. Bradley, it has not only laid the true foundations of Ethics, it has not only left all modern philosophy bafouee—these seem to me small achievements compared to the establishment of that Method which shines like sword a between the lines. It is the scientific method deliberately applied, for the first time, to Reasoning. Is that true? You perhaps shake your head, but henceforth who will be able to tell lies one thousand times as easily as before? The truth, there can be no doubt, is really now upon the march. I date from Oct. 1903 the beginning of the Age of Reason....Dear Moore, I hope and pray that you realize how much you mean to us.

The obvious problem Bloomsbury's adulation of Moore poses for the received opinion is this. Whatever else one might wish to say about Bloomsbury (and many powerful voices, including those of Leavis and D. H. Lawrence, for example, wish to say much, all of it negative) its members were not conventional, either in their attitudes or in their behavior. Just the opposite in fact. Convention in their day (the first two decades of this century, roughly speaking) was on the side of chastity, monogamy, and heterosexual relations, for example. But not Bloomsbury. If it is not quite true, as one wag put it, that "In Bloomsbury all the couples are triangles," it is quite true that sex fell into enthusiastic, imaginative and (for their time and place) decidedly unconventional hands when it fell into theirs. Strachey takes Duncan Grant as a lover, only to lose him to Keynes—who in turn loses him to Vanessa Bell, who in turn loses him to David Garnett, who in times moves to Charleston farm to live with—Duncan Grant and Vanessa Bell. In matters of sex, whatever may be true of logic, Bloomsbury had a rich, precocious understanding of recursive functions.

No less unconventional was Bloomsbury's open disdain of the frills and majesty of the British Empire. When the First World War came, only Keynes served the war effort, and even he did so in the government, not the trenches. Duncan Grant refused to serve, as

did Clive Bell. But it is Strachey's interrogation before the Hampstead Tribunal, where the sincerity of his conscientious objection was put to the test, that has become part of oral intellectual history. Keynes' first biographer, Michael Holroyd, recreates the occasion as follows.

In the course of (the examination) the military representative attempted to cause (Strachey) some embarrassment by firing a volley of awkward questions from the bench.

"I understand, Mr. Strachey, that you have a conscientious objection to all wars." "Oh no," came the piercing, high-pitched reply, "not at all. Only this one." "Then tell me, Mr. Strachey, what would you do if you saw a German soldier attempting to rape your sister?" Lytton (whose homosexuality was a matter of public knowledge) turned forlornly regarded each of his sisters in turn. Then he confronted the Board once more and answered with gravity, "I should try and interpose my own body."²

Almost a decade earlier (the year was 1910) other members of Bloomsbury had assaulted the British sense of the Holy by playing a hoax on the most venerable of the empire's institutions—the British Navy and its Admiral, afloat aboard the flagship *Dreadnought*, anchored off Weybridge. Dressed for success, which in this case meant some of the pranksters wore great coats and bowler hats, other (with darkened skins) were attired in billowy silken creations from the east, the *Dreadnought* hoax came off without a hitch. The Admiral and his officers had welcomed these merrymakers on board without so much as a murmur of suspicion, having been duped (via an elaborate scheme) into thinking that the Emperor of Abyssinia and his retinue, accompanied by representatives of the Home Office, were to be their honored guests. Red carpets, a military band, a private launch—all the trappings of English pomp and circumstance—and all showered upon a group of impostors which, united mainly by their thirst for scandal, included Duncan Grant in false beard and (believe it or not) Virginia Woolf, in Eastern drag.

That the Admiral and his fleet were taken in so unreservedly by such amateurs only heightened the official outrage that shook the last pretense of empire, once the hoax was revealed. Regulations concerning visitors were tightened, a development which led Virginia to observe, in an uncharacteristic rush of patriotism, "I am pleased that I, too, have been of service to my country."

Sex, politics, dress—Strachey was conspicuous for his earrings generations before more timid men would dare wear them, and Virginia (these are only two examples) walking about the streets of London with an ensemble of clothes held together (barely) by safety-pins—in these and other respects the Bloomsberries, as they were called, exhibited neither respect nor reverence for the standards of conventional morality. Theirs was in many respects a most uncommon sense of what a person should be allowed to do.

Ever observant, Strachey understood the insurmountable task the Group faced when they turned their attention to convincing people outside Bloomsbury that the Bloomsberries had their hand on the truth. "It's madness of us to dream of making dowagers understand that feelings are good," he wrote in April 1906 to Keynes, "when we say in the next breath that the best ones are sodomitical."

Not to go unnoticed, finally, is the cool aloofness and elitism that even today is synonymous with the "Bloomsbury." With rare exceptions (Keynes' government service is the most notable) the Bloomsberries were in the world not a part of it. They had neither the temperament nor felt the calling to improve the lot of humanity. They had their (in Leavis' words) "coterie" and luxuriated in their own peculiar "ethos." Their sense of the larger political reality surrounding them is perhaps best illustrated by Vanessa Bell's asking H. H. Asquith over dinner whether he had any interest in politics. Asquith at the time was England's Prime Minister. The conventional expectations of citizenship failed to take up lodging in the hearts of most who were Bloomsbury.

Here, then, in the broadest terms, is the challenge to the received opinion Moore's influence on Bloomsbury offers. That opinion pictures Moore as a philosopher of narrow aspirations and achievements, whose only adventure with unorthodoxy (if such it be) was a nonnatural tryst with the concept, Good, and whose beliefs and teachings in other areas of ethics favored strict adherence to the expectations of conventional morality—who advocated, in Gertrude Himmelfarb's telling phrase, "a feeble concession to conventional morality."³ The Bloomsberries for their part were openly contemptuous of these same expectations, and yet it was Moore whom they identified as their inspiration and prophet, his *Principia Ethica*, their bible. The challenge is: How can the received opinion possibly be correct if we trust the testimony of the Bloomsberries?

Paul Levy has a provocative reply: We are not to put much trust in the testimony of Leonard Woolf, Strachey and the others. In his book, *Moore: G. E. Moore and the Cambridge Apostles*, Levy argues that it was not Moore's philosophy but his character that both emboldened and inspired those who would be Bloomsbury. "Those who proclaimed themselves his disciples," Levy writes,

were devoted not so much to his ideas as to certain aspects of his character. Everyone agrees his character was remarkable, and some agree with Leonard Woolf that it was unique. My claim is that what Moore's followers had in common was admiration—even reverence—for his personal qualities; but that as their hero happened to be a philosopher, the appropriate gesture of allegiance to him meant saying that one believed his propositions and accepted his arguments for them. Had the great man been a poet, they would no doubt have shown their fealty (as others have) by reciting his verses; if a composer, by singing his songs. This is a radical view to espouse, for one does not

often encounter 'the cult of personality' in the history of philosophy.... It is tantamount to saying that in professing belief in Moore's 'philosophy' his Bloomsbury disciples were, for the most part, gesturing in order to demonstrate their allegiance.⁴

For reasons I can only sketch in what follows, I do not believe that Levy has got it quite right. (A fuller explanation of my views will be found in my book, *Bloomsbury Prophet: G. E. Moore and the Development of His Moral Philosophy*.⁵ What we might call the Cliff's Notes version will be presented here.) That presentation begins by noting that Moore wrote a great deal on ethical matters before *Principia's* publication in 1903, most of which has never been published but all of which was familiar to the Cambridge-core of Bloomsbury (Clive Bell, Leonard Woolf, Roger Fry, Desmond McCarthy, Maynard Keynes, and Strachey) and all of which sheds light on *Principia's* pages.

Two things in particular we learn from these papers. First, Moore early on saw himself as a reformer, especially of that Science he most revered: Ethics. He refers to what he calls "would-be scientific moralists, with their (lists of) virtues and duties." It is clear that he has nothing but contempt for these impostors. Their lists, he believes, are both too extensive and too demanding, and what pretense of truth their oppressive deliverance might appear to have cannot disguise what he calls "their lies." *Principia*, as I shall explain (albeit overly briefly) below, continues Moore's self-declared civil war with other practitioners of the Science of Morals; but that war was well under way long before that book was published.

The second thing we learn from these unpublished essays is that Moore at one time was sorely tempted by a form of moral mysticism—the view that during certain heightened moments of consciousness we are able to grasp the complete truth of good and evil, in a flash, as it were. Now, Moore-the-mystic is rather far removed from our ordinary picture of the great defender of common sense, and those who favor the mythological to the genuine article might prefer to keep Moore's romance with mysticism in the closet. But genuine this side of Moore's character was, and though it was in time to give way to his rapacious appetite for rigorous analysis, my guess is, it was never totally vanquished—another point I shall develop briefly below.

The main point, however, is the first one—the one about Moore's civil war with other practitioners of the Science of Morals. His hope was to leave no wounded. His most earnest desire, which Strachey's glowing letter upon *Principia's* publication must have at least partially satisfied, was to replace false science with the true one. Less than total victory was, for Moore, less than total vindication of the truth.

Moore's effort to grasp the Science of Morals from the clutches of would-be scientific moralists is symptomatic of his resolve to save

his Science from the muddled hands of natural scientists and metaphysicians. When in *Principia* Moore writes that Good is "unique," he means just that. And what he means, by way of implication, is that no other science, whether it be natural or metaphysical, can presume to study Good systematically. This is the central theoretical result of Moore's criticisms of any and all attempts to define Good (his famous declarations regarding "the naturalistic fallacy"). What is at issue is the autonomy of Ethics. The uniqueness of Good, assuming it to be so, shows that Ethics and its defining question (What is Good?) cannot be co-opted by any other science—not by biology, not by psychology, not by sociology, not by theology, not even by metaphysics. For Moore is no less insistent that Good is not a metaphysical property than he is that it is not a natural property. It, along with a few other properties Moore mentions (evil and beauty in particular), are members of a very select ontological club: it (and they) are non-natural.

No less important than Good's uniqueness is its alleged simplicity. Definitions, Moore contends both in *Principia* and before (for example, in *The Elements of Ethics*), are possible only in the case of those things that are complex, from which it follows, given the alleged simplicity of Good, that no definition of Good is possible. Moreover, the nature of simple properties is such that no reason, by which Moore means no evidence, can be given for the judgment that something has them. Not only, then, is it the case that no natural or metaphysical science can presume to study the nature of Good, it is no less true that these sciences cannot presume to offer any reason or evidence, for or against, something's being good.

The result is that there can in principle be no priestly caste of moral experts—people who, because of their expertise in other fields of inquiry, are better qualified, on that basis, than are others, to establish which things are good, which not. By insisting on the simplicity and uniqueness of Good, Moore democratizes the domain of moral judgments about what things are good. Those would-be scientific moralists he attacks, who celebrate the great goodness of their duties and their virtues, are no more qualified to say or discover what things are good than are people of common sense everywhere. As we might imagine, this happy message of equality was not lost on Moore's disciples. Few things could have pleased the likes of Lytton Strachey more than to learn that his preference for the higher sodomy over the higher pleasures of the church could not be discredited because he lacked an education in theology. Better to be a satisfied homosexual than a dissatisfied priest.

But Moore's was a democracy of judgment, not a state of anarchy. Along with his emancipation of every individual to judge with no less authority than people in robes or white coats there was his severe repudiation of subjectivism. Some things really are good, others really are evil. And this is true independently of what any of us say or

ur thinking it so does not make it so, anymore than our liking things more than others make the former better than the latter. though the Lytton Strachey's of the world are no less qualified to judge of what is good than are the Cardinal Mannings, heathens or just as mistaken as clerics. However, since in the very nature of the case no reason can be given, for or against, judgments of intrinsic goodness, who could say which judgments are correct, which is right? This is a problem Moore confronted honestly throughout the work he worked on *Principia* as well as during the formative years leading up to its composition.

It is in *Principia's* famous "method of isolation" that Moore finds an answer that permits him to believe that things are good without forsaking the demands of reason. Because those things that are intrinsically good are good independently of their causes and effects, one must consider their claim to value in isolation from anything else, as if they existed quite alone—as if they were the only thing that existed. And though this level of abstraction is not common, Moore is confident that achieving it is well within the reach of every person of common sense.

Once the questions are clearly understood, the answers, Moore thinks, are so obvious as to be platitudinous.

By far the most valuable things, which we know or can imagine, are certain states of consciousness, which may be roughly described as the pleasures of human intercourse and the enjoyment of beautiful objects. No one, probably, who has asked himself the question, has ever doubted that personal affection and the appreciation of what is beautiful in Art or Nature, are good in themselves; nor, if we consider strictly what things are worth having for their own sakes, does it appear probable that any one will think that anything else has nearly so great a value as the things which are included under these two heads.⁶

Keynes and the others who were Bloomsbury were no less enamored of "Moore's method" than they were of the results they obtained by its finest application. Not only, then, did the Bloomsberries eagerly embrace the democratization of value judgment Moore's treatment of Good made possible, and not only did they find in the method of isolation the "logical and analytical technique" that enabled them to answer questions of value, Keynes, Strachey and the others also found in Moore's work the celebration and vindication of those very values that helped create and sustain their identity as a Group: the great values of friendship and the shared appreciation of beauty.

But they found more even than this. Moore's ethic in relation to conduct could not have fallen on more attentive or receptive ears, and it is in this respect, more than any other, that Bloomsbury's cast of characters provides us with an understanding and appreciation of Moore's thought that reduces the received opinion to rubble. That opinion maintains that Moore offers an uninspired (and uninspiring)

defense of conventional morality: We are always, or so its is alleged, to follow the rules of conventional morality—the prevailing moral expectations of our time and place and position. A close reading of *Principia*, illuminated by what we know of Bloomsbury and its members' way of life, reveals that this gets Moore's teachings quite wrong.

Moore sets forth his views of ethics in relation to conduct in Chapter Five. Perhaps the main reason why his views have been so badly misunderstood is the common failure to recognize that he carries out his analysis at two different, but related levels. On the one hand, he continues the work of reform he had begun in his pre-*Principia* papers. At this level of analysis Moore's intention is to show *how very limited the science of morals is*. Ethics, Moore argues, can at best make a probable case for why a very few rules are universally binding, and those rules of which this is, or may be, true are ones that *already* exist and *already* are generally observed and socially sanctioned. What Ethics *cannot* do, is to justify the introduction of some *new* rule. It is largely because of their failure to recognize the limits of their science that those would-be scientific moralists, with their extensive lists of duties and virtues, many of which are not part of the existing moral code, offer lies in the guise of truth.

Moore offers three reasons why Ethics is likely to fail if its practitioners offer rules of duty or sets of virtues that are not part of the already existing moral conventions of a given society:

- In the first place, (1) the actions which they advocate are very commonly such as it is impossible for most individuals to perform by any volition....
 (2) Actions are often advocated, of which, though they themselves are possible, yet the proposed good effects are not possible, because the conditions necessary for their existence are not sufficiently general....
 (3) There also occurs the case in which the usefulness of a rule depends upon conditions likely to change, or of which the change would be as easy and more desirable than the observance of the rule. (*Principia*, pp. 160-161)

What needs to be emphasized is that Moore is not here defending blind conformity to prevailing social customs on the part of individual moral agents. His point is a very different one—namely, that the *Science of Morals* is limited in what it can do by way of challenging or changing the conventional morality of one's time and place. "One or another of these (three) objections," Moore goes on to observe, "seems generally to apply to proposed changes in social custom, advocated as being better rules to follow than those now actually followed; and, for this reason, *it seems doubtful whether Ethics* can establish the utility of any rules other than those generally practiced" (p. 161, emphasis added). Moore does not infer from this either that (a) all existing rules have utility or that (b) each individual ought to abide by every rule of conventional morality and social custom.

His concern here is *not* with what individuals ought to do, or how they should decide this but rather with putting the Science of Morals in its proper place. When properly reformed, we too (or so Moore believes) that this Science lacks the wherewithal to change existing social customs by justifying the introduction of new rules.

That is the first strand of analysis Moore weaves through the pages of Chapter Five. The second, though related to the first, is distinct from it. It concerns the domain of individual moral autonomy and how this domain is defined by the Science of Morals. According to Moore, the principles of this Science can be used to make a plausible case in favor of universal compliance to certain rules. Very few in number, these rules in Moore's view are presupposed by any society, given the world as we know it. So the Science of Morals does offer principles that—again, in Moore's view—do justify the imposition of certain limits on everyone's behavior. At the same time, however, the very same principles that underwrite these universal limits on individual behavior also provide the bias for that extensive individual liberty, both in conduct and judgment, that Moore's own practical ethic allows and indeed encourages. Just as the Science of Morals cannot rationally justify general adoption of a *new* set of rules, so it cannot rationally defend uniform conformity to the *old* set that defines the body of prevailing social customs at a given time and place. It is precisely these limits of Ethics, when it comes to establishing what *everyone* ought to do or what virtues *everyone* ought to acquire, that open up the vast area of individual discretion Moore is at pains to protect from the moral imperialism of those "would-be scientific moralists"—those philosophers and theologians who use their "science" to call for the establishment of a "new" set of rules or who offer a blanket endorsement of the "old" set. Moore's fundamental point is that in the vast percentage of cases the individual does—and the individual should—get along just fine without trying to conform to *any* rule, old or new. An enlightened ethic in relation to conduct must encourage rich diversity between individuals, not bland sameness. As Moore writes:

Moralists commonly assume that, in the matter of actions or habits of action, usually recognized as duties or virtues, it is desirable that every one should be alike. Whereas it is certain that, under actual circumstances, and possible that, even in a much more ideal condition of things, the principle of division of labour, according to special capacity, which is recognized in respect to employments, would also give a better result in respect of virtues. (pp. 165-166)

To encourage diversity among individuals is not to answer the question, "How should we decide what we ought to do when, as is true in Moore's view in the vast majority of cases, it is improbable that we should follow a rule?" Moore anticipates the question and replies as follows:

It seems, therefore, that, in cases of doubt, instead of following rules, of which he is unable to see the good effects in his particular case, the individual should rather guide his choice by a direct consideration of the intrinsic value or vileness of the effects which his action may produce. (p. 166)

This, however, is only part of an answer. Which among the possible good effects should we aim at: The immediate or the remote? Those that will affect strangers or those that will touch friends? Moore again anticipates the question and offers a reply: In general we ought to aim at goods affecting oneself and "those in whom one has a strong personal interest" rather than to "attempt a more extended beneficence" (pp. 166-167); and in general we also ought to try to secure goods that are in "the present" rather than to seek goods that are in the more distant future. Both points of general instruction are defended by Moore by appealing to their probability of success. We are, he thinks, *less* likely to secure a good in the future than we are in the present, and we are *more* likely to obtain goods for those (ourselves included) for whom we are more concerned than for those for whom we are concerned less. "Egoism," Moore proclaims, "is undoubtedly superior to Altruism as a doctrine of means: in the immense majority of cases the best thing we can do is to aim at securing some good in which we are concerned (that is, concerned either for ourselves personally or for those in whom we have a 'strong personal interest'), since for that very reason we are far more likely to secure it". (p. 167) Because we want that outcome most, in short, we are in Moore's view more likely to act in ways that will get it.

How far Moore is from endorsing those views attributed to him by advocates of the received opinion should now be clear. There are, he thinks, a *very few* rules that people everywhere ought always to follow. (Not even all the rules commended by Common Sense qualify: only "*most of those most universally recognized by Common Sense*" are possible candidates, and even in their case Moore maintains only that the requisite type of justification "*may be possible*." (p. xxii) *Almost all* our decisions will have to be made without relying on any rule: in almost all cases "*rules of action should not be followed at all*." (p. xiii) In *all* cases of this sort individuals should guide their choice "by a direct consideration of the effects which the action may produce," *not* by reference to the expectations of conventional morality. In *these* cases one in general ought to do what one thinks will promote one's own interests, as these are enlarged by the lives of others in whom one has "a strong personal interest," instead of attempting to satisfy the demands of "a more extended beneficence." And of the goods to be aimed at, the more immediate are generally to be preferred to the more distant. *In short, in virtually all our activities in our day-to-day life we are at liberty to live and choose without troubling ourselves about whether we are doing what duty, in the form of the prevailing*

rules of conventional morality, requires. To draw the limits of morality along these lines is not arbitrary or capricious. It has reason—discovered, articulated, and defended by a reformed Science of Morals—on its side.

Moore's teachings in Chapter Five of *Principia* could not have been lost on those attentive readers who were familiar with the major tendencies of his thought at this time—in particular, his developing tendencies in reforming the Science of Morals. Part of that reform on which Moore was embarked involves breaking that Science free from mistaken connections with other sciences, both natural and metaphysical. That is the work of the first four chapters, where Moore tirelessly makes the case both for the uniqueness of the concept, Good, and for the autonomy of Ethics. But another part of his reform involves defining the limits of this Science *after* its autonomy has been secured. Nothing would be more natural than to suppose that an autonomous Science of Morals is a liberty to promulgate wearisome lists of duties and virtues, each incumbent upon everyone, at all times, and in all places. Given its autonomous status, no other science could challenge its claims. What else could?

Moore could. And does. A further reform must come *from within* this science itself. Because in his view such notions are Duty, Right, Obligation, and the like are necessarily tied to the notion, Good, Ethics must consider what is right, what is obligatory, and so on. But because of *how* these notions are related to Good, Moore believes the limits of knowledge in this quarter are severe. We do not know very much about what is productive or good. And this must chasten the enthusiasm of each and every practitioner of Ethics. That Science must (in Moore's words) be appropriately "humbled." When it is, Moore believes its practitioners are only slightly better able to say what acts are duties than they are able to say what things are good. On the latter point (What things are good-in-themselves), Ethics is able to prove nothing; on the former point (What acts are obligatory), Ethics can prove at best that a very few rules impose duties. Nothing in the one case. A few things in the other. Not a very impressive showing.

When viewed in a more sympathetic light, however, these results *are* impressive. Immensely so. By severely limiting the number of duties and virtues the Science of Morals can identify and defend, Moore offers an ethical system that aspires to prick the inflated pretenses of would-be scientific moralists, one that justifies the necessity of the *individual's* moral judgment and freedom. That is the principal message of *Principia's* Chapter Five and of that book generally. When Vanessa Bell writes, just before the First World War, that "a great new freedom seemed about to come," she pays proper homage to Moore the liberator.

For Bloomsbury practiced what *Principia* preaches, not only (as many commentators have noted) in its acceptance of that work's

pronouncements about what things are good in themselves, but also *Principia's* major themes concerning what sort of person we ought to be and how we ought to live. Each member of Bloomsbury in his or her own way labored to acquire those "private" virtues Moore commends in *Principia*: prudence, temperance, industry. There was not a slackard in the crowd. Not one who recklessly threw his or her life away through willful over-indulgence in one vice or another. Though God was dead in Bloomsbury, the work ethic of their largely Protestant upbringing was alive and well. Moore's celebration of those virtues the members already were determined to pursue and in time were in large measure to possess could hardly have failed to elicit their happy approval. Not beneficence. Not charity. Not civic-mindedness. Not social justice. Not patriotism. Not courage. Not self-sacrifice. Not any of those "social virtues" that would-be scientific moralists applauded and that Bloomsbury by its cliquish aloofness tended largely to disdain. The virtues of Bloomsbury are *Principia's* virtues. They are the virtues of the private self, not the virtues of the corporate citizen.

But not only *Principia's* virtues, that book's entire practical ethic permeates Bloomsbury's moral approach to living. How ought we to decide what to do, if we are to act as a legitimate, scientific ethic requires? *Principia* offers its justification of a very few rules of duty: Do not murder. Do not steal. Bloomsbury could not have asked for more sanguine prescriptions. Murder was not on their social agenda. Nor the theft of another's property. Nor any serious meddling with the existing social structure, the one that enabled the Bloomsberries to work at perfecting their several crafts while the servants did the housework. Theirs was an anarchy of the bedroom, not the streets. How reassuring to learn that everyone had a moral duty not to steal, that the stability of any society—or so Moore claims—depends on everyone's respecting a person's property rights, and that those who had more than enough property had no obligation to cultivate a "more extended beneficence" by inquiring into how equitably it had been acquired. The Bloomsberries could rest comfortably in the belief that more than enough was enough. And they did.

But Moore's influence goes deeper still. That passage in *Principia* in which Moore extols the virtue of Egoism over Altruism as a means of producing good—that passage more than any other captures the essence of Bloomsbury's ethic. We are to act to increase our share of what is good in this world, including in our range of concern those persons "in whom (we have) a strong personal interests." Loyalty to friends comes before loyalty to country. The patriotism of a McTaggart is dead. The friendship of a Forster is alive. We have no *duty* to nourish "a more extended beneficence." In general we do best if we keep to ourselves and our friends, mindful, of course, that we are not to commit murder or steal—even in the company of strangers. That cool aloofness that is synonymous with the name Bloomsbury is a predictable outgrowth of Moore's teachings when

taken seriously by intelligent, clever people who belong to the leisure class. Leon Edel is both right and wrong when he states that "the ethical side of Moorism...touched the young men (that is, the Cambridge core of Bloomsbury) less than the philosophical sanction given them to assert themselves, to shake off the old rigidities, to be homosexual if they wished, to scoff at the dying—the dead—Victorians." Right in ascribing this liberating influence to Moore, Edel is wrong only in thinking that the influence is somehow distinct from Moore's "ethical side." Moore's "ethical side" is a declaration of individual liberty, not, as the received opinion supposes, a dreary call to acquiesce in the face of "old rigidities," not (in Gertrude Himmelfarb's telling phrase) "a feeble concession to conventional morality."

The Bloomsberries took Moore's liberating teachings into themselves. They were doing exactly what Moore said they ought to be doing. It was the great mass of people outside Bloomsbury—too much involved in the unproductive affairs of social justice, too frequently in pursuit of a hopelessly extended beneficence, too much in bondage to a morality of rule worship, too little in control of their own destinies, too much under the regrettable influence of those "lies" told by "would-be scientific moralists"—it was the great mass of humanity who failed to carve out an approach to life that could be defended by a truly scientific ethic. The barbarians outside Bloomsbury did not live as they ought. The Bloomsbury elect did. When David Garnett writes to Moore in June of 1949, after reading Keynes' "My Early Beliefs," that "the thing which I don't like in Maynard's paper is the assumption that nobody reads you today and that you are a prophet without disciples," he gives, I would venture to say, a fairly accurate description of where Moore and his work stand today. This was not always so. For Moore *was* Bloomsbury's prophet, and the people who were the Bloomsbury Group *were* his disciples. Perhaps once we come to see these people and their lives as tangible expressions of Moore's ethical teachings, including his ethic in relation to conduct, we will recognize the need to read his work again, with renewed interest and clearer vision. We are, perhaps, beyond the point of revering him as our prophet, and the days of Moorean disciples probably are behind us. But the man, and his work, deserve nothing less than a fresh, enriched reexamination, something knowledge of his Bloomsbury connection hopefully will help occasion.

1. Leonard Woolf, *Beginning Again: An Autobiography of the Years 1911-1918* (New York: Harcourt Brace Jovanovich, 1964), p. 25.
2. Michael Holroyd, *Lytton Strachey: A Critical Biography*, Vol. II (New York: Holt, Rinehart and Winston, 1968), p. 179.
3. Gertrude Himmelfarb, "From Clapham to Bloomsbury: A Genealogy of Morals," *Commentary* 79, no. 2 (Feb. 1985), p. 40.

4. Paul Levy, *G. E. Moore and the Cambridge Apostles* (Oxford: Oxford University Press, 1981), p. 9.
5. Tom Regan, *Bloomsbury's Prophet: G. E. Moore and the Development of His Moral Philosophy* (Philadelphia: Temple University Press, 1986). Portions of the present essay are excerpted from Chapter Eight of this longer work.
6. G. E. Moore, *Principia Ethica* (Cambridge: University of Cambridge Press, 1960), pp. 188-189. Hereafter page references to *Principia* are noted in the main body of the text.
7. Leon Edel, *Bloomsbury: A House of Lions* (New York: Avon Books, 1980), p. 37.

JUDGING WITHOUT JUSTICE: THE STERILE DEBATE OVER JUDICIAL ACTIVISM

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When a citizen claims that a congressional act or state statute violates his or her rights, what is a judge to do? In recent years we have witnessed a tumultuous debate about this issue between judicial "conservatives" and "liberals."¹ In Part I of this article, I shall describe each of these two positions and explain why both are constitutionally suspect. In Part II, I shall suggest that both of these positions stem from a skepticism about the existence of rights antecedent to government. I shall contend that, whether or not such a skeptical posture is philosophically warranted, it sterilizes a Constitution that was written by persons who believed in the existence of such rights. In Part III, I distinguish the "external" from the "internal" functions that individual rights should perform in constitutional analysis. Finally, in Part IV, I address the concerns of some that letting judges pursue justice will inevitably result in the "tyranny of the judiciary."

THE CURRENT DEBATE BETWEEN JUDICIAL LIBERALS AND CONSERVATIVES

Judicial liberals, who have dominated both the courts and academic discussions for decades, view the Constitution as a "living" document whose broad provisions warrant the judicial adoption of enlightened social policy to keep up with changing times. Since the 1930s, this has meant that federal and state courts have legitimated a virtually unfettered legislative power to remake the law governing economic relations, while strictly scrutinizing legislation that impinges on certain favored non-economic rights.

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Today's judicial conservatives resist the idea of judges substantively scrutinizing congressional and state legislative acts. They view political legitimacy as stemming entirely from majority will—a will, they say, that unelected federal judges, especially, have thwarted with impunity. Popularity elected legislatures are “accountable.” Lifetime appointed judges are not. Judges are authorized only to “apply” the law, not to “make” it, by which judicial conservatives mean that judges must follow legislative orders—including the commands contained in the popularly ratified Constitution.

Which of these judicial philosophies is most appealing often depends upon what a person most fears. Judicial liberalism appeals to those who support a general expansion of governmental power for noble ends, but who fear that state legislatures will prove only too responsive to a majority's wrongheaded desire to trample the (non-economic) freedoms of the minority. Liberals would employ a rather freewheeling judicial activism by federal judges to counter the discretion of state legislatures.

Judicial conservatism, on the other hand, appeals to those who are afraid that an unaccountable “activist” judiciary will conspire to impose its own wrongheaded vision of social policy. To constrain this exercise of judicial power, they would confine federal judges to enforcing the rule-like provisions of the Constitution² and, where the Constitution is more general, they would confine judicial enforcement to those specific applications that were contemplated or intended by the constitutional framers.

While the fears of each camp are warranted and deserving of serious attention, I think both of these judicial philosophies are constitutionally flawed. The first is to override the original constitutional scheme of limited, enumerated federal powers as stipulated in the Tenth Amendment:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.³

Despite this constitutional injunction, judicial liberals view the powers of Congress to regulate economic activity as virtually unbounded. Since the 1930s this view has dominated Supreme Court opinions. This view has been facilitated by, among other devices, an expansive interpretation of the “commerce clause”⁴ and the “necessary and proper clause”⁵ to grant Congress the power to regulate economic activity without any constitutional restraint.⁶

Judicial liberal's second constitutional mistake is to advocate a hierarchy of rights or liberties. Legislative acts impinging on certain “personal” (non-economic) liberties are accorded judicial scrutiny; economic liberties receive no effective protection. The distinction between economic and non-economic liberties, however, receives no support from a Constitution that ensures the “equal protection of

the laws” and that explicitly protects the “obligation of contract,”⁸ the undifferentiated “privileges or immunities”⁹ of citizens, and the “life, liberty, or property”¹⁰ of all persons. Moreover, the Constitution provides that “private property may not be taken for public use, without just compensation.”¹¹

Although some modern judicial (and political) liberals clearly wish it had been otherwise, the Constitution of the United States expressly acknowledges property rights and the obligation of contract. Indeed, the Supreme Court has never explicitly refused to review economic legislation. Instead, it purports to determine whether there existed a “rational basis” for economic legislation—a standard of review that, as applied by the courts, one hundred percent of economic regulations can pass.

Judicial conservatives embrace the liberals’ broad post-New Deal reading of congressional powers but compound this mistake in two ways. First, they limit judicial review of legislative acts to an application of the narrowest possible reading of only those rights that are clearly specified in the Constitution. Second, they adopt an expansive, antebellum view of state legislative discretion. Consequently, judicial conservatives fiercely resist judicial protection of *both* non-economic and economic rights.

This vision of expansive legislative powers, constrained only by enumerated rights, turns the actual constitutional text upside down. At the federal level, the Constitution explicitly establishes a structure of limited enumerated governmental powers and expansive individual rights. When Congress exceeds its enumerated powers by acting in ways not shown to be truly “*necessary and proper*” to these enumerated powers, such acts are *ultra vires* and should not be recognized by courts as law. Therefore the substance of congressional acts must be evaluated by judges to see whether they are in fact within an enumerated power. Those acts which survive this scrutiny must be further evaluated and stricken if they violate individual rights—for example, by taking property for public use without paying just compensation or by violating a right of free speech.

Judicial conservatism also distorts the issue of federal judicial scrutiny of state statutes by ignoring fundamental structural changes that occurred long after the framing of the original Constitution. True, the original text left state legislatures free to act in ways that Congress could not, but this structure was found to be grossly deficient.¹² Most significantly, it permitted state laws enforcing human slavery. The Thirteenth Amendment outlawed slavery,¹³ but did not prevent other legislative abuses that were widespread after the civil war—abuses that often took the form of economic regulation.¹⁴ The Fourteenth¹⁵ and Fifteenth¹⁶ Amendments, however, fundamentally altered the original constitutional structure. They expressly authorized Congress and the courts to protect from state infringement the economic and non-economic rights to “life, liberty, or property” of all persons, as well as the “privileges or immunities” of all citizens and the right to vote.¹⁷

If a written constitution means anything, it means that even constitutional rights that are unfashionable according to current political thinking merit genuine judicial protection until the

Constitution is amended. Judges who turn a blind eye to enumerated powers and constitutionally protected economic liberties dangerously undermine their own authority. As people come to believe that the Supreme Court makes up its own constitution as it goes along in order to fulfill a political agenda, the legitimacy of judicial review is eroded and the Constitution is debased.

STERILIZING THE CONSTITUTION

An underlying philosophical skepticism pervades both judicial liberalism and conservatism. Judicial conservatives consistently pose a false choice between an objectively determinate meaning of rule-like constitutional provisions on the one hand and the imposition of judges "subjective preferences" on the other.¹⁸

Many judicial conservatives allow for no middle ground because they share the view of Jeremy Bentham that "there are no such things as natural rights—no such things as rights anterior to the establishment of government...."¹⁹ Once this skeptical premise is accepted, judicial decisionmaking that does not rest squarely on a legislative command can be nothing but illicit, subjective lawmaking.

For their part, judicial liberals have long disparaged any assertion of unenumerated substantive rights against state power as positing, in the words of Justice Holmes, "a brooding omnipresence in the sky."²⁰ While many judicial liberals were led to this view by the prevailing pragmatism and utilitarianism of modern thought, there was a political motive as well. For a time, the judicial protection of rights antecedent to government operated as a serious constraint on the growth of the modern regulatory-welfare state. With these institutions in place, however, judicial liberal fealty to rights skepticism has recently abated, permitting them to favor the judicial protection of "fundamental" (non-economic) rights. Moreover, many have sought to harness the rhetoric of "entitlements" to resist the eroding popularity of expansive redistributionist measures.²¹

Although intellectuals of every ideological stripe have shared a skeptical view of rights for a very long time, grave problems arise when the Constitution is interpreted in this light. The original Constitution, the Bill of Rights, and the Fourteenth Amendment were not written by Benthamites. They were written by persons who accepted the reality of Lockean natural rights.²² This philosophy was formally enacted in the Ninth Amendment:

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage *others retained* by the people.²³

The Ninth Amendment has long been dismissed as a "mere" rule of construction by liberals and conservatives alike. Even if this was true, however, its importance to today's debate over judicial activism is undiminished. One reason the Ninth Amendment was included in the Constitution was precisely to avoid the cramped construction of individual rights that judicial liberals in the recent past insisted—

and that conservatives continue to insist—was the framers' "original intent." As James Madison's original draft of what became the Ninth Amendment makes clear:

The exceptions *here or elsewhere* in the Constitution, made in favor of *particular rights*, shall not be construed as to diminish the just importance of other rights retained by the people, or as to enlarge the powers delegated by the Constitution, but either as *actual limitations of such powers*, or as inserted merely for greater caution.²⁴

In sum, enumerated constitutional rights were meant to supplement the scheme of enumerated powers in two ways: by further limiting these powers or by acting as a redundant safeguard against their illicit expansion. They were not intended to foreclose the existence and equal protection of other rights retained by the people.

The framers rightly believed that, while democracy is a useful constraint on the tyranny of the executive branch, it is insufficient to protect the individual from the tyranny of the legislature. For this reason, they wrote a Constitution limiting the Federal government to enumerated powers, and containing not one, but several passages recognizing the existence of economic and non-economic rights that even majoritarian institutions should not violate. As Madison argues as in Congress he introduced his version of the Bill of Rights:

[T]he legislative [branch]...is the most powerful, and most likely to be abused, because it is under the least control. Hence, so far as a declaration of rights can tend to prevent the exercise of undue power, it cannot be doubted, that such declaration is proper.²⁵

Notwithstanding this elaborate effort, one by one, most of explicit power-limiting provisions and rights-protecting passages have been steadily rendered functionless by the Supreme Court. Once interpreted away, these protective strictures never seem to resurface. Judges must salvage these long-neglected provisions of the text, or the American experiment with constitutional limits on governmental power will have failed.²⁶

THE INTERNAL AND EXTERNAL FUNCTIONS OF UNENUMERATED RIGHTS

The limitation of government to its enumerated powers and the vigorous protection of enumerated rights would go a long way towards ensuring liberty and prosperity, but this is not enough. In addition, the unenumerated individual rights protected by the Constitution also must be taken seriously. Such rights are neither mystical creatures, nor unfathomable mysteries. Rather, they establish a vital baseline of individual freedom from external interference with voluntary economic and non-economic activities. Unenumerated rights or

“privileges” and “immunities” from government constraints create a constitutional presumption in favor of liberty and against legislative constraints on liberty.

In constitutional analysis, individual rights have both an internal and an external function. Externally, rights provide a means of critically evaluating a political scheme. The American revolutionaries, for example, used a rights analysis to criticize the acts of Parliament and to justify acts of rebellion against the Crown. The role played by individual rights *within* an assumedly justified constitutional scheme, however, is distinct from using individual rights to critically evaluate the legitimacy of the constitutional scheme itself. In this mode, a rights analysis has an internal role to play.

In establishing the Constitution, the framers contemplated an internal role for individual rights—that is, they contemplated the protection of individual rights within the Constitutional scheme. Such an internal mode of rights analysis takes the legitimacy of the Constitutional structure as given, but requires an interpretation of this structure that renders it as consistent with an individual rights analysis as possible. Of course, it would have been possible to devise a constitution that did not contemplate the protection of unenumerated rights. Justifying such a constitution by an external rights analysis might, however, prove difficult as internal and external rights diverge. The constitutional protection of “internal” rights, therefore, can enhance the external legitimacy of the constitutional scheme as a whole.

However, it is important to note that even within a scheme that protects unenumerated rights, an internal analysis of rights could markedly diverge at points from an external rights analysis of the Constitutional structure as a whole. Internally, rights claims have a presumptive character that permits them to be overcome by sufficiently weighty Constitutional strictures. So, for example, although the Constitution continues to protect property rights, it also explicitly permits the collection of an income tax²⁷ and the regulation of foreign trade.²⁸ A constitutional scheme that permits such powers may be criticized by an external rights analysis, but internally, the taxing power and commerce powers must be permitted, albeit in a manner that is as consistent with individual rights as possible.

Although the Constitutional presumption favoring individual liberty sometimes may be overcome by sufficiently weighty constitutional strictures, this presumption is of great practical importance. It requires that any claim by some—including those calling themselves a legislature—to control forcibly the actions of others *must be justified*.²⁹ Rights “theory” is the systematic study of what constitutes a sound moral justification for the use of force by one against another.³⁰ If express constitutional warrant for this kind of inquiry is required, the Constitution of the United States provides it.

For this inquiry to be meaningful, however, the legislature cannot be the judge in its own case. We need an impartial third party to adjudicate claims by individuals that persons designated a legislature have exceeded their constitutional authority and violated individual rights. In short, we need substantive “judicial review” of legislative action.

As Madison argued on the floor of Congress,

If they are incorporated into the constitution, independent tribunals of justice will consider themselves in a peculiar manner the guardians of those rights; they will be an impenetrable bulwark against every assumption of power in the legislative or executive; they will naturally be led to resist every encroachment upon rights expressly stipulated for in the constitution by the declaration of rights.³¹

Accordingly, the federal courts are empowered by Article III to decide “all Cases, in law and Equity, arising under this Constitution,”³² just as common law judges have for centuries determined the content of individual rights.³³

COMBATING JUDICIAL OVERREACHING

Judicial conservatives fear that judicial review of the substance of legislative acts will lead (or has already led) to a “tyranny of the judiciary.” Substantive judicial review, they argue, enables judges to substitute their own “subjective policy preferences” for those of the legislature. Even if the rights skepticism of judicial conservatives is in error, the danger of judicial overreaching is quite genuine.

Yet the means favored by judicial conservatives for preventing judicial tyranny exacts too steep a price. By opposing substantive scrutiny, judicial conservatives would combat the risk of judicial overreaching by all but ensuring legislative overreaching. Instead, the Constitution contemplates that judicial overreaching be minimized by utilizing three important formal constraints on the powers of judges engaged in reviewing legislation.

First, constitutional rights only operate against the government. They do not generate rights claims against private parties.³⁴ Second, judges have no authority to exercise executive functions or to spend state or federal tax moneys (except to order the payment of damage awards). In exercising substantive review, judges, in Jefferson’s words, must be “kept strictly to their own department...”³⁵ Finally, the Constitution contemplates the protection of “negative” not “positive” rights.³⁶ Constitutional rights protect individual actions that are “privileged” and “immune” from governmental interference. While these rights may justify equal access to “public” property and processes, they do not justify claims to wealth transfers.

In short, according to these formal limitations, proper substantive review only authorizes judges to say no. Judges may only strike down legislative acts, not pass them. Judicial negation is not legislation.³⁷

Moreover, the Constitution provides three important structural safeguards of judicial performance. First, both the President and the Senate may scrutinize the "judicial philosophy" of all judicial appointments³⁸; second, federal judges may be impeached by the Senate³⁹; and, third, where the text itself is wrong, it may and should be amended.⁴⁰ Any lack of "public will" to use these constitutionally authorized constraints on judicial power suggests that the problem with the judiciary today is not that it has thwarted the majority's will, but that it has succumbed to it. While the danger of judicial overreaching is quite real, with these formal and structural constraints, the judiciary is indeed the "least dangerous branch."

CONCLUSION

The debate about judicial philosophies often camouflages a more fundamental debate about political philosophies. The authors of the Constitution, the Bill of Rights, and the Fourteenth Amendment tried to design a constitutional structure and constraints that would facilitate their political views. It is *no accident* therefore, that this structure pinches the feet of those who do not accept the framers' political vision. Some try to evade this structure by expanding or contracting the role of the judiciary.

Still, although political vision is all that can ever justify a constitution, the debate over the appropriate role of the courts is itself important. We remain at peace with one another by confining our political disputes to constitutionally permissible channels. Those on the right or left who manipulate the constitutional text to support their political vision invite grave social conflict by undermining the legitimacy of these channels. They convert the Constitution into a mere fig leaf for wholly extra-constitutional debate. We must end this dangerous game by restoring both the textual constraints on governmental power and the vision of justice based on individual rights that the Constitution presupposes to their rightful places in constitutional adjudication.

1. In this essay, I will refer to *judicial* liberals and conservatives. Such persons may, but need not also be *political* liberals and conservatives.
2. For example, the provision that stipulates that a person must be thirty-five years old to be President. See Article II, Sec. 1.
3. U.S. Constitution, Amend. X.
4. U.S. Constitution, Art. I, Sec. 8 ("The Congress shall have Power...To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes...").

5. U.S. Constitution, Art. I, Sec. 8 ("The Congress shall have Power...To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers...").
6. See Richard A. Epstein, "The Proper Scope of the Commerce Power," *Virginia Law Review* 73 (1897): 1387-1455.
7. U.S. Constitution, Amend. XIV ("No State shall...deny to any person within its jurisdiction the equal protection of the laws").
8. U.S. Constitution, Art. I, Sec. 10 ("No State shall...pass any...Law impairing the Obligation of Contracts..."). See Richard A. Epstein, "Towards a Revitalization of the Contracts Clause," *University of Chicago Law Review* 51 (1984): 703-751.
9. U.S. Constitution, Amend. XIV ("No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States...") See Michael Kent Curtis, *No State Shall Abridge: The Fourteenth Amendment and the Bill of Rights* (Durham, NC: Duke University Press, 1986).
10. U.S. Constitution, Amend. V ("No persons shall be...deprived of life, liberty, or property, without due process of law..."); U.S. Constitution, Amend. XIV ("nor shall any State deprive any person of life, liberty, or property, without due process of law..."). For a discussion of the "substantive" conception of "due process of law" that preceded the adoption of the Fourteenth Amendment, see Michael Les Benedict, "Laissez-Faire and Liberty: A Re-Evaluation of the Meaning and Origins of Laissez-Faire Constitutionalism," *Law and History Review* 3 (1985): 293-331.
11. U.S. Constitution, Amend. V. See Richard A. Epstein, *Takings: Private Property and the Power of Eminent Domain* (Cambridge, MA: Harvard University Press, 1985). I summarize Epstein's thesis in Randy E. Barnett, Book Review, *Ethics* 97 (1987): 669-672. For a useful criticism of this thesis, see Jeffrey Rogers Hummel, "Epstein's Takings Doctrine and the Public-Goods Problem" (book review), *Texas Law Review* 65 (1987): 1233-1242.
12. State legislative power was not originally unbounded, however. Significantly, Article I, Sec. 10 stipulated that "No State shall...make any Thing but gold and silver Coin a Tender in Payment of debts; pass any...ex post factor Law, or Law impairing the Obligation of Contracts..." By the time the Fourteenth Amendment was passed, these strictures had already been denied any meaningful function in constraining state legislatures.
13. U.S. Constitution, Amend. XIII ("Neither slavery nor involuntary Servitude, except as punishment for a crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction").
14. See e.g. Jennifer Roback, "The Political Economy of Segregation: The Case of Segregated Streetcars," *Journal of Economic History* 46 (1986): 893-917.
15. See *supra* notes 7 and 9.
16. U.S. Constitution, Amend. XV ("The rights of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude").
17. Note that while the Fifteenth Amendment prohibits the denial or abridgement of the right to vote "on account of race, color, or previous condition of servitude," the protections of the Fourteenth Amendment are not limited to legislative abuses on this basis.
18. See Stephen Macedo, *The New Right v. The Constitution* (Washington, DC: Cato Institute, 1986), pp. 33-41.
19. Jeremy Bentham, "Anarchical Fallacies," in A. Meldon, ed., *Human Rights*, (Belmont, CA: Wadsworth, 1970), p. 31.
20. *Southern Pacific Co. v. Jensen*, 224 U.S. 205, 222 (1917) (Holmes, J., dissenting).
21. I chronicle the growing rejection of rights skepticism and the related philosophy of legal positivism in Randy E. Barnett, *Contract Scholarship and the Reemergence of Legal Philosophy* (book review), *Harvard Law Review* 97 (1984): 1223-1236.
22. See Edward S. Corwin, "The 'Higher Law' Background of American Constitutional Law," *Harvard Law Review* 42 (1928): 149-185, 369-409; Thomas C. Grey, "The Origins of the Unwritten Constitution: Fundamental Law in American Revolutionary Thought,"

Stanford Law Review 30 (1978): 843-893; Suzanne Sherry, "The Founders Unwritten Constitution," *University of Chicago Law Review* 54 (1987): 1127-1177.

23. U.S. Constitution, Amend. IX (emphases added). I discuss the Ninth Amendment at length in Randy E. Barnett, "James Madison's Ninth Amendment," in *The Rights Retained by the People: The History and Meaning of the Ninth Amendment* (R. Barnett, ed. forthcoming). See also, "Symposium on Interpreting the Ninth Amendment," *Chicago-Kent Law Review* (forthcoming).

24. *Annals of Congress*, vol. 1 (Washington, DC: J. Gales & W. Seaton, ed. 1834), p. 452 (emphasis added).

25. Madison, *supra* note 24, at 454.

26. Two recent cases interpreting the "takings clause" of the Fifth Amendment show that rehabilitating right-protecting provisions is possible, even after years of neglect. See *First Evangelical Lutheran Church of Glendale v. Los Angeles County*, 480 U.S. ___, 107 S.Ct. 2378 (1987); *Nollan v. California Coastal Commission*, 483 U.S. ___, 107 S.Ct. 3141 (1987).

27. U.S. Constitution, Amend. XVI ("The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.")

28. U.S. Constitution, Art. I, Sec. 8 ("The Congress shall have Power...To regulate Commerce with foreign Nations...").

29. On the need for moral justification of legal coercion, see Ronald Dworkin, *Law's Empire* (Cambridge, MA: Harvard University Press), p. 110; David Lyons, "Constitutional Interpretation and Original Meaning," *Social Philosophy and Policy* 4 (1986): 78-80; Dale A. Nance, "Legal Theory and the Pivotal Role of the Concept of Coercion," *University of Colorado Law Review* 57 (1985): 1-43.

30. For one approach, see Randy E. Barnett, "Pursuing Justice in a Free Society: Part One—Power v. Liberty," *Criminal Justice Ethics* 4:2 (Summer/Fall 1985): 40-72; *id.* Foreword: "Why We Need Legal Philosophy," *Harvard Journal of Law and Public Policy* 8 (1985): 6-15; *id.* "A Consent Theory of Contract," *Columbia Law Review* 86 (1986): 291-300.

31. Madison, *supra* note 24, at 457.

32. U.S. Constitution, Art. III, Sec. 2.

33. I discuss substantive judicial review at greater length in Randy E. Barnett, Foreword: "Judicial Conservatism v. A Principled Judicial Activism," *Harvard Journal of Law and Public Policy* 10 (1987): 273-291.

34. This is known in constitutional parlance as the "public-private" distinction. I explain this and other usages of the distinction in Randy E. Barnett, Foreword: "Four Senses of the Public Law-Private Law Distinction," *Harvard Journal of Law and Public Policy* 9 (1986): 267-273.

35. Letter of Thomas Jefferson to James Madison (March 15, 1789), reprinted in Bernard Schwartz, *The Bill of Rights: A Documentary History*, vol. 1 (New York: Chelsea House, 1971), p. 620. This passage was part of Jefferson's argument that Madison had to date underestimated the effectiveness of judicial review to combat legislative abuses:

In the arguments in favor of a declaration of rights, you omit one which has great weight with me, the legal check which it puts into the hands of the judiciary. This is a body, which if rendered independent, and kept strictly to their own department: merits great confidence for their learning and integrity.

Some credit Jefferson's influence for Madison's later explicit endorsement of judicial review in his speech in the House of Representatives. See Bernard Schwartz, *The Great Rights of Mankind* (Oxford: Oxford University Press, 1977), p. 118.

36. See David P. Currie, "Positive and Negative Constitutional Rights," *University of Chicago Law Review* 53 (1986): 864-890.

37. Analogously the Senate may reject, but may not choose a Supreme Court Justice and the President may veto, but not initiate and pass legislation. We consider neither

of these functions to be "lawmaking." Still I must emphasize that these are only analogies. Judges do not have a "veto" power over legislation that they, like the President, may exercise simply because they disagree with the wisdom of legislation. Rather, they may strike down legislation only if it is unconstitutional. The point is that when they do so, they are not engaged in *lawmaking*—except to the extent that their act influences future judicial decisions

PREFERENCE UTILITARIANISM, PRIOR EXISTENCE AND MORAL REPLACEABILITY

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One of the many components of conventional philosophical and moral wisdom against which John Hospers has fought is the doctrine of utilitarianism. On the moral level, utilitarianism seems to deny the sovereignty of individual lives and the significance of individual rights and deserts.¹ And, on the political level, utilitarianism seems to lend support to schemes for the redistribution of income and for the political engineering of social and economic life that are incompatible with Hospers' vision of a free society.² However, despite being subject to severe criticism in recent years,³ utilitarianism still has its defenders. One of the most prominent of these defenders, especially in works that are admirably addressed to the general educated public, is Peter Singer. Singer is well-aware of at least certain of the objections that have been pressed against utilitarianism. Hence, the degree to which he can develop a satisfactory reformulation of this hoary doctrine is a reasonable gauge for the plausibility of retaining utilitarianism as part of our conventional normative wisdom. In this essay, I shall assess the success of Singer's reformulation of utilitarianism in his *Practical Ethics*.⁴ I shall focus especially on: (a) Singer's equivocal stand on whether practical reason and/or morality requires an agent to be impartial between his interests and the interests of others and (b) Singer's attempt to deal aptly with the charge that utilitarianism endorses the moral replaceability of persons.

I

In attempting to lay the groundwork for his utilitarianism, Singer seeks to avoid the traditional utilitarian foundationalism that identifies certain states of affairs (e.g., the pleasant, the satisfying or the valued

ones) as good in themselves and certain contrasting states of affairs (e.g., the unpleasant, the frustrating or the disvalued ones) as bad in themselves. This approach would reflect belief in "...a mysterious realm of objective moral facts...;" and Singer asserts the "non-existence" of such facts.⁵ Surprisingly and fortunately, according to Singer, the non-existence of objective moral facts does not seriously challenge ethics because "it does not imply the non-existence of ethical reasoning."⁶ It is, then, in his account of ethical reasoning that Singer seeks to ground practical ethics.

According to Singer, ethical reasoning exists when and only when one is "prepared to defend and justify"⁷ a decision or action and the justification is "of a certain kind."⁸

For instance, a justification in terms of self-interest alone will not do... [T]he notion of ethics carries with it the idea of something bigger than the individual. If I am to defend my conduct on ethical grounds, I cannot point only to the benefits it brings to me. I must address myself to a larger audience.⁹

While the reader may pause to puzzle over why one cannot address a large audience with a self-interested defense, Singer proceeds to equate an appeal to something bigger than the individual, an appeal that goes beyond self-interest, and an appeal that addresses a larger audience, with the adoption of "...a point of view that is somehow universal."¹⁰ And Singer proceeds, in this form of argument by free association, to identify the "universal point of view" with "the universal law, the universalizable judgment, the standpoint of the impartial spectator or ideal observer, or whatever we choose to call it." Having been so catholic in his characterization of ethical reasoning, Singer acknowledges that it would be surprising for this characterization to lead "ineluctably to one particular ethical theory."¹¹ "There are other ethical ideals—like individual rights, the sanctity for life, justice, purity and so on—which are universal in the required sense, and are, at least in some versions, incompatible with utilitarianism." Nevertheless, Singer insists that his analysis of ethical reasoning does "swiftly" (!) lead to "an *initially* utilitarian position."¹²

Yet how can this be when, as Singer has just acknowledged, this reasoning no more points to utilitarianism than it does to a variety of ethical principles that are incompatible with utilitarianism? Nor is this puzzle made less acute by Singer's comforting insertion of "*initially*." Having only "*initially*" arrived at utilitarianism, Singer asserts his willingness to add non-utilitarian components to his moral universe—should good reasons be produced for them. But if, as it seems, his initial utilitarianism now provides the standard for evaluating the case for any non-utilitarian element, it is hard to see how any interestingly non-utilitarian element will have any real chance of entering this initially utilitarian moral domain. And, indeed, nothing in Singer's extensive survey of contemporary moral problems, does

lead him to add, or even explicitly to consider adding, any non-utilitarian component to his own normative views.

One can only assume that what leads Singer to utilitarianism is an additional and implicit premise that ethics and ethical reasoning are fundamentally concerned with the satisfaction of interests;¹³ they are not fundamentally concerned with, e.g., the achievement of virtue, the respect for rights, or the compliance with duty. Such an implicit premise would allow Singer to rule out (as adequate to ethical reasoning) all non-utilitarian principles that are universalistic by way of assigning to each person a comparable list of moral aspirations, moral rights or moral duties. Only utilitarianism would remain as both sufficiently universalistic and sufficiently interest-oriented. Singer, however, provides no support for this exclusively interest-oriented conception of ethics.

Singer's attempt to base utilitarianism on his account of ethical reasoning is rendered yet more problematic by the interesting discussion in his last chapter, "Why act morally?" In this chapter, Singer goes in search of what he might call a pre-ethical reason for being moral. Singer wants to answer affirmatively the question: Does practical reasoning endorse ethical reasoning (where ethical reasoning is defined in terms of impartiality or universality)? According to Singer, an affirmative answer is forthcoming if and only if being committed to, capable of, and engaged in ethical reasoning is in an agent's self-interest. That is, the practical rationality of morality depends upon its being in the interest of the practitioner of morality. This stance creates two major problems for Singer's overall position.

First, while it is difficult enough to defend a congruence of the counsels of self-interest and the demands of morality—at least as long as these two remain definitionally semi-independent—this defense becomes extraordinarily difficult when the morality involved is stringently impartial utilitarianism. For that position prides itself in embodying the demands that agents be impartial between their own and all others' interests and that agents give allegiance to "something bigger than the individual." Second, Singer's recognition of *each agent's* self-interest as the appropriate standard for *that agent's* adoption of morality (however defined) clashes directly with his account of universalizable reasoning in his opening chapter. In his discussion of "Why act morally?" Singer realizes that he must defend his stance that it is rational for each agent to evaluate proposals before him—in this instance, the proposal that he adopt "morality"—in terms of his own self-interest (and not, e.g., in terms of the interests of all those affected). To defend this stance, Singer invokes the common distinction between personal and impersonal egoism. (He dubs the latter "pure egoism.") Personal egoism, which is expressed in the claim on behalf of someone (or everyone), "Let everyone do what is in *my* interests," is in no sense universalizable. Hence, Singer seems to argue, it and its invocation are contrary to reason.¹⁴ But

impersonal egoism, which maintains that, for each person, his self-interest is the appropriate standard for evaluating proposals, does not "lack the universality required if it is to be a rational basis for action.... Pure egoism could be rationally adopted by everyone."¹⁵

However, if the mark of *ethical* reasoning is that it is universalizable, why doesn't Singer's argument show that pure egoism embodies ethical reasoning as much as utilitarianism? In short, why doesn't Singer's argument contradict his grounding of utilitarianism on his earlier account of ethical reasoning? Singer is aware of this problem. And he seeks to meet it by suggesting that there is a "limited" and a "stronger" sense of universalizability.¹⁶ While pure egoism satisfies the "limited" sense and thereby qualifies as rational, it does not satisfy the "stronger" sense and thereby it fails to be ethical. In the stronger sense at least, pure egoism is not "universalizable." But, the problem with Singer's suggestion is that he provides no argument for the contention that ethical reasoning must be "universalizable" in any sense stronger than that satisfied by pure egoism. What we must do, according to Singer, in order to engage in ethical reasoning, is to attempt to justify our acts in a way that addresses others. And surely one does this when, in appealing to pure egoism, one indicates that one is pursuing one's self-interest just as one allows (and, perhaps, even expects) others to pursue their respective interests. Singer cannot allow that this would be ethical reasoning while holding the line by claiming that it is bad ethical reasoning. For his account of ethical reasoning must be entirely formal. It cannot distinguish between modes of ethical reasoning on the basis of the soundness of the values they invoke. For such a recourse would involve entrance into the "mysterious realm of objective moral facts" belief in and reliance upon Singer eschews.

II

In advancing his particular formulation of utilitarianism, Singer appeals to two distinctions. The first is a contrast between classical and preference utilitarianism. The second is division between total view and prior existence utilitarianism. The first contrast is introduced in connection with a rather confusing discussion about the ways, if any, in which it is morally worse to kill a person than, e.g., a cow. The second division is introduced by Singer when he addresses the question of whether those in position to bring a happy human being into the world are, on utilitarian grounds, obligated to do so. The two distinctions are connected in that Singer believes that preference utilitarianism undergirds prior existence utilitarianism for persons. Singer is eager to endorse the prior existence view with respect to persons because he believes that this allows him to embrace the moral "irreplaceability" of persons—and, thus, to defuse the charge that utilitarianism represents persons that are morally replaceable units. Against Singer, I shall emphasize that: (a) his distinction between

classical and preference is obscure; (b) preference utilitarianism does not ground prior existence utilitarianism for persons; (c) the endorsement of the prior existence view and the irreplaceability of persons associated with it involves a radical departure from utilitarianism; while (d) this departure is, nevertheless, not radical enough to secure the desired irreplaceability.

According to Singer, a crucial feature that marks off a person from other sentient beings is the awareness of itself as a distinct being with a past and a future. Only such a being will have desires about its own future. Hence, only such a being will be subject to the non-fulfillment of its desires about or for the future. It is this feature of persons that underlies the only type of direct reason against killing persons that does not also hold against the killing of other sentient beings, *viz.*, that the victim will be denied the satisfaction of his desires for or about the future. But, according to Singer, this direct reason against killing persons cannot be invoked by classical utilitarians. For, we are told, *felt* pleasure—hence, not the mere absence of pain—is the only good for classical utilitarianism while *felt* pain—hence, not the mere absence of pleasure—is the only evil. Given this picture of the common view of Bentham, Mill and Sidgwick, Singer concludes that:

According to classical utilitarianism,...there is no direct significance in the fact that desires for the future go unfulfilled when people die. If you die instantaneously, whether you have any desires for the future makes no difference to the amount of pleasure or pain you experience.¹⁷

One is puzzled, though, when Singer adds that, "The classical utilitarian can still regard killing as a wrong done to the victim, because it deprives the victim [whether a person or not] of her future happiness." This puzzle is partially resolved when one realizes that Singer is distinguishing between current desires for the future, e.g., a current desire that so-and-so obtain at such-and-such future date—the sort of desire that only persons can have—and future desires, e.g., a desire that a person or other sentient being will form on such-and-such future date. Thus, in saying that the classical utilitarian can count the victim's being deprived of the satisfaction of her future desires as a reason against killing her, Singer is not directly contradicting his claim that this utilitarian cannot count the victim's being deprived of the satisfaction of her desires for the future as a reason against killing her.

But Singer's claim that the classical utilitarian can count the victim's being deprived of the satisfaction of her future desires as a reason against killing her does directly contradict his own account of classical utilitarianism. And if the classical utilitarian can count the non-satisfaction of a future desire in his moral calculations, may he not also count the non-satisfaction of a current desire for the future? It seems that he may.¹⁸ Thus, Singer fails to establish the relevant

contrast between classical and preference utilitarianism—where according to the latter actions are judged “by the extent to which they accord with the preferences of any being affected by the action or its consequences.”¹⁹ Of course, one might exploit the idea of preference utilitarianism to depart from classical utilitarianism. One might maintain that, in virtue of being preferred, value can reside in conditions other than pleasure (and the absence of pain) and even in conditions that are not desired. Singer does not pursue this sort of contrast and it remains unclear what precisely is deemed to be good, the *states or conditions* that are preferred or the (not necessarily felt) *satisfaction* of those preferences.

The capacity of persons to form and be subject to the satisfaction of desires or preferences for the future gives them a moral edge, however slight, over merely sentient beings. In any life and death decision involving a person, the satisfaction or non-satisfaction of any such desire for the future, would be a matter of some moral weight. There are, of course, two ways in which the satisfaction of desires or preferences can be served. The first is to fulfill existing desires; let us say, to fulfill the stable set of desires of existing beings. The second is to bring into existence additional desiring beings whose desires will then be fulfilled. It would seem that nothing predisposes either classical or preference utilitarianism to one or another of these methods. Yet Singer is very much concerned to avoid the second method at least with respect to human beings.

Consider the satisfaction of the desires of the not yet existing person that an abortion frustrates. On average, each abortion (of a healthy, non-defective) fetus costs the world the average amount of preference satisfaction associated with the lives of those who were healthy, non-defective, fetuses. Surely, on average, an abortion in such a case costs more in preference fulfillment than is lost in preference satisfaction when the desire for an abortion (of healthy, non-defective) fetus is frustrated. In short, if we include the value that will reside in the life of the not yet existing person in our utilitarian calculations, there is a strong presumptive case against the morality and even the moral permissibility of abortion. Yet Singer considers the utilitarian defense of abortion to be easy. This can only be because he implicitly assumes that the preference satisfaction of the not yet existing person simply does not count.

This issue becomes explicit when Singer considers whether a couple who can conceive, bear and raise a child who would live a happy life (with no significant net disutilities for any other sentient being) are thereby obligated to conceive, bear and raise this child. For Singer this closely parallels the question of the permissibility of abortion. For, in general, abortion and contraception are morally on a par. How, though, can Singer defend the permissibility of failing to conceive, bear and raise this child?²⁰ Singer attempts to do so by distinguishing between the total and the prior existence versions of

utilitarianism and by opting for the latter at least with respect to persons. Total utilitarianism simply favors the largest balance of pleasure over pain or preference satisfaction over dissatisfaction. It would obligate the couple in the case in question to conceive, bear and raise the child. In contrast, the prior existence view only counts the preference satisfaction of those "beings who already exist, prior to the decision we are taking, or at least will exist independently of that decision."²¹ So, on the prior existence view, the benefits that would accrue to that potentially happy child have no moral weight. The possible child generates no claim against those capable of creating those benefits.²²

The prior existence view seems to be a radical departure from standard ("total") utilitarianism. It would seem to imply, e.g., that the only reason against a convergent voluntary decision by all human beings not to procreate would be that many of those people would be misjudging the consequences of this decision *for themselves or their contemporaries*.²³ This departure is both a boon and a danger for Singer. It is a boon insofar as it allows Singer to distance himself from certain standard utilitarian embarrassments. But it is a danger for him insofar as the prior existence view no longer qualifies as utilitarian and no longer connects with those segments of his position which are identifiably utilitarian. Both the boon and the danger are exemplified in Singer's discussion of the implications of this view with regard to the replaceability of persons. Suppose, the critic of utilitarianism suggests, that one person with the prospect of a certain level of preference satisfaction were to be secretly and painlessly killed and replaced with another person with the same prospective level of preference satisfaction? Wouldn't utilitarianism monstrously take the killing of the first combined with his replacement by the second as morally neutral? And doesn't this show that utilitarianism conceives of persons as mere replaceable units having value simply as receptacles for pleasure (or preference satisfaction)?

However, Singer is eager to assert that prior existence utilitarianism does not construe people as morally replaceable. And, of course, Singer has a point. For while, on the prior existence view, the death (even the secret and painless death) of the existing person will count against his replacement by a second person with similar prospects, the introduction of the second person will not provide a countervailing reason in favor of the replacement. Since the second party does not exist prior to or independent of the decision about replacement his satisfactions, were he to come into existence, would not register in the moral calculus. But why shouldn't the satisfaction had by the second party when he comes into existence provide a countervailing reason which makes the overall substitution morally neutral?²⁴ The conceptual clarification that only existing beings can be benefited or harmed in itself hardly implies that the satisfactions which come about through replacements are morally weightless.

Singer can coherently deny that the replacement's satisfaction balances the loss of the first party's satisfaction only by implicitly adopting a moral picture which gives interpersonal obligation a much more fundamental place than it has in any standard conception of consequentialism. This picture is one of each existing person having a duty to each existing person (and each future person whose subsequent existence is beyond that first party's control) to act on behalf of their respective pleasure or preference satisfaction. Each person's existence (or already determined future existence) equally places a burden upon each moral agent to advance that person's satisfaction, to protect that person against the threat of non-satisfaction. The best anyone can do to fulfill the multiple, competing and, thus, merely *prima facie* duties to which one is subject is to maximize pleasure or preference satisfaction across all the recipients of one's duties. The aggregative, utilitarian, content of one's net duty is the summation of these separate duties imposed on one by the respective independent existence of those subject to dissatisfaction. Duty fulfillment is at the center of this moral picture. Impartial value maximization has only a derivative status.

This duty-oriented prior existence view can account for a certain sort of moral irreplaceability. In the replacement process, killing the first party contravenes one's *prima facie* duty to him—and inexcusably, since it does not maximize one's net compliance with one's duties to others. For one does not get countervailing moral points for compliance with one's duty to their placement, since one had no such duty to comply with. Nevertheless, there are two possible major criticisms of Singer's prior existence view. The first is that, despite its divergence from standard utilitarianism, it does not represent a significant enough rejection of moral replaceability. The second is that, because of its departure from standard utilitarianism, the prior existence view cannot find support (as Singer thinks it can) in preference utilitarianism. In fact, Singer's prior existence view succumbs to both of these objections.

Clearly the point of rejecting replaceability is to affirm some strong moral claim on behalf of each individual against being sacrificed to bestow benefits on others. It is this highly anti-utilitarian picture of individuals as rights-holders against (even) value maximizing actions that Singer evokes when he says that "rational, self-conscious beings are individuals, leading lives of their own."²⁵ The prior existence view appears to provide each *existing* individual with something like side-constraint protection against being replaced by ascribing to each existing person a claim of some *prima facie* force against being killed while ascribing no claim at all on behalf of possible replacements. Relative to possible replacements, an already existing person is secure in his net claim to life. However, this should not be misinterpreted as anything like systematic, anti-maximizing, side-constraint, protection against having his life sacrificed. To see this one need only consider the choice between allowing A to continue in his life

and fatally harvesting bodily organs from A in order to save the life of existing person B. Assuming that A and B have comparable prospective lives and ignoring indirect consequences for third parties and beyond, one's *prima facie* duty to promote the preference satisfaction of B would precisely counterbalance one's similar duty to A—substituting B's future for A's would be morally neutral. If B's life prospects were somewhat better than A's (i.e., if B's future life was a better receptacle for pleasure or preference satisfaction than A's) or if C's life would also be saved by A's evisceration, then the taking of A's life would be morally proper—indeed, obligatory.²⁶ On Singer's view I can turn aside any moral indictment based on my having killed A with the defense that B's life, which otherwise would have been lost, is at least an equal replacement for A's. This hardly fulfills the promise of a significant rejection of moral replaceability.

Does Singer provide any argument for the prior existence, view however inadequate that view is as a basis for irreplaceability? Preference utilitarianism is offered as the explanation for the moral irreplaceable of persons and, hence, for the application of the prior existence view to persons. Singer's argument seems to be: (a) classical utilitarianism both valued as only pleasure or happiness and was guilty of thinking of persons as mere receptacles for pleasure or happiness (and was, thereby, guilty of belief in their replaceability of persons); (b) preference utilitarianism recognizes the value of preference satisfaction—especially in the case of persons where what is preferred need not be states of pleasure or happiness; (c) therefore, preference utilitarianism is not guilty of thinking of persons as mere receptacles for pleasure or happiness; (d) therefore, preference utilitarianism is also not guilty of thinking of persons as mere receptacles for valuable stuff; (e) therefore, preference utilitarianism is not guilty of belief in the replaceability of persons. Of course, the key flaw here is in the inference to (d). It would seem that the preference utilitarianism simply has a broader view of what merits pouring into receptacles. Admittedly, Singer also reiterates that persons distinctively have preferences for or about their futures. But so will the replacements for those persons. No reason is given for why the preference satisfaction of those replacements, including the satisfaction of the preferences they will have for or about their futures is less valuable or less morally demanding than the preference satisfaction in currently existing persons. From Singer's own announced impartial standpoint, there is no basis at all for his claim that:

...with self-conscious beings the fact that once self-conscious one may desire to continue living means that death inflicts a loss for which the birth of another is sufficient compensation.²⁷

In his reply to a review of *Practical Ethics* by H. L. A. Hart, Singer makes a final stoic attempt to ground the prior existence view in preference utilitarianism.

The creation of preferences which we then satisfy gains us nothing. We can think of the creation of unsatisfied preferences as putting a debit in the moral ledger which satisfying them merely cancels out. That is why Preference Utilitarianism can hold that it would be bad deliberately to create a being most of whose preferences would be thwarted, and yet hold that it is not a good thing to create a being most of whose preferences will be satisfied.²⁸

This passage nicely reinforces the earlier ascription to Singer of a duty-oriented (indeed, guilt-oriented) ethic. The appearance of each additional being with preferences imposes further moral burdens—increasing the moral debt we must spend out lives working, at best imperfectly, to discharge. Note also that this argument in no way distinctively turns on the threat of *preference* dissatisfaction—as opposed to the threat of desires for pleasure or happiness going unfulfilled. It especially does not distinctively rely on the threat of dissatisfaction of preferences for or about the future. Thus, contrary to Singer's own perception, this argument points to purging from the moral calculus all the benefits (and harms) which would be had by *any* sentient creature one might choose to bring into existence. Contrary to the argument that centered on self-consciousness, the prior existence view would not apply only to persons.²⁹

How does Singer's final argument so thoroughly discount the interests of possible future beings? The argument seems to be that the production of new preference possessing beings is very likely simply to deepen our moral debt. Rather than bringing us closer to discharging our moral burdens, we will find ourselves further from that goal. At best, we will be no worse off in our moral indebtedness. It seems, then, that it is not merely permissible not to bring a new preference possessing being into existence. Except in the rarest of cases, *viz.*, those in which all of a new being's (mutually consistent) preferences will be satisfied, it is obligatory not to bring that being into existence. Thus, while standard utilitarianism seems to require the production of new generations, this version of preference utilitarianism (in its pursuit of the prior existence view) requires the elimination of future generations! On the doctrine outline in Singer's last argument, one's replacing A with B will almost always be wrong because: (a) almost always some of existing A's preferences could have been satisfied and that would somewhat reduce one's moral debt, while (b) almost always not all of B's preferences could be satisfied and, therefore, B's existence will almost always increase one's moral debt.

This radical partiality for the preferences of already existing beings does, as we have previously noted, sustain a highly limited, literal,

irreplaceability. But, once again, this hardly satisfies the intuitions behind the call for moral irreplaceability. To see this we need only consider again the choice between allowing B to die and saving B by transferring to him certain of A's vital organs. Should A's life be sacrificed to save B's? According to Singer's preference utilitarianism A's life should be sacrificed if and only if (ignoring third party effects) the extent of A's preference satisfaction were A to live would be less than the extent of B's preference satisfaction were B to live. In short, A's (future) life should be replaced with B's if and only if B's is a better receptacle for preference satisfaction. Once, again, Singer's argument fails to generate a significant rejection of moral replaceability.

When Singer asserts that "death inflicts a loss for which the birth [or presumably, even the continued existence] of another is insufficient compensation,"³⁰ he is the spokesman for practical reason. But, as a spokesman for his conception of ethical reason, he must affirm that death inflicts a loss for which the continued existence of another (who, otherwise, would have died) can more than compensate. Practical reasoning may, as Singer hopes, endorse a commitment to ethical reasoning—but not the ethical reasoning advocated in *Practical Ethics*.

1. See, John Hospers' "Retribution: The Ethics of Punishment" in R. Barnett and J. Hagel eds. *Assessing the Criminal* (Cambridge, MA: Ballinger, 1979) pp. 181-209.
2. See, John Hospers' *Libertarianism* (Los Angeles: Nash Publishing, 1971) especially chapter 2. pp. 49-94.
3. The list of critics is almost endless. A nice synopsis (that over-estimates the divergence between utilitarianism and Rawls' views) appears in H. L. A. Hart's "Utilitarianism and Natural Rights" *Tulane Law Review* (April 1979): 663-680.
4. Peter Singer, *Practical Ethics* (Cambridge: Cambridge University Press, 1979).
5. Singer, p. 7.
6. Singer, p. 8.
7. Singer, p. 9.
8. Singer, p. 10.
9. Singer, p. 10. It is unclear why Singer assumes that one cannot, in citing the benefits for oneself, address a large audience.
10. Singer, p. 10.
11. Singer, p. 11.
12. Singer, p. 13.
13. The only illustration that Singer gives of thinking ethically—and it is not presented as one possible example among others—is setting out "to weigh up all these interests and adopt the course of action most likely to maximize the interests of those affected," p. 12.
14. Singer, p. 205.
15. Singer, p. 206. See J. Hospers "Baier and Medlin on Ethical Egoism" *Philosophical Studies* (Jan.-Feb. 1961): pp. 10-16.
16. Singer, p. 205.
17. Singer, p. 79.

18. If anything, shouldn't the present claim to satisfaction of a current desire for the future be weightier than the present claim to satisfaction of a merely future desire?
19. Singer, p. 80.
20. The question is especially pressing since Singer denies any moral significance to the distinction between omission and action. See pp. 162-168.
21. Singer, p. 87.
22. Singer worries, however, about whether this means that no wrong would be done by a couple who knowingly bring an utterly miserable child into existence. For that profoundly miserable child will not have existed prior to or independently of that couple's decision. This worry may seem overdone—merely a function of Singer's infelicitous formulation of the prior existence alternative. Singer could have avoided these miserable child concerns had he contrasted a total version which considers both actual and possible subjects and an "actual subject" version which only counts the pleasures and pains, satisfactions and dissatisfactions, of actual subjects. This actual subject utilitarianism easily identifies the asymmetry between the non-conceivers of the happy child and the conceivers of the miserable one. The non-conceivers will not have denied an existing subject the fulfillment of her desires or preferences. But the producers of the miserable child will have imposed misery upon an actual subject. The fact that the miserable child will not exist until after the harmful processes have been initiated does not undercut the wrongfulness of the couple's decision—just as the current non-existence of next weeks' inhabitants of a newborns' nursery does not undercut the wrong of currently planting a time-bomb in the nursery set to go off in one week's time. But Singer may be wise not to opt for actual subject utilitarianism because, unlike the prior existence view, it would not help him deny commitment to the replaceability of persons.
23. And note the benefits to that generation in not having to save and preserve resources for future generations.
24. This is where actual subject utilitarianism fails to provide any reason against replaceability.
25. Singer, p. 102.
26. Singer cannot appeal to the argument that killing A would be worse than letting B die or even letting B and C die. For he insists upon the fundamental moral equivalence of acts and omissions. See pp. 162-168.
27. H. L. A. Hart, "Death and Utility" *New York Review of Books* (5/15/80).
28. Singer, correspondence, *New York Review of Books* (8/14/80).
29. In itself, this eliminates one problem not recognized by Singer. If, as he believes, the prior existence view applies to persons while the total existence view applies to other sentient beings, then in any choice between future happy persons and future happy cows and chickens, the latter are to be preferred over, indeed lexically ordered over, the former.
30. Singer, p. 103.

ASSASSINATION

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Assassination marks a slim space between murder and execution—without quite excluding either. It is hard to legitimate by way of principle, because it usually presupposes a conflict of ideologies. To condemn or condone, therefore, participates in the same conflict. Where a complex form of life is clearly shared and persists across generations and harbors a convincing consensual sense of outrage among a people, then stalking lives deliberately, premeditatedly, among the supposed oppressor offers at least an initial basis for accepting (without necessarily approving) a claim of justice by assassination. But there is no question that, if the killing of Indira Gandhi by Sikh nationals was a not-quite condemnable assassination, the indiscriminate slaughter of Hindus by Sikhs and Sikhs by Hindus more than verges on murder. One might begin to recover even the latter—but only by claiming war, not assassination. The same is clearly true among the Northern Irish factions and within Muslim-Israeli and infra-Muslim feuds. It is the “informality” of assassination, if one may so speak, that makes it both difficult to legitimate and difficult to disallow altogether. The same is increasingly true of war itself, since the “just war” concept has all but lost its former limited relevance.¹ Many contemporary small-scale wars fought by groups that cannot claim to occupy an effective or recognized political state cannot, in the nature of the case, distinguish clearly between war and guerrilla war and terrorism and revolution.

It is to some extent the democratization of war and of the very technology of warfare and killing—from the French Revolution to the present—together with the instability of certain states and the ineptness of insisting on state boundaries in order to define all legitimate political causes, that invites what has come to be called terrorism, political assassination, and guerrilla warfare. “Guerrilla warfare” is an optimistic phrase, signifying that an alien or unjust (but politically installed) state power will be removed. “Terrorism” is the prejudicial epithet favored by those at mortal risk, within the

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seeming protection and legitimacy of an established state, from the murderous efforts of others who claim the right of either guerrilla warfare or political execution or assassination or something of the sort. The bombing of Parisian restaurants, the execution of American hostages in Lebanon, the slaughter of Israeli athletes at Olympic games fall under these headings—if they can be legitimated at all.

Assassination tends to be politically motivated and, as such, tends to single out responsible officials clearly linked to the condemned regime or plausibly taken as symbols of the corrupt power of that regime: Armenians act to assassinate Turkish ambassadors anywhere in Europe and outraged Muslim factions act to kidnap and/or assassinate American businessmen who still dare to “remain” in Lebanon after the American support of Israel has been duly “exposed.”

It's true, as among the crime families of America, that assassination (or something very much like it) obtains outside legitimate political life; but then, there is a sense in which crime is territorially organized in the United States in a way that burlesques legally enforced contracts. With an eye to political etiology, therefore, there is not much difference among the prevailing forms of warfare, guerrilla warfare, terrorism, assassination, revolution and the like—as far as conceptual puzzles of legitimation are concerned—although assassination, taken on its most favorable terms, is certainly different from these other manifestations. Much the same may be said for terrorism or would-be revolution.

Michael Walzer condemns the “random” killing, the “infinite” threat, the “aimless” attack, the failure to honor the distinction between combatant and noncombatant—in so-called terrorism and political assassination.² But that is to miss the supremely up-to-date touch of contemporary political struggle. It's one thing to share John of Salisbury's scruple about ending the tyrant's life. It's quite another to grasp the entrenched perception of the political outrage of Asian and African colonialism and of the threatened impotence of politically exploited ethnic groups.³ In contemporary terms, the “random” and the “aimless” and the “infinite” are only in the prejudiced eye of the politically condemned beholder. The most interesting cases are hardly so seen by their own champions. There is nothing “random” or “aimless” or “infinite” about their political purpose.

There is a general theme, however, that collects all these distinctions perspicuously, so that we can appreciate the double-bind of not being quite able to approve or condemn them in a principled way and of not being quite able to disallow their defense and condemnation under conditions significantly less firm than covering principles may be counted on to afford. It is not merely that political judgment is strongly biased here—being explicitly ideological. It is also that the requisite judgment is addressed to *collective* behavior or to the behavior of agents acting in the name of a collective principle. But there *are* no collective entities—states, in particular, clans, tribes, ethnic peoples.

There are only human individuals, aggregated to be sure in accord with the practices, institutions, traditions, habits, rules, norms, principles usually assigned collective bodies. Collective bodies do not think, intend, desire, or act—except as fictions, that is, through the agency of individuals prone to accept the ideologies by which they suppose themselves to be acting in order to serve the interests of putative collective entities. Aggregates of individuals, so-called terrorist gangs for instance, certainly exhibit *collective properties* (sharing a practice or an institution) in addition to *aggregated properties*; but there literally are no *collective entities*.⁴

The trick is that even the most legitimate or least disputed moral or legal or political practices of well-established states—pursuing war, imprisoning those said to be convicted of crimes, exercising eminent domain, acting in the name of clear and present danger, authorizing state executions—are vindicated by and only by the mediation of accepting the legitimacy of given collective entities. Short of the fiction of contractarianism,⁵ there is no convincing rational procedure for validating the existence of any state or similar collective body; although there may well be rational grounds for continuing to support one ideology or another and to alter states one way or another—in a world already committed to collective entities. There is no straightforward conceptual linkage between the putative moral concerns of human individuals and the practices of putative collective entities: both because the first cannot fail to be species-specific and the second cannot be such at all; and because there is, pertinently, no viable way to disengage the first assignment of political entitlement and responsibility to individuals except in terms of their historical milieu—which already entails the collective structures of their political life.

As soon as we understand this, as soon as we understand that there cannot be a principled, universally valid rule of legitimation for all states, we understand that our sense of the validity of pursuing war, guerrilla warfare, terrorism, assassination, revolution, *raisons d'état*—or of opposing any of these—is itself inextricably grounded in some ideology or other by which a fictional process is treated as real and is neither permitted to be nor is able to be reduced to the aggregated interests of the human race or of any principled partition of the same. All these phenomena are predicated on a natural division of ideologies and interests. Most moral theorizing about these matters tends to assume that problem cases are normally of the second sort—cases of divided or opposing interests, where the ideologies involved are themselves of a strongly similar sort. But in our own time, this is hardly true. The chief contests that bear on the puzzles of terrorism and assassination are contests of widely disparate ideologies: so that what counts as murder on one theory counts as legitimate assassination on another, what counts as terrorism on one theory counts on another as a desperate form of guerrilla or informal warfare against an unequal foe—a foe, in fact, usually thought to

have coopted the very show of justice as the supreme weapon of the politically corrupt. If, for instance, the United States is Iran's "Great Satan," then it is little wonder that the exquisitely fashioned rationale for subverting American political power within the severe terms of Islamic doctrine should appear to the intended victim as the mere advocacy of "anything goes."

No. The sense of pertinent neutrality (if there is any) in assessing the extreme cases that claim our attention as cases of assassination (or of terrorism or the like) makes sense only if, initially, the action in question belongs within a ("natural") practice, "natural" ethos, genuinely consensual for a population guided or governed by its own native ideology. One cannot, as an outsider, condemn the brutal and ugly slaughter of Irish Protestant and Catholic citizens of Northern Ireland as murder, without denying that the two factions are locked in what amounts to a form of war. Each side will condemn the other as murderers; but they are both partisans in a sense in which their judgment cannot but be discounted—also, in a sense in which their own behavior betrays the fact that they themselves view the conflict in more complicated terms than they are prepared to acknowledge.

Political evil, a sense of political injustice, is inherent in the inevitably unequal partitions between the strong and the weak, the fortunate and the unfortunate, the victors and the vanquished, the rulers and the ruled—within the history of political collectives divided by opposing ideologies that have roots in the ethnic life of the populations affected. There is no political state enjoying any significant measure of power that can be viewed, in the modern world, as simply just: we don't know what political justice means for ideologically divided populations *aware of the history of their disadvantage at the hands of another.*⁶

Within the pale of "well-behaved" states, terrorism and political assassination can hardly escape being condemned as outlawed behavior; although it is noteworthy that the regularity with which Western nationals are kidnapped and threatened with execution or traded for arms, release of political prisoners, and policy adjustments (as the French, the Americans, the Israelis, the Saudis, the Iranians, the Syrians can hardly deny) confirms that even "well-behaved" states must implicitly recognize suitably stable, strategically placed political "entities" other than states. The point is that the outlawed status of terrorism and assassination not only reinforces the apparent legitimacy of the well-behaved states but also feeds the worry and suspicion that their own legitimation is ultimately as dubious—on logical or conceptual or foundational grounds—as the "collective" behavior they would condemn. The inertia of mutual recognition among the well-behaved states begins to bleed off and subvert the illegitimacy, the outlawed status, the mere political presumption usually assigned the acts of sub-societies that, by their evident cohesiveness and collective purpose, appear to be unavoidably *present, there, apt* for political

recognition. Under the presence of such tendency, the perception of assassination, terrorism, revolution, guerrilla warfare, execution, kidnapping begins to change. What, after all, is the line of demarcation between these adventurous practices on the part of fledgling political entities and the routinized sorties of the spies and foreign agents of the more well-heeled states?

The question of assassination, therefore, is a particularly touching one. It surfaces in isolated episodes that seduce us— that is, seduce those of us who live relatively safely in a world in which assassination is either extremely rare or (as with the crime families) relegated to a marginal population that is thought hardly to affect “us”—into reaching an easy and “principled” condemnation. But the practice is completely transparent when applied to an alien ideology, unless— what seems quite impossible—such condemnation can satisfy objective canons of a definable sort.

One can invent canons, of course, if one is willing to overlook the price. The pertinent dilemma arises in either of two ways: on one strategy, denying the reality of collective entities (though not collective properties), we act to rationalize political life in terms of the interests of aggregates of individuals; on the other, accepting the realism of political life (without addressing the ontic status of states and related “entities”), we insist on the moral autonomy of individuals. The first fails *because there is no viable conceptual reduction of the collective features of social existence in terms of biological and psychological attributes of a purely individualistic sort*. The first would require, as Jon Elster rightly observes (but wrongly believes to be plausible), that the collective features of human life—for instance, the ideological, the traditional, the institutional, the praxical, the normative or rulelike within actual societies—should appear *only* as a feature of the intentional content of individual mental states or of the intentional objectives of individual actions.⁷ But the properties merely of language—the ubiquitous element of human life—cannot be suitably so analyzed—that is, cannot be analyzed without attention to *collective* features (as of usage, syntactic practice, meanings, conventional intentions) directly ascribable to the behavior and mental life of the members of a society, not restricted to intentional objects. So the admission of collective properties does not presuppose or depend upon the admission of collective entities. (The point had already been recognized, however thinly, in Karl Popper’s advocacy of “methodological individualism”—which denies nevertheless that the societal can be reduced to the psychological.⁸) We cannot understand the complexity of human existence solely in terms of an idiom deprived of collective predicates or of the ability to refer to collective attributes. There is, therefore, a very good reason for thinking that we cannot formulate a convincing legal or moral or political rationale by which to guide and govern human behavior, that precludes the irreducible collective structures of historical existence. Perhaps this is the permanent (though admittedly potentially

misleading) advantage of Hegelian and Marxist thought over the Kantian (and over that attenuated post-Kantian development known as liberalism and libertarianism).

The second strategy also fails *because, although in real-time terms (not necessarily in principle) the smooth functioning of complex human life requires intervening ideologies that postulate collective entities capable of monitoring the normative direction and harmony of the individualistic and collective features of social existence, there is (no known) rational or principled way by which to justify collective norms or the harmony between collective norms and whatever are taken to be the norms of individual conduct.* Philosophical anarchists regularly insist on the point—often not in individualistic/collectivistic terms, usually in terms of majoritarian rule/minoritarian autonomy. But the charge is very close to our own, even if formulated in aggregative terms. The argument has been put in its most explicit Kantian forms by Robert Paul Wolff: assuming the moral autonomy of the rational individual, Wolff correctly concludes that “the just state must be consigned the category of the round square, the married bachelor, and the unsensed sense-datum.” “If autonomy and authority are genuinely incompatible,” he says, “only two courses are open to us. Either we must embrace philosophical anarchism and treat *all* governments as non-legitimate bodies whose commands must be judged and evaluated in each instance before they are obeyed; or else, we must give up as quixotic the pursuit of autonomy in the political realm and submit ourselves (by an implicit promise) to whatever form of government appears most just and beneficent at the moment.”⁹

Our concern here, is not the legitimation of the political state. But if the double dilemma posed obtains, then, because political life is noticeably collectivistic as well as collective (again: not perhaps necessarily for logical reasons, but effectively in real-time terms), *there can be no principled basis for normatively constraining the ideologies of different historical states and other political “entities” of an implicitly or explicitly collectivistic sort.* This is not to say that political debate is completely arbitrary. It is not. But it cannot claim to be principled if plausible in piecemeal circumstances, and it cannot claim to be plausible if principled in some reasonably exceptionless sense. There is a profoundly *non-rational*—but executive—role to be assigned the features of collective life; whatever is convincing in judgment and behavior directed to the “real” interests of collective bodies (not reducible in Elster’s sense and not open to autonomous repudiation in Wolff’s utopian sense) must to a significant degree correspond to what we have already characterized as the natural consensus of a people sharing collective patterns and drawn to a collective ideology. *There, one finds the setting in which the puzzle of (political) assassination arises—the puzzles of terrorism and revolution and execution and guerrilla warfare as well. There is no way to justify any commitments of these sorts in individualistic terms, however universalized; and there is no way to justify the collectivistic norms*

by which any commitments of such sorts are regularly justified, however reasonably constrained by individualistic values. The reason, once again, is that the collective cannot be reduced to the individualistic and that the collectivistic (but not the collective: the entities, in effect, not the attributes) is purely fictional.

Under the circumstances, therefore, we must soften our conception of the nature of ethical assessments of political realities. Verdicts, like the presumably principled condemnation of political assassination, are (one may almost say) *logically* inappropriate; for either they are taken to be the expression of a prevailing ideology (with which they may conceivably still be incongruent) or they are judgments that preclude the relevance of the collective concerns in accord with which the original commitments so judged were once sincerely motivated and made.

Assassination and (political) execution are two sides of the same process. Execution suggests a rump or kangaroo court that has reached a finding as close to a verdict as an unauthorized body can pretend to have processed; execution is the sentence of that "court," which, as in the Irish play *The Informer*, would mete out a "justice" capable of a strong measure of plausibility that cannot be quite dismissed on the strength merely of its partisan origin. Surely, the same rationale is invoked in the so-called "victors' trials" at Nuremberg, however formalized the proceedings.¹⁰ The Nuremberg trials did not, after all, disregard the responsibility of states: they were addressed, rather, to what were supposed to be the universalizable limits on the conduct of individuals acting as agents of collective principals. But the normative constraints applied (however enlightened we may take them to have been were, surely, projections of the collective norms of the victors—on the face of it, projections incapable of a logically stronger validity of their own. Assassination corresponds to the political face of formally authorized legal execution just as political execution corresponds to its legal face. Once grant the normative realism of collective political life: either political assassination and execution cannot be summarily condemned as invariably unauthorized, illegal, unconstitutional, arbitrary; or else the corresponding behavior of well-established states is logically open to the same condemnation. Where is the rule for determining *la volonte generale*? and what is the difference in kind between the two? The question is hardly a comfortable one.

The only known strategies for routinizing the condoning or condemning of extreme practices presented in collectivistic terms requires either reducing the collectivistic to some aggregative function ranging over individuals or independently vindicating the legitimate interests of the collective entities involved. The first is, demonstrably, conceptually inadequate; the second is demonstrably incapable of a rational defense or discovery. Nevertheless, assassination and its associated options are too widespread, too natural a custom, too often treated with respect and a sense of justice, too clearly not practiced

in an arbitrary or irresponsible way, too common among those who condemn it in others and condone it in themselves, to be rejected out of hand. The relevant judgments—particularly, those judgments rendered in an “interested” way in the immediate space of political life—cannot be true verdicts, cannot be neutral or objective, cannot be principled, cannot be simply valid. There is no easy way to characterize them. They are, actually, *judgments of conviction*, judgments by committed agents, and they lead regularly to *commitments*. They are verdict-like, objective-like, neutral-like; but they are not any of these things. They form, in the political sphere, the natural analogue of what, in the world of the arts, may be called *appreciative judgments*, judgments that presuppose the committed (but alterable) taste of those who judge.¹¹

Since the usual consequence of such “interest” in the arts are pale by comparison with what may obtain in the political sphere, the comparison may seem tepid. But that is not because of the *logical* dissimilarities between the kinds of judgments compared, it is only because of the difference in the existential importance of the kinds of interests usually engaged. “Judgments of conviction” behave logically in very much the same way in which “appreciative judgments” do: because they presuppose the interests of the one who judges and make no sense without them; because the interests involved are normally effective in directing the judge’s life; because there is no universal basis for determining the right interests in either sphere by which the judge’s life ought to be governed; because whatever reasonable constraints may claim objective force in delimiting the exercise of relevant commitments and preferences (politically, or in enjoying the arts) there is no sufficient ground for completely vindicating such judgments; because the congruity, plausibility, and convincingness of such judgments and such commitments cannot be assessed without allowing or disallowing—from a *comparable vantage*—the interests and commitments of those who so judge and act; and because such judgments (and commitments) can only be singled out within a field of pluralized, opposing, irreconcilable divergences of conviction and taste.

They are, in a word, *interested* judgments (judgments linked to interested commitments) *utterly opposed, logically, to every pretense of neutrality, indifference, objectivity*. But they are not, for that reason, without rigor and discipline; and they are hardly merely self-serving, biased, partisan, faked, judgments, rationalizations after the fact, shams, arbitrary or unreasoned conclusions or commitments.

The point is that our conceptual network of ethical and moral review fails to provide for them. We tend to be committed to a dichotomy of principled (and therefore neutral) judgments in any sphere at all, separated from claims said to be completely arbitrary because of an absence of covering principle or because of the presence of intrusive, determining interests. But that is itself a sign of the merely

impoverished range of our own theories of normative judgment: it is hardly an assurance of a safe foundation on which, out of hand to condemn such practices as assassination and terrorism and political execution. If, as is plain, the world practices in these ways—practices seriously, as seriously as it does whatever else captures our own conventional respect and our own sense of responsibility—then we must supply a further account of the rigor that may be found in this extended field of political life.

As a matter for rational assessment inextricably linked with standard ethical concerns, assassination confronts us with at least two dire conditions of political reality: first, that those who are politically committed in the mortal way we have been considering are normally committed to irreconcilable ideologies and irreconcilable collective interests; and second, that those who make commitments, who act, in accord with such convictions are normally and reasonably convinced that there are no reliable or no less radical political options available by which to redress the wrongs they perceive. The nature of politically serious judgment is fairly captured in this sense: if it is a serious judgment, it must be acted on; if it must be acted on, it must be acted on here and now or in the near future; if one must thus judge and thus be committed, then one must also internalize the grounds for legitimation within oneself; and if the conventional ideologies won't do, others must be found and developed. The threatening arbitrariness is offset only by the perceived congruity among judgment, act, rationale and enveloping tradition within which political agents live and practice. The threatening danger of that practice is enhanced by the perceived divergence of the opposing ideologies distributed around the planet.

Now, then, the interesting question arises: Is it possible that the vindication—or at least the tolerance—of the inevitably informal practice of assassination (a tolerance entirely compatible with condemning particular assassinations) is a better paradigm of the entire range of moral and ethical judgment than the usual exemplars of individual contractual relations and legally adequate covering principles? Here, we have only to consider that, in extending the import of the assassination case, we may readily fall back from the putative interests of collective entities to the collective practices, customs, institutions, norms, conventions of actual historical societies. For, *if* there is no objective basis for positing a set of universal principles that hold, species-wide, for all human societies, then there is no way to avoid arbitrariness except by invoking the collective norms and related features of actual societies. This is not the place to attempt the argument, although it is clear that there are very few efforts nowadays to formulate a universal ethics on foundational grounds.¹² The point at stake, here, is that we must take notice of the case with which a shift of paradigm may radically affect not only our tolerance for the disturbing complexities of political assassination but also for the counterpart informalities that would thereupon invade

the apparently stabler, more regularized center of Western notions of responsible judgment and conduct.

This is not a plea for a blunderbuss tolerance of political assassination. It is, rather, a plea for an enlargement and an adjustment of our conception of political ethics—a *fortiori*, of ethics in general. Radical individualism fails in all its forms if it cannot plausibly accommodate the conditions of responsible judgment and commitment pertinent to political life; and radical collectivism fails because it illicitly converts the fictive into the real. But the distinction between collective entities and collective attributes preserves a meaningful political realism that is still normally neglected within the usual scope of Western ethical theories. Add to this the recognition of the real-world disposition of men everywhere to commit themselves through their ideologies to the interests of collective entities; as well as the obvious fact that the puzzle cases we have been considering make no sense except in terms of the stable collective interests of opposing populations. For those populations cannot supply convincing foundational grounds on which the legitimacy of their own collective acts may be straightforwardly confirmed. (That is, except of course by reference to their own ideology or to those of bodies in accord with their own.)

The largest consequence of the shift recommended is that ethical judgments probably must (and may best) be construed as the judgments of *interested, responsible, rational partisans* rather than as the judgments of *impartial, disinterested, objective judges*. There's no doubt that this adjustment completely subverts the presumption of standard ethical theory. But why not? The problem remains, how to specify a measure of rigor for judgments made under the altered paradigm. It will give up universal covering principles of course. It will turn instead to similarity and analogy anchored to favored exemplars.

It will argue case by case. It will legitimate its exemplars within the historical *praxis* of its own people. It will be dialectically alert to the divergences and convergences between the practices of different peoples. It will try to resolve pertinent differences, or at least incompatibilities and incommensurabilities by comparing pertinent runs of case-by-case arguments. But, above all, it will be prepared for irreconcilable differences. The important point, here, is that the shift is a viable and coherent one—and that it must subvert the entrenched conceptions of familiar doctrine.

There certainly is no other way to concede the defensibility—even the disputability—of such practices as those of assassination and terrorism. They are condemned out of hand only by distorting their description and the salient conditions under which their usual description would be weighed. Merely to admit their eligibility forces us to grasp the profoundly rhetorical structure of ethical judgment—both with respect (ineliminably) to the issue of assassination and with respect (by extension) to the whole of ethical life. What first

appears, therefore, as a marginal question proves, on reflection, to be close to the center of ethical seriousness.

1. Michael Walzer is the principal champion at the moment of the just war concept. See Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977); and Joseph Margolis, "The Peculiarities of Nuclear Thinking," in Abner Cohen and Steven Lee (eds.), *Nuclear Weapons and the Future of Humanity* (Totowa, N.J.: Rowman and Allanheld, 1986).
2. Walzer, *op. cit.*, pp. 197-204.
3. See Frantz Fanon, *The Wretched of the Earth*, trans. Constance Farrington, (New York: Grove Press, 1963).
4. Jon Elster makes the point correctly about entities, but fails to admit collective properties. Elster's thesis neither follows from the attack on entities nor accounts satisfactorily for the social behavior of humans. See Jon Elster, *Making Sense of Marx* (Cambridge: Cambridge University Press, 1985), Chs. 1-2. For a criticism, see Joseph Margolis, *Science without Unity* (Oxford: Basil Blackwell, 1987), Ch. 12.
5. Alternatively construed as the essential strength or fatal weakness of the liberal conception of the state. See John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971).
6. This points to the fatal flaw of Rawls' theory: Rawls' fail to accommodate an awareness of political history and the assessment of justice in terms never separated from such awareness.
7. The thesis is pressed in Jon Elster, "Marxism and Individualism," in M. Dascal and O. Gruengardieds (eds.), *Knowledge and Politics: Case Studies on the Relationship between Epistemology and Political Philosophy* (Boulder, Colo.: Westview Press, forthcoming 1987).
8. See Karl R. Popper, *The Poverty of Historicism*, 2nd ed. (London: Routledge and Kegan Paul, 1960).
9. Robert Paul Wolff, *In Defense of Anarchism* (New York: Harper and Row, 1970), p. 71. The inherent contradictions of liberal political life are clearly marked in Herbert Marcuse, "Repressive Tolerance, in *A Critique of Pure Tolerance* (Boston: Beacon, 1965), which collects papers by Marcuse, Wolff and Barrington Moore, Jr.
10. See Telford Taylor, *Nuremberg and Vietnam: An American Tragedy* (New York: Quadrangle Books, 1970).
11. For a discussion of appreciative judgments in the arts, see Joseph Margolis, *Art and Philosophy*, (Atlantic Highlands, N.J.: Humanities Press, 1980), Ch. 10. The distinction is applied in ethical contexts in Joseph Margolis, *Values and Conduct* (Oxford: Clarendon, 1971), Ch. 1.
12. Both Alan Donagan's attempt to claim the universal validity of a Biblical-cum-Kantian ethic and Alasdair MacIntyre's attempt to claim the schematic universal validity of a de-essentialized Aristotelian ethic are vindicated on a reading of the moral sensibilities of man within human history—and because of man's explicit awareness of human history. See Donagan's *The Theory of Morality* (Chicago: University of Chicago Press, 1977); and MacIntyre's *After Virtue*, 2nd ed. (Notre Dame: University of Notre Dame Press, 1984).

HOSPERS ON THE ARTIST'S INTENTIONS

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In *Understanding the Arts*, Hospers distinguishes between "isolationism," the view that no conditions outside the experience of the work of art itself are required for the aesthetic appreciation of the work, and "contextualism," the view that artistic appreciation requires information about at least some of the following: the work's artistic heritage and traditions, the life of the artist, or the era in which the artist lived.¹ Hospers' own position generally is somewhere between the two; but on the relevance of the artist's biography, and specifically of the artist's intentions *vis a vis* a work, to the appreciation of the work, his view is isolationist. He is dubious as well about inferences from the art work to the biography of the artist.

Aesthetic appreciation is for Hospers a positive value response one which the appreciator believes he can to some extent justify by an appeal to his understanding of aesthetically relevant considerations.² Thus Hospers' isolationism amounts to a clear rejection of one common version of contextualism:

C1: A work of art is correctly judged to be a good art work just in case it fulfills the creating artist's intentions.

In fact, he considers another common contextualist thesis to be false as well:

C2: A work of art is correctly understood just in case it is understood as the artist intends it to be understood.

As Hospers' presentation shows, C2 is very naturally adduced to justify C1: We have to understand what the artist meant to achieve in a

work, understand the work on its own terms, in order to judge fairly whether it is an artistic success.

I shall not be concerned directly with Hospers' rejection of C1 and C2. C1 is false, as Virgil's instructions to burn the *Aeneid* and the case of the author who "intended to write trash"³ show; and C2 is seriously challenged, as Hospers claims, by cases of authors who seem not to know what their works express.⁴ I shall be concerned instead with some of Hospers' arguments against contextualism, ones which bear on the evidential relationship between the work of art and the artist's intentions:

We know nothing at all about the lives of most artists in antiquity; does this inhibit appreciation of their work (granted that we know something about the period)? We admire today the grace and expressiveness of figures drawn on cave walls by prehistoric men more than fifty thousand years ago; we know nothing about the artists....Are we any the worse off for this biographical ignorance?⁵

Yet of the vast majority of works of art that we possess, created from ancient times to the present, we have no record of what the artist's intentions were; we have only the work of art. We tend to conclude that he intended to do just what he did do, that every brush stroke was intentional, inasmuch as he put it there, that nothing went wrong, and that the work of art fulfilled his intentions entirely; if in some cases that is not true, we have no present way of knowing it. We judge by the product we see before us.⁶

These arguments are parallel to a point. C1 and C2 are wrong because they would instruct us to understand or evaluate art works which we obviously are able to understand and evaluate on the basis of something for which the work itself is our only evidence. In such a situation, continues the second argument, we escape a very implausible agnosticism by tacitly substituting a description of the work for a description of the artist's intention; we make judgments—which Hospers clearly considers acceptable judgments—by judging "by the product we see before us." The further conclusion is left unstated: If the proposed standard is in fact irrelevant because we can as well use the work itself instead in these cases, then we can always bypass intentions by examining the work, and information about artistic intention is never relevant to understanding and evaluating works of art. The answer Hospers intends to the rhetorical question of the first argument is, "No, we are not worse off for lacking biographical information about the artist."

There are problems with this argument strategy. For one thing, it is just as well to leave the further conclusion unstated, for the argument that if a conclusion can be reached on a certain amount or kind of evidence, then additional or other evidence is irrelevant works only if the first conclusion is every bit as sound and satisfactory as the one which the additional or different evidence would support.

Thus Hospers, for his part, is content with the general assumption that judgments of artistic intention based on the work function as satisfactorily in the context of artistic appreciation as judgments of intention which involve additional evidence as well—because he does not think that information about intentions is relevant to appreciation at all. Even if it turned out that all of Van Gogh's paintings were by someone else, he suggests, it would not affect our appreciation of them.⁷ And even if Donne in the 17th century intended a reference to "white Alp" to connote terror, we with our different attitude toward mountains, may understand the reference as connoting delight and pleasure, provided only that this reading gives rise to the "best interpretation (the interpretation that makes the passage or the work of art as a whole come off best)."⁸ But defenders of C1 and C2 are not likely to share Hospers' views; for such theorists the fact that the work itself as a source of information furnishes less evidence of intention that the work plus background knowledge makes it a less satisfactory basis for appreciation.

More importantly for our purposes, Hospers' argument depends generally on our granting that a work of art is not very determinate evidence of artistic intention; otherwise our critical turning to the work itself would not amount to tacitly abandoning intentions as a criterion. But this concession is plausible only if we are not very often faced with a case in which the work of art by itself is evidence for a creative intention which it does not fulfill, for if we are very often faced with such cases, then the cases in which we accept a work as evidence of a determinate sort for an intention which it does fulfill cease to be just obvious cases of ruling intentional evidence irrelevant.

But it is simply false in general that an action product may not be good evidence for the presence of an intention which it does not fulfill, and it is hard to see why works of art should be exceptions to this general rule. Consider the case in which mountain climbers find poor Excelsior Smith frozen solid a few feet below the peak, a look of grim determination on his frozen face, a frozen flag stretched out toward the summit; surely they are entitled to conclude that Smith intended to climb to the summit, though he apparently did not make it. Again, consider the case in which I open the kiln and find a broken pot; surely I am entitled to conclude that the maker intended to make a pot, not the left and right-hand pieces of a pot. Of course I may be wrong, just as the mountain climbers might be wrong. It might be that Smith intended to freeze solid a few feet below the summit, making himself a monument to human frailty, just as a potter maddened by his sense of the futile passion of human existence might have put a pot with a known weakness into the kiln, there to break asunder before the onslaught of the fire. The point remains that we can and often do infer unfulfilled intentions from failures and that we are perfectly justified in doing so because the unfulfilled intention we posit is a very good explanation for the data we have.

Cars parked crookedly, ketchup on the cafeteria floor, and most student papers are obvious failures which are the only evidence we have—though not perhaps the only evidence we could get—for the intentions they do not fulfill.

Do similar situations arise in our judgments of art works? Indeed they do. Art works which have suffered the ravages of time surely give evidence of intentions they no longer fulfill. Or suppose that I see without prior knowledge of the director or the production a performance of "Miss Julie" in which the heroine is played by three different actresses. Which actress speaks Miss Julie's lines depends on what state of what passes for her mind the heroine is in. Suppose further that the performance is a resounding flop, that the three-for-one arrangement is belabored and annoying and detracts from the dramatic tension of the plot. I can conclude—and my evidence is the failure before me—that what was intended was a presentation of the main character in which the disharmony of the heroine's personality was to be emphasized by the different actresses, and its instability was to be expressed by the jerky shifts from actress to actress contraposed against the continuity of the plot and the dialogue. This seems to be a perfectly good example of inferring the director's unfulfilled intention from an artistic failure. The art world is full of this sort of thing. The chorus in *Elektra* wear concentration camp rags; the intent is clearly to emphasize the universality of primal inhumanity, and the result is belabored and affected. Two characters caught in a squalid tangle of events converse in front of a lighted stained glass window as strains of organ music drift from the background; the intent is to connect their troubles with a deeper, cosmic order; but the result is unconvincingly saccharine. In such cases the work itself is evidence of intention unfulfilled.

Just as often, perhaps, we take the result of an action, say a four-way stop sign on the corner, as evidence of agent intention fulfilled, in this case of the intention to put that stop sign there. Similarly, we often take art works as evidence of intention fulfilled. The scenes of Dante's *Purgatorio* are turgid and resist the reader's progress toward the *Paradiso* palpably in a way which it seems Dante must have intended; in such a case we do conclude, as Hospers says, that the artist intended to do just what he did do. But since we need not draw a conclusion of intention fulfilled in every case in which we judge by internal evidence alone, such a conclusion, in the case in which we do draw it, has considerably more determinacy and warrant than Hospers supposes.

What differentiates the work which gives evidence of intention fulfilled from the work which wears failure on its face? We suppose that the fourth of a series of four-way stop signs on a corner corresponds to someone's intentions because, given the kind of thing it is and its situation in a whole context, such a sign is so very unlikely to have been put there inadvertently or to be part of some greater,

unfulfilled plan. Similarly, we suppose that the *Purgatorio*, given the match between its effect and the spiritual status of its characters and the whole context of a Neoplatonic literary work having to do with the parallel between personal and cosmic salvation, is also very unlikely to have come to have the effect it does by accident or by virtue of its relation to some other secret and horribly unfulfilled nexus of intention. Of course, one could be wrong in either case. The sign could be the work of a madwoman whose great goal is to see a red sign on every corner of the world. And it is rather more common to be wrong about Neoplatonic literary works than about stop signs, since the nexus between intention and result is less invariant in such cases; there are probably more different images of the secret shape of ineffable truth than there are grand designs for the disposition of stop signs. Still, in every case the kind of thing, the characteristic nexus between intention and result for this kind of thing and the context the thing is in which determine to a great extent whether the product or work is properly taken to bespeak intention fulfilled or failure.

Obviously, such conclusions are reached from the work as internal evidence *and* context, which serves as external evidence of a sort. But the usual cases cited by the isolationist, for example Shakespeare and Vermeer and the author of *Beowulf*, are cases in which we have extensive background knowledge of this kind. Hospers' concession, "granted that we know something about the period," allows what usually amounts to a rich context of knowledge—available techniques, ordinary iconography, movements and their characteristic objectives and obsessions, etc. Thus the standard proposed by C1 and C2—if we wanted to use it—is usually available; either there is idiobiographic knowledge, or the work in context is pretty conclusive evidence of artistic intention, even in the absence of such knowledge.

Again in his discussion of inferences from the art work to truths about the artist, Hospers disparages inferences from the art work as "internal evidence alone to the beliefs, attitudes, emotions or motivations of the author."⁹ He gives a number of unacceptable inferences: the conclusion that Shakespeare was sensitive to race relations from the mixed marriage in *Othello*; inferences about Fielding's views on life from the humorous essays in *Tom Jones* or Tolstoy's views on history from *War and Peace*; the conclusion that the composer of joyful musical compositions was himself joyful; concluding that Harriet Beecher Stowe was an opponent of slavery from *Uncle Tom's Cabin*. And:

Consider again prehistoric drawings on cave walls 30,000 years old. We know nothing about the artists or their mental states, and we shall never come across their autobiographies....What can we infer about the artists just *from* examining the drawings? Can you think of any one inference you could make with safety?¹⁰

Suppose that we have no external evidence at all about the creator of a given work. What can we infer, just from the sculpture or painting or musical composition alone?...We cannot even infer with certainty that he "believed in" what he was doing. Evidence of an artist's thoughts or feelings must, in general, be obtained from external evidence.¹¹

It is therefore surprising when Hospers goes on to say that we *can*, on the other hand, infer from works of art an artist's "sense of life", "a pre-conceptual equivalent of metaphysics, an emotional, sub-consciously integrated appraisal of man and existence."¹² We are here faced with an obvious puzzle: If we cannot infer from the work of an artist such comparatively simple kinds of things as attitudes about race and temperament, then how can we draw conclusions of a depth and clarity we associate at best with our knowledge of our closest friends?

I think that we have to assume again that Hospers is supposing normal contextual knowledge and excluding only idiobiographical knowledge about the artist. He has given us *Othello*, after all, and has not asked us to suppose that we have found the text of *Othello* inscribed on a moon rock. But then the answer to the puzzle seems fairly obvious. First, we can in fact make many inferences of the kind Hospers disparages, though not infallibly; and second, inferences about the artist's sense of life, if by them we objectively attribute some psychic state disposition or property to the artist, are no more—though no less—secure than the rest.

There is probably no single simple connection between biography and work which holds for all artists. Yet it seems that Schopenhauer must have hit upon a general truth when he stressed the relationship between "genius," i.e., artistic talent, and imagination:

Imagination has rightly been recognised as an essential element of genius; it has sometimes been regarded as identical with it; but this is a mistake. As the objects of genius are the eternal Ideas, the permanent essential forms of the world and all its phenomena, and as the knowledge of the Idea is necessarily knowledge through perception, is not abstract, the knowledge of the genius would be limited to the Ideas of the objects actually present to his person, and dependent upon the chain of circumstances that brought these objects to him, if his imagination did not extend his horizon far beyond the limits of his actual personal existence, and thus enable him to construct the whole out of the little that comes into his own actual apperception....Therefore extraordinary strength of imagination accompanies, and is indeed a necessary condition of genius. But converse does not hold, for strength of imagination does not indicate genius; on the contrary, men who have no touch of genius may have much imagination.¹³

If imagination plays so vital a role in the production of art works, then the proper question to ask about Tolstoy is not, "What sort

of view of history could in the realm of logical possibility have given rise to the words of *War and Peace*?" but rather, "What sort of view of history in a 19th century Russian author is likely to have given rise to this universal vision of life, death, war and peace?" One's answer to such a question could, of course be wrong; for that matter, after reading the epilogue, Tolstoy's essays and other novels, and the reports of his family, one could *still* be wrong about his actual views about history at the point in his life when he wrote *War and Peace*. But it is not very likely that one *is* wrong about Tolstoy's views when writing *War and Peace*—or about Fielding's view of man or Shakespeare's standard Elizabethan racism.¹⁴ The same link between life and art *via* imagination obviously invalidates the inference from joyful compositions to the supposition that a composer was joyful; even supposing that it is possible to establish the affective tone of a musical composition so determinately, unhappy people are as likely to envision or imagine joy as happy ones.

Similarly, if to infer a "sense of life" is to infer from the characteristic shape of an artist's visions the general character of his orientation to reality, such inferences are generally as reliable as inferences of the sort discussed above and in the same kind of cases. It is difficult, as Hospers says, to see how this sort of claim can be based on musical works. The same is true of abstract painting, and for that matter, of architecture, unless they are supplied with a fairly elaborate iconography, as Rothko's paintings, Picasso's *Guernica*, and Bauhaus architecture are. Certainly in any case, the artist's complete works support a more determinate judgment of this sort than a work in isolation; and works over a period of time are more telling than the works of a single period of productivity, since they support judgments about the evolution of attitudes.

What, finally, about Hospers' cave-painters? Here we encounter, an almost complete lack of biographical context, not just a deficiency with respect to idiobiographic knowledge. No one doubts, I think, that we can, as Hospers says, "admire today the grace and expressiveness of figures drawn on cave walls."¹⁵ And it is not quite fair to counter this claim by pointing out that we can admire the expressiveness and grace of driftwood and mountain ranges too, for in the presence of these drawings we do find ourselves involved in what Bell called "the metaphysical hypothesis":

It seems to me possible, though by no means certain, that created form moves us so profoundly because it expresses the emotion of its creator....If this be so, it will explain that curious but undeniable fact, to which I have already referred, that what I call material beauty, (*e.g.*, the wing of a butterfly) does not move most of us in at all the same way as a work of art moves us. It is beautiful form, but not significant form.¹⁶

But in the case of our cave painters, the hypothesis is extremely tenuous. We have no evidence that these cave paintings are art, even as conceived by ancient civilizations—though surely we are applying the canons of artistic practice in those civilizations as we know them when we adopt an attitude of relative indifference to the cave-painters' individual biographies. Consequently, in these cases—and indeed, even in the case of medieval altarpieces, where our information context is much better—the critic often must content herself with the judgment that the work is a “superb example” of whatever it is. Such a judgment is at least substantially art historical: This object has a large proportion of the characteristics which we associate with objects of this kind and which we value, largely because they correspond to the characteristics which we consider valuable in other art works. Thus the critical fate of the work of the cave painter counts for, rather than against, C1 and C2.

The case of the cave painter does show, as Hospers claims, that from the work alone we can conclude almost nothing about the intentions or biography of its creator. This is perhaps more true of art works than of other artifacts, since the aesthetic context as we in the post-Renaissance world know it is one which prescind for the most part from the assumable generalities of the day to day context of means and ends. But the nearly complete absence of successful inferences in this case shows very little about inferences in the much fuller context of information which we normally can assume. In such contexts, art products, like other action products, can give a fairly determinate basis for inferences about their creators' intentions and idiobiographical characteristics, if such information is wanted. Arguments against contextualism have therefore got to find some other point from which to start.

1. John Hospers, *Understanding the Arts* (Englewood Cliffs, NJ: Prentice-Hall, 1982), pp. 81-82.

2. I here condense a long and intricate discussion. A crucial passage runs: “...unlike the other two [“understand,” “enjoy”] “appreciate is a *value* term: when you use it, you presuppose that there is something there that is worthy of appreciation. ...In moral contexts the use of the term presupposes that you have done something worth appreciating; and in artistic contexts it presupposes that the work of art contains something worth appreciating,” *ibid.*, p. 79. Thus the appreciator has got to believe that the work is worthy of appreciation, minimally that the work is in itself worth dealing with aesthetically; Hospers does not, I think, mean to require that work *be* objectively worth appreciating for someone legitimately to claim to appreciate it. (Claims that someone else appreciates a work which one does not oneself believe worthy of appreciation will present the usual problems and call for the usual circumlocutions, e.g., “Sam *extends appreciation to/ finds something to appreciate in* this [unworthy] work.) Whether appreciation for Hospers requires understanding and enjoyment is a more difficult question. The best answer is perhaps that Hospers does require *aesthetic* understanding of a work and *aesthetic* enjoyment for aesthetic appreciation, but enjoyment and understanding in the aesthetic context, if not *sui generis*, are under severe contextual restrictions and have unusual characteristics. The exact relationship

between fact, affect and value in aesthetic contexts is an issue with a long history of debate. Similarly, whether aesthetic appreciation or its elements *are sui generis* is one of the central questions of aesthetics. These are issues on which Hospers ultimately does not take sides. Cf. *ibid.*, ch. 8, "The Aesthetic Attitude and Aesthetic Experience"; ch. 9, "Aesthetic Qualities, Beauty, and Aesthetic Value."

3. *Ibid.*, p. 87.

4. *Ibid.*, p. 90. In fact, I think a thesis related to C2 is true, but as stated, C2 leaves unspecified what is to count as an artist's "intending a work to mean something." The artist's say so? The artist's conscious intent? May an artist intend to leave aspects of his work open to the spectator's interpretations? Etc., etc.

5. *Ibid.*, p. 86.

6. *Ibid.*, pp. 86-87.

7. *Ibid.*, pp. 85-86.

8. *Ibid.*, pp. 87-88.

9. *Ibid.*, p. 255.

10. *Ibid.*

11. *Ibid.*

12. *Ibid.*, p. 256.

13. Arthur Schopenhauer, *The World as Will and Representation*, I, 36. Transl. R.B. Haldane, and J.B. Kemp. Reprinted in *Philosophy of Art and Aesthetics from Plato to Wittgenstein*, ed. F. Tillman and S. Cahn (New York: Harper & Row, 1969), p. 257.

14. For a discussion of the implications of Shakespeare's treatment of Blacks, cf. Anthony Barthelemy, *Black Face, Maligned Race: The Representation of Blacks in English Drama from Shakespeare to Southern* (Baton Rouge: Louisiana State University Press, forthcoming).

15. Hospers, *op. cit.*, p. 86.

16. Clive Bell, *Art* (London: Chatto and Windus, Ltd., 1928). Reprinted in M. Rader, *A Modern Book of Esthetics* (New York: Holt, Rinehart and Winston, 1979), fifth ed., p. 295.

SELF

J. ROGER LEE

John Hospers has contributed to the reaction against the Orphic-Platonic-Cartesian theory of the self. In a series of papers which used causal concepts as important for an understanding of human action and the ethics of human conduct, he has been one of the thinkers of this century who have argued that a certain conception of self, called "zero-point" below, was too simple a construct and left out many of the important physical and contextual aspects of the self. In his important criticism of John Rawls' device of the original position, in 1974, Hospers again reminded us of the importance of factors of physical gender, and situation, to being a self which was capable of rational choice.¹

In this article I develop an outline of the concept of self which is required for and is actually operative in an Aristotelian personal flourishing ethics. The concept of self which I find there is one which is importantly tied to the body of the person, the mind of the person, the career, family and other social relations of the person. It is a non-zero-point conception of the self which I think is consistent with the view that John Hospers has been urging on us, wisely, for the last 35 years.

I start with an outline of the kind of ethical theory which I am calling Aristotelian. Aristotle has a theory of what we now call the moral point of view. For him, being virtuous is not simply performing an action specified by a virtue. In addition, Aristotle requires that the action be performed on the basis of requisite psychological states: that they be done, in a way which is 1) characteristic of the acting agent, 2) on the basis of knowledge of the situation which calls for action, and 3) are done for the sake of *kalos*, which is alternatively translated as "the fine," "the beautiful" and "the noble."²

We also know that the virtues are states of character which make a human being function well. [NE, 1106a24] Further, we know that human functioning well is living fully expressive of reason [NE, 1098a13] and that happiness, *eudaimonia*, living well for humans is living a life expressing virtue. [NE, 1177a1] So, there is a network

of concept, "kalos," "living, in accord with reason, fully, excellently or well," and "*eudaimonia*," which alternatively carry the burden of expressing Aristotle's moral ideal for humans.

Aristotle addresses ideals for relations among humans in his theory of friendship, where the self-interested moral agent takes up the concerns and values of the friend into the facts of the situation which a knowledgeable person acting characteristically will find necessarily bound up with his/her *kalos*. A good person always will take up the interests and values of the friend in a primary way influencing action. And, by so acting, she/he acts in a way which advances her/his own self-interest where self-interest is used in the approved way for Aristotle. One who tries to attain what is fine and good, gratifying every rational desire, and who, so helps herself/himself and others.³ Self-interest, morality and concern for the other are all alive in the same act towards *kalos*.

Aristotle holds that: a friend is another self. [NE, 1166a32 and 1170b6]

Context of use fixes the extension of a word, at least partially. The claim here is that friendship is such a context for fixing the extension of the word "self." A fact, to which Jones must attend, if she/he is to be knowledgeable about the situation calling for action, is that Smith is a friend. But Jones should act characteristically to make a *kalos* Jones. Now the essential Aristotelian claim comes into play: "A friend is another self." So, as the self which Jones is "involves" Smith, the values and concerns which are to be satisfied to make a *kalos* Smith are principles of selection in Jones' choice of the right action.

I think that this is the right way to see these matters. But the claim that this is so invites the question of what kind of conception of self am I, and perhaps Aristotle, using? Selves just don't seem to be the sort of things that *one* can have *another* of!

WHAT IS A SELF?

Existentialists rejected a view of the self as fixed by an immutable human nature. Instead of viewing a human being as an essential human nature, existentialists treat the self as zero-dimensional or as a pure freedom, theory of persons.

My view is multi-essentialist. I have essential properties, but that what particular combination of essential properties I have is a function of which true description of me is operative in the inquiry into my nature under consideration. I have different essential properties under different descriptions.⁴

Which descriptions are appropriate to me, and so which properties are essential to me in some aspects of my life, are to some extent up to me to determine. For example, I am a philosopher by choice. In virtue of that choice, the essential features of being a philosopher

are essential to me, under the description, philosopher. In another sense of "choice," I have human limits by choice. I chose those limits, because that's where all the action is, in the sense that excellence at another life form isn't even a possibility. So, I don't even evaluate non-human ideals for choice. On the other hand, I am smart enough not to fight against the limit of being human, as some people do.

One need not be human. Some people fight against it, choosing non-human ideas as if their realization was possible for them. Were I to make some bad choices, or were I to have bad luck, then I could lose myself and turn into a vegetable thing, an alienated thing, or a corpse. But even as a vegetable things, say as an affluent alcoholic, I would have become a *self* of that sort. It just would not be a human sort.

I could fight a battle against my humanity. I wouldn't win it, but I could identify with it. Then, being a combatant of that sort would be the self I would have become.

In really tragic cases of advanced alcoholism and other disorders, people become inhuman in ways that effectively block a retreat back to normal human functioning. Being human is no longer a description which is open to them, either because of their bad choices or because of bad luck.

Fortunately, I am still human with a wide range of choices of action still open to me. What I am is not fixed for action. My nature is open to different descriptions at least. Under different descriptions, I have different essential properties, and what is *kalos* for me changes under different descriptions.

So I do not hold the rumored essentialist view of an immutable human nature which existentialists argued against. Also, I do not hold what I call the zero-point theory of the self which hails from the Gaetae and the Trausi, north of the Danube, and from the Tracian Orphics. This view of the self was first stated explicitly, in philosophy, by Empedocles who speaks as if the same self, Empedocles, had been both boy and girl, bush, bird, and fish, in prior embodiments, in prior lives [Fr. 117] and yet, through all that, it, the self, retained enough sense of personality to discern that it is an ego, fallen to earth, who has discovered itself in a foreign land. [Fr. 119, 118] This view was taken up by Plato in the West, rejected by Aristotle, and after a time, Rene Descartes attempted to show that part of the thesis—the essential separability of the self from the body—was true and compatible with modern science.

Again, as is widely known, the self which hasn't any physical components, including components which are parasitic on physical states criteriologically, has had rough going in the middle part of this Century. Under the name "Cartesianism," it has been attacked broadly and well.⁵

The gist of the matter is captured well by the following passage in Plato's version of the zero-point self: "The south that [after

separation from the body, at death] survives as a recognizable self or person must somehow retain feelings that make sense only if they have physical concomitants." [Claus, 113, n. 16] Alternatively, if these are taken away from the non-physical existing part of the soul as, say, in Aristotle's theory, "it is only pure intelligence devoid of individuality that survives." [Clause, 113, n. 16] In short, there is no self remaining.

Gregory Vlastos has written well on the Platonic theory of self's inadequacy for moral discourse in one domain, the theory of friendship. In Plato, we don't really befriend *people*, we befriend the forms that the bodies and thoughts that are associated with the souls happen to instance. We might as well love a beautiful sunset as a beautiful person. [Vlastos, 26, 31]

The reason is that there are no people there to befriend, on the zero-point view. Nothing of what confronts us, *of* them, *is* them. It is not a boy or a girl, tall or short. Selves are supposed to be secret inhabitants hiding behind all that show. Platonic people are rather like the gods of negative theology. Whatever you think of them they are not. Because the predicates all designate the forms that the things they are visiting instance (or, in the case of the gods, that they create and transcend).

I include psychological ascriptions here, because, after Wittgenstein, we should not assign a privileged place to thinking, and the psychological, as not requiring bodily criteria for the correct application of terms. In consequence of this Wittgensteinian development, we can no longer give the immaterial souls the job which Plato, Descartes and others had assigned to the soul, the job of thinking, while hiding out, "inside somewhere."

Orphic-Platonic-Cartesian souls are only zero-points "inside" there somewhere, and nowhere. That is to say, they aren't. So what's to love!? What's to befriend?

In ethics we have to talk about friends caring for each other, hoping for the well-being of the other, and even among others who are not friends, we must have moral concerns of some sort relative to who these people are in the world. So, the selves which we discuss and have these attitudes toward, in ethical reflection, must be more "robust" than Orphic-Platonic-Cartesian zero-point selves.

A POSITIVE ACCOUNT

Lillian Gish, now, in 1988, in her 90s, has a new movie out. She's been an actress for over 80 years starting, as she did, as a child. Recently, a reporter asked her what she would have done if she had not been an actress. She responded in a very healthy and non-Cartesian way. She considered the question to have been unintelligible.

Having taken acting, theater and films into her life, so intensely, and so long, she refused to think of herself without that component in it. It just wouldn't be *her*.

In the sense in which we use the term "self" in ethics, the self she is for choosing and undertaking actions involves activity, with others in the theatre, as *part* of who she is. So-called "externals" like fellow actors, audiences, plays, cameras and make-up get taken up into our selves as parts of who we are, this story shows.

What has to be added, to our picture of the self, to make an adequate, non-zero-point self, is more than just the person's body. My self can and does include, *as parts*, many things and people of the world that zero-point theories would place outside of me. Above I noted, by reference to vegetable, alcohol-addicted lives, that my self also can exclude many things that others would consider to be necessarily internal to me, like humanness.

How one has lived and what one considers most *important*, judgmentally and characteristically, determines the issue of what has come to be constitutive of the self. Characteristically choosing the human in one's self or not, determines whether being human is essential to the ethics-relevant self. Characteristically choosing and attaching importance to a career can do the same for the things involved in that career.

The notion of self which operates in ethics is flexible. Selves can accommodate all sorts of things, or not accommodate them, in them. Humanity, the theatrical, or the philosophical, may or may not be a part of me.

What, then, am I that allows such flexibility? I am this living thing, neither life, nor body, nor mind, but this body-mind-living-doing. I am an Aristotelian this-much, where such includes my activities and the overall structure of my activities, conferred by my history, values, purposes and intentions, and in addition to the nature of each of my particular material and psychological characteristics, the overall structure of them relative to each other.

Given a structure of importance in a person's life, a foot or another body part *can* be essential to a self. But to get this essentiality, one has to view the self, and the foot that is or was its part, relative to the structure of importance a person has—relative to the picture of personal excellence she/he has. Body parts, so described, are part of the self that moral philosophy talks about.

Friends can play a role such as this as part of a person's life. We can, and do, identify with them on the same model as we identify with our body parts. Their loss can undermine a self. Careers, abilities needed for a career, treasured objects with great personal value, geographical locations and their associated culture can all be essential to what in fact is a person's self.

The fact that friends can be parts of my self goes some way toward showing why I will take the ends of the friend at a level of my ends

in planning action. Through friendship I can come to adopt the ends of the other as my own. In deciding whether to attend to my food, and in deciding whether to attend to my friend, we don't deliberate about non-existent conflicts of interest, we just do the thing. And it feels natural to us to do so.

An athlete, who's newly lost a foot, has a diminished self. Some parts of her/his self are missing, the activities, the goals and ambitions, the meaning. And they are missing, because another *part of self* is missing, the foot. Such an unlucky person would have need to *build a qualitatively new self*. And we'd try to help by showing opportunities in the hope of helping in the development of new structures of importance that the now diminished self can grow into.

The athlete, the widow(er), the emigre in a strange land, the writer who starts loosing mental abilities, are all at risk. Their sense that their recently diminished self is *not them*, can be final. Suicide lies on this road. And when the continuance of life is not the continuance of self, suicide can even be indicated. But selves also can go the other way in such circumstances, for there is often great capacity for regeneration. But whether or not regeneration is possible is something which is hard to determine.

MOIRA AND GOOD SELVES

A person, who has the virtues and acts on them characteristically, with knowledge of the circumstances, and for the sake of virtue, for the sake of *kalos*, has developed a self, has filled it in with meanings, structures, characteristics, commitments, etc. Others do too. But an ideal person has developed a self via the virtues. So, what this person does is characteristically for the ideal. Of course, the virtues are defined for this person, relative to what that person *is*, what *self*. [NE, 1106a31-1106b6] And even with *kalos*, what is *kalos* for us is relative to some degree, at least to what we are. [Rhet., 1361b7-14]⁶

The virtuous person has defined a limit, a boundary, in terms of range of action and style of action. That person has made limits on who and what they are, and does not overstep her/his bounds. Such a person would say as a second order judgment about those actions: "I did that, because that's the sort of person that I am. That's *who I am*."

Some other people are loose and amorphous in their self-definition. One doesn't know what they will be or do in a situation. Yet other people flee self-definition, adopting contradictory features, avoiding commitment which might close options. Some people *seek* the zero-point. Finally, other people will be precisely defined by vices. One knows to expect bad things from them. But the two prior groups are groups of bad people as well, bad for failing to have developed virtue or for developing virtues at war with one another.

The concepts which are employed here, limit, self-definition, character, bounds, fitting, overstepping bounds, are all captured by the early Greek work, *moira*. In the primitive Greek world of Cornford's *From Religion to Philosophy*, the term *moira* played a key role in religious and ethical thought.

In that ancient world, *moira* was one of the earliest Greek fumbings after the notion of the nature of x . Originally hailing from the art of land measurement where a *moira* was some sort of specification of the size of a piece of land, 'moira' came to mean the boundaries on what a thing is and does. But this notion of boundary has normative dimensions, as it does in land measurement, where it is used to define ranges of property rights. Such a boundary is a *limit* on how far activities *should* go. I may plant my crops within my boundaries, but not outside them, in your fields. If I ignore *moira* here, I overstep my bounds and behave badly. [Greene, 401-02] So the most primitive form of ethics relative to this notion is the injunction not to overstep one's *moira*. "Nothing too much."

In the classical tradition, if someone were to overstep one's *moira*, then bad consequence to them. The nature, or boundary, of what it is to be me, *can* be overstepped, but if it is, then nature adjusts. This is the sense of nature of self which we need in ethics. A self which is robust in content, yet flexible, where change can come in ways that are self-denying or self-affirming.

So if the self is to have clearly defined boundaries of the sort desired here for excellence, the self must be disciplined to the point of achieving structure of actions within such limits. Because, if we overstep our *moira*, we leave the field in which we develop our *eudaimonia*—living fully and well as this thing of the sort that I am.

We must stay within our *moira*, or at most change it in internally consistent ways. If we don't stay within it, then we are overstepping our bounds. If we change it in ways which introduce inconsistency into our *moira*, then we are fated to overstep our *moira*, even while acting within it! The common denominator of deviations from one's *moira* is inconsistency. And consistency is a necessary, though (*pace* Kant) not a sufficient condition for morality.

Self-definition of the required sort to have a good *moira* is largely a matter of acquiring discipline. How does one acquire the discipline, first, to establish, and then to retain a well limited and detailed self?

Book Two of *The Nicomachean Ethics* tells us that the influence of others starts us off on self-definition, with parents, teachers and trusted others, models and friends. Our concern for their attitude, or our imitation of their style, lets their attitude and behavior constitute limits on us which we come to accept, characteristically.

PRIVATE LANGUAGE
ARGUMENT AND VIRTUE

The chief feature of the mid-century rejection of Cartesianism has been the recognition of the criteriological importance, even for our most "intimate" thoughts, of the reaction of others to our linguistic behavior and of the importance of the requirement that even "inner" thought must have "outer" (bodily-behavioral) manifestation to allow the others to have this purchase on our thought.

Wittgenstein showed that an auto-psychologist who attempted to keep a private, untranslatable diary about a psychological state, using the neologism, "E," to report the recurrence of a particular sensation, would, of necessity, fail. [Wittgenstein, *PI*, 258]

The project necessarily fails to fix the meaning of the private symbolism because no part of the project is capable of fixing meaning. A rule, or a reliable pattern of behavior relative to "E" has to be established to fix the meaning of "E." And it simply begs the question for the auto-psychologist to claim to have the rule or pattern fixed at the outset, without any evidence for the auto-psychologist to consult, at some point in the study, should she/he wonder whether she/he was accounting for the evidence correctly. [Wittgenstein, *PI*, 258]

This development is called the private language argument. We owe it to Kripke to see that this difficulty, which is announced in section 258 of *Philosophical Investigations*, is part of a broader difficulty of having criteria for following a rule. In his *Wittgenstein on Rules and Private Language*, Kripke directs our attention back to Wittgenstein's earlier discussion of the student learning arithmetic which culminates in the *now* frequently cited section 202,

And hence also 'obeying a rule' is a practice. And to *think* one is obeying a rule is not to obey a rule. Hence it is not possible to obey a rule "privately": otherwise, thinking one was obeying a rule would be the same thing as obeying it.

The criteria of correctness are given in the social interactions of the person, relative to a group which reacts in intelligent, consistent, useful ways, relative to one's linguistic behavior.

In an actual case of a child, learning arithmetic, who has got the rule wrong, what would we do, as teachers and elders or only as friends? We'd say, "No, that's wrong." We'd "object to actions caused by vice, just as the musician enjoys fine melodies and is pained by bad ones." [Aristotle, *NE*, 1070a10] We'd both argue, we'd show examples from textbooks, we'd calculate it aloud ourselves, and ultimately, baring shocking new arguments or a sense that we are mistaken, we'd insist that we are right and *insist* that the student *conform*

to the discipline now (regardless of what the student will do in the future).⁷

In mathematics and even in psychological reasoning, we have to see ourselves as 1) manifesting thought in overt, bodily-behavioral states, and 2) as having interacted with others in ways which amount to our being of a same community with each other. So the classical, post-Wittgenstein position has been that an intelligible notion of the self must include body parts as in the self, to account for the requisites for psychological discourse.

But more is required in the notion of self, than mere body parts, to be included along with the mental. The more general point about rule-following shows that an adequate concept of a self which can wield a language must include a community with others in the linguistic group as a part of what the self is, under the description, language-user. If English were my sole language, then I am a person who is influenced by and has some same customs and practices as people who lived on or near the British Isles, and others who were so influenced, is part of who I am, capable of thought and reflection.

The reality of some others and their behaviors is part of my sense of a limited self, *moira*, in the self defined by virtues as well. This fact follows from the fact that Wittgenstein's results about language and mathematics generalize to any minimally adequate theory of setting the limits of the self, *moira*, the virtues, and ethics.

Virtues, as capacities and tendencies, are similar to mathematical and linguistic capacities and tendencies. The life of the virtues is a life of characteristic action, designed to achieve our own excellence and happiness based on our developed ability to see the action which is *kalou* in the situation for action. Since "every virtue causes its possessors to be in a good state and to perform their functions well," [NE, 1106a16] and human virtue will be "the state which makes a human being good and makes him perform his functions well." [24]

That description compares nicely enough with what Wittgenstein said about counting to show that the learning and keeping of the virtues is the same, coming-to-follow-a-rule, intelligently that learning to count, or learning linguistic fixities of symbolic behavior is. Wittgenstein remarks:

what we call "counting" is an important part of our life's activities. Counting (and that means counting like *this*) is a technique that is employed daily in the most various operations of our lives. And that is why we learn to count as we do: with endless practice, with merciless exactitude; that is why it is inexorably insisted that we shall all say "two" after "one", "three" after "two" and so on. [Wittgenstein, *Remarks*, 4]⁸

Virtue and computational ability are similar. Learned states of tendencies toward and ability to discern intelligent *action* in support

of living well, of *eudaimonia*, on the one hand, and linguistic and mathematical abilities as learned states of tendencies toward and ability to discern intelligent procedures in symbolism, expression, performance and computation, on the other, have many points of psychological similarity. The same kind of problem which besets the acquisition employment and retention of the one kind of state will show up in the other.

Even if, contrary to what Aristotle says about the importance of *phronesis* and an ability to knowledgeably discern and orient ourselves to the *kalos* in right action, as if it were true that virtuous behavior was just a sort of habituated unreflective response, more like hitting home runs, or hitting tee shots well, then adding well, others would play similar roles in the acquisition of virtue.

Athletes, who do have muscle memory, get in slumps now and again. What feels right is obviously not right. Tee shots start veering for the right rough with alarming frequency. At this point it is nice to have a someone else around who has our well- bring as a goal of their own. Such a person, be it a coach or a teammate or even just a golfing buddy can sometimes give profitable advice. She/he can see what you are doing better than you can feel it.

She/he says something like "You're letting your right elbow flare out from your body in the middle of your swing."

On getting such advice, of course, the initial reaction is immediate. "No I'm not." One has the direct evidence of one's own feeling of one's own body states. Here, at least what *feels* right, *is* right. *Following the rule* of holding one's right elbow on a certain plane relative to the body, *is* just *feeling* that one is following the rule. One thinks: "Something is wrong with how I'm doing it, but it isn't that!" One swings again and *concentrates* on the correct feeling in the right arm as one hooks the drive. Thus one *confirms* one's hypotheses and knows to look for the problem elsewhere. But where.

All of that thought, of course can be as silly as the behavior described in Wittgenstein's *PI*, 185 or 258. The sage advice of *PI* 202 is being ignored. In principle, there is a difference between thinking one is following a rule and actually following it.

The helpful other person may put a hand on our arm as we practice a swing so we can feel the pulling away, or rig straps of some sort to mold our swing. But most of all our advisor must just *persist* being a source of contrary evidence. This persistence will call on us to treat the advice more seriously, in time, as the athletic problem persists.

Similar things happen in business. Were I to spend the next twenty years designing and planning the fabrication of the ideal, consumer satisfying widget, and were I never to take anything to market in that time, then my prospects of success would be slight.⁹

Were my goal only a subjective good feeling, then whatever would

feel good would be right—anything I felt like doing, and did, would be right and so there we could not speak of right. There we could not even speak of reasons for action. For reasons require evidence, and where feeling right is identified with being right, it is meaningless to speak of feeling right as evidence of its being right. It is meaningless in the same way that it is meaningless to speak of having a toothache as being evidence for believing that I have a pain.¹⁰ I'm either enjoying myself or I am not. That's it. Reasoning plays no role.

It might seem that autonomous thought, without social reinforcement, might be sufficient to determine the issue, if the goal sought is *objective*, but not public or social as satisfying the market is. My widget maker above could be working on the ideal widget, *qua* widget, regardless of marketability. She/he can check the produced widgets against a paradigm widget and have an objective measure. It can come out that way, as can following a rule by accident. But it also might not. Checking against the paradigm has subjective elements to it and can go awry given all sorts of psychological causes.

The history of invention and of art is rife with stories of people who lost their way, convincing themselves, while working alone, that their feeling of doing the right thing, was the same as doing the right thing. But it wasn't.

The histories of these fields describe much accomplishment, some by lone, alienated pioneers. But also much self deception, among many other lone, alienated, would-be-pioneers. Because, as Aristotle said: "the solitary person's life is hard, since it is not easy for him to be continuously active all by himself; but in relation to others and in their company it is easier,...for the excellent person, in so far as he is excellent,...objects to actions caused by vice." [NE, 1170a5-101]

To learn the virtues, and so to form and keep good *moira* for ourselves, we are going to have to, at least, imitate the actions of good people. To learn enough quickly, we in fact, "*triangulate*" our picture of healthy correct action by seeing action and potential action from our own point of view and from at least one model human's point of view. But to have a model human's point of view at all the times relevant for action, I must have *internalized* her/his reactions to concrete situations of our lives—I have to have made the human model's point of view of a *part* of the *me* that is living *this* life, in *this* way, at *this* time, so that the relevant inputs of the human model are there at *all* the relevant times.

This "multi-phonetic" dimension of feedback on whether we are acting finely is *essential* to our mastery of right or virtuous action at the *level of complexity of evaluation* necessary to get all the good things there are to get—to be truly fine, in having set reasonable limits for ourselves and then in having lived fully and well within those limits.

Others, especially friends for virtue, who become so central to our interests, needs and concerns, actually enter into our selves, as other selves, provide a more intense, and so more useful form of evidence about the *fineness* of one's life. More useful, in conjunction with non-personal facts, about our widgets and about our lives than those facts alone may be. Friends of this sort are a great block to self deception, because they enter into our selves and block it. It is one thing to fool myself. It can be quite another to fool myself with a virtuous Katie Sue in there as a part of my self, with my knowing what she would think, after she knew what I am doing, knew why I am doing it, and her reacting to it. But even before her reaction, before my action, since she is a part of me, I see the intended action already from her point of view, automatically.

But the importantly intensified role that *friends*, as special kinds of other people, play in the shaping of oneself, *moira* and *kalos* is worthy of separate discussion in another article. For the purposes of this article I take the point to have been established that, the only chance we have for making a self which is capable of being determinate enough to be the subject of a virtues ethics of personal flourishing, is by taking the concerns, interests, and reactions into ourselves and letting them limit us—fix parts of our *moira*.

In this respect, it is not surprising that psychoanalytic theory, which has a lot to do with the flourishing of selves, with requisite self-definition, attends to the place of the ongoing projects with parents and others which inhabit our ongoing self. Selves which chose and act, worry and get blocked, have other things, people, and cultures in them as much as they have body parts and mental capacities.

What has to be added, to our picture of the self, to make an adequate non-zero-point self, is more than just the person's body. My self can and does in, *as parts*, many things and people of the world that zero-point theories would place outside of me, because I am this living thing, neither life, nor body, nor mind, but this body-mind-living-doing. My self includes my activities, values, purposes and intentions, friendships, cultural associations, and in addition to the nature of each of my particular material and psychological characteristics, the overall structure of them relative to each other.

1. The relevant papers are John Hospers, 1950, 1961 and 1974.
2. In Aristotle, in the working of all the virtues, there is the intentional orientation to nobility or fineness. For example, *kalos* is referenced in the choosing matrix for *sophrosene* at NE, 1119a18 and again at NE, 1119b16. The brave person chooses what is fine in war. NE, 1117b14 The person of *megalosukia* will aim at the fine. NE, 1122b6-7 But the vulgar person will fail of excellence because an ostentatious display of wealth, is aimed at display and admiration and not at what is fine. [NE, 1123a24-25]

The most clear statements of the issue come at NE, 1120a24, where Aristotle says, "Actions expressing virtue are fine, and aim at what is fine" and at NE, 1122b7 where Aristotle calls *kalos* the common denominator of the virtues.

3. "[H]e awards himself what is finest and best of all, and gratifies the most controlling part of himself, obeying it in everything" *NE*, 1168b30 has self-interest in this Aristotle-approved sense. "The good person must be a self-lover, since he will both help himself and benefit others by doing fine actions." [*NE*, 1169a1zero-11]

4. Aristotle may well have had such a theory. Contrast *Categories*, 7a36 with 8a15-16, in which a slave is a relative (owned by a master) *qua* slave. But "An individual man is not called someone's individual man."

5. Chief among the classical refutations are Wittgenstein, *PI*, and Ryle. The designation "zero-point" comes from Wittgenstein's earlier *Tractatus*. [5.64] "Here it can be seen that solipsism, when its implications are followed out strictly, coincides with pure realism. The self of solipsism shrinks to a point without extension, and there remains the reality coordinated with it."

6. Here Aristotle speaks as if youth, maturity and old age were discrete measures of persons. However experience shows that different persons have characteristic measures of youth, maturity and old age for different aspects of their personality at different times of their lives. Putting the same point another way, it seems that people grow up, in different aspects of their personality, at different rates and at different times. So that someone may be chronologically old, mature in work-discipline and childlike in capacity for social relations. Other people will have different arrays of these measures distributed over a time-slice of their life.

So Aristotle's theory of *kalos* relative to age would have to be fine-grained for this phenomenon. Further, the theory would have to be adjusted to allow for combinational effects for these different stages. For example a chronological youth who is mature in judgment is more *kalos* than a chronological adult who is mature in social skills and childlike for lack of mature judgment.

All of that classification would be a very large task. But someone who is good at tracking the *kalos* of humans, tracks those variables and their combinational effects.

7. Such discussions are sketched in Wittgenstein, 1939, pp. 26-29. *Remarks*, sections 1-4, covers the same ground.

8. Wittgenstein goes on to discuss truth here and at that point there is at least a surface disagreement with Aristotle. Aristotle had held that *phronesis*, the ability to "deliberate finely about what is good and beneficial for himself....about what promotes living well in general," [*NE*, 1140a25] was "a state of the soul that grasps the truth in affirmations and denials." [*NE*, 1139b15] Wittgenstein claimed: "...But is this counting only a *use*, then; isn't there also some truth corresponding to this sequence? The *truth* that counting has proved to pay.—"Then do you want to say that 'being true' means: being usable (or useful)?—No, not that; but that it can't be said of the series of natural numbers—any more than of our language—that it is true, but: that it is usable, and, above all, *it is used*." But truth in rightness of action comes to this same practical point, probably. So I don't see any room for controversy here.

Second, *phronesis* operates on a different level of generality than counting. But that is not a difference which makes a difference to anything under consideration here.

9. Wittgenstein's cousin, F. A. Hayek develops this point in his important paper, "The Use of Knowledge in Society."

10. At *PI* 246, Wittgenstein remarks: "Other people cannot be said to learn of my sensations *only* from my behaviors,—for *I* cannot be said to learn of them. I *have* them." This is the same point, if feeling right was the point of ethics, there would be no role for reason, as there would be no role for *inference*. This, I take it is Aristotle's views, that the life of pleasure is a slavish life at the level of grazing animals, [*NE*, 1095b16-20] is living at the non-rational level of the soul [*NE*, 1102a29-b12], where it would be absurd to place the ends of ethics, what with all its hard work. Ethics has to involve the rational parts of the soul. [*NE*, 1176b29- 1177a6]

- . "Rhetoric," trans. W. Rhys Roberts, in *The Complete Works of Aristotle: The Revised Oxford Translation*, vol. II, Jonathan Barnes, ed. (Princeton: Princeton University Press, 1984).
- Claus, David B. *Toward the Soul: An Inquiry into the Meaning of Psyche Before Plato* (New Haven: Yale University Press, 1981).
- Greene, William Chase. *Moirai: Fate, Good, and Evil in Greek Thought* (Gloucester, MA: Peter Smith, 1968).
- Hayek, Friedrich A. "The Use of Knowledge in Society," in *Individualism and Economic Order* (Chicago: University of Chicago Press, 1948).
- Hospers, John. "Philosophy and Psychoanalysis," *Philosophy and Phenomenological Research* (1950).
- . "What Means this Freedom?" in Sidney Hook, ed. *Determinism and Freedom in the Age of Modern Science* (New York: Collier Books, 1961).
- . "Review of John Rawls's *A Theory of Justice*" 60 (Winter 1974).
- Irwin, Terence. "Glossary", in Aristotle, *Nicomachean Ethics* trans. Terence Irwin. (Indianapolis: Hackett, 1985).
- Ryle, Gilbert. *The Concept of Mind* (London: Hutchinson, 1949).
- Vlastos, Gregory. "The Individual as a Object of Love in Plato," *Platonic Studies* (Princeton: Princeton University Press, 1973), pp. 3-34.
- Wittgenstein, Ludwig. *Wittgenstein's Lectures on the Foundations of Mathematics, Cambridge 1939: From the Notes of R.G. Bosanquet, Norman Malcolm, Rush Rhees, and Yorick Smythies*. ed., Cora Diamond (Ithaca, NY: Cornell University Press, 1976).
- . *Philosophical Investigations*, trans. G. E. M. Anscombe (Oxford: Basil Blackwell, 1967).
- . *Remarks on the Foundations of Mathematics*, trans. G. E. M. Anscombe. eds. G. H. von Wright, R. Rhees, and G. E. M. Anscombe (Oxford: Basil Blackwell, 1967).
- . *Tractatus Logico-Philosophicus*, trans. D. F. Pears and B. F. McGuinness (London: Routledge and Kegan Paul, 1961).

ARISTOTLE AND THE NATURAL RIGHTS TRADITION

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John Hospers remarks that "we speak of 'natural rights' or 'human rights'—rights that human beings have 'because of their very nature as human beings': for example, the right to life, the right to liberty and the pursuit of happiness."¹ The theoretical origins of natural rights, which have an important place in Hospers' own political theory, may be traced through John Locke (1622-1704), Thomas Hobbes (1588-1679), Richard Hooker (1554-1600), Thomas Aquinas (1225-1274), Cicero (106-43 BC), and many others back to Aristotle (384-322 BC).² This paper is concerned specifically with Aristotle's place in this tradition. I contend, against many interpreters,³ that not only is Aristotle a proponent of natural rights, but that they play an important role in his political theory.⁴ The argument of this paper complements the arguments in some other recent works that Aristotle's teleological view of human nature and his ethical theory of *eudaimonia* (happiness or flourishing) can serve as a foundation for a theory of individual rights akin to Locke's.⁵

It is necessary, however, to enter a caveat regarding the distinction between theories of natural rights and the cluster of modern political theories which are variously characterized as "individualist," "libertarian," "classical liberal," "Enlightenment era," etc. John Hospers (like Ayn Rand, Robert Nozick, Tibor Machan, and others) uses a theory of natural rights as part of the foundation for a liberal theory. However, other modern liberal philosophers eschew natural rights in favor of utilitarianism or contractarianism as theoretical underpinnings. On the other hand, some natural rights philosophers argue for a more expansive and intrusive state than libertarians would accept. Thus, to ascribe a theory of natural rights to Aristotle is not equivalent to assimilating to him some variant of modern liberalism.⁶

TWO MODERN NATURAL RIGHTS THEORIES

In order to understand Aristotle's theory of natural rights and its implications for his own political theory, it will be helpful to use as foils two of the most influential modern theories of natural rights: the Hobbesian and the Lockean.

The Hobbesian Theory

For Hobbes, "The Right of Nature...is the Liberty each man hath, to use his own power, as he will himselfe, for the preservation of his own Nature; that is to say, of his own Life; and consequently, of doing any thing which in his own Judgement, and Reason, he shall conceive to be the aptest means thereunto" (I.14, p. 64)⁷. This right is contrasted with "a Law of Nature," which is "a Precept, or generall Rule, found out by Reason, by which a man is forbidden to do, that, which is destructive of his life, or taketh away the means of preserving the same; and to omit, that, by which he thinketh it may be best inconsistent." Hobbes maintains that "naturally every man has Right to every thing" by the following argument:

1. The condition of Man is a condition of Warre of every one against every one; in which case everyone is governed by his own Reason;
2. There is nothing he can make use of, that may not be a help unto him, in preserving his life against his enemyes;
3. It followeth, that in such a condition, every man has a Right to everything; even to one anothers body.

It is clear from Hobbes' distinction between the notions of *right* and *law*, and from conclusion (3) above, that he takes "a right" to be "a privilege" (also called "a liberty-right") in the Hohfeldian sense, rather than "a claim-right."⁸ Because there are no duties between individuals in the Hobbesian state of nature, individuals cannot possess claim-rights which impose correlative duties upon other individuals; rather they possess only those rights which entail no duties to other individuals. For example, two persons in the state of nature have the right (are at liberty) to enslave (i.e. try to enslave) each other, but neither has the right (claim-right) against the other not to be enslaved.

Hobbes further reasons that "as long as this naturall Right of every man to everything endureth, there can be no security to any man, (how strong or wise soever he be,) of living out the time, which Nature ordinarily alloweth men to live." Hence, Hobbes derives his first two "Laws of Nature," which are understood as "precepts, or generall rules of reason" (I.14, pp. 64-65).

- (I) That every man, ought to endeavor Peace, as farre as he has hope

of obtaining it; and when he cannot obtain it, that he may seek, and use, all helps, and advantages of Warre;

- (II) That a man be willing, when others are so too, as farre-forth, as for Peace, and defense of himselfe he shall think it necessary, to lay down this right to all things; and be contented with so much liberty against other men, as he would allow other men against himselfe.

According to Hobbes when one lays down one's rights by transferring them to another, "then is he said to be OBLIGED or BOUND, not to hinder those, to whom such a Right is granted, or abandoned, from the benefit of it..." Consequently, from (II), argues Hobbes, "there followeth a Third; which is this,

- (III) That men performe their Covenants made: without which, Covenants are in vain, and but Empty words; and the Right of all men to all things remaining, we are still in the condition of Warre.

Hobbes' theory thus has the following features: In the state of nature, individuals are governed by laws of nature, which are rules of conduct imposing obligations, and individuals also possess rights. These natural rights, however, are unrestricted liberty-rights, and the obligations are purely self-regarding. The obligations are rules discoverable by reason which assert a causal connection between the ends of an agent and the forms of behavior necessary to attain that end. These must be obligations which will motivate a human being, and Hobbes' theory of motivation is materialistic, deterministic, and egoistic. Human beings are motivated purely by the passions, and, as in Hume, reason is "the slave of the passions." His ethical theory is fundamentally subjectivistic and relativistic: "good" and "evil" are defined in terms of one's desires (or, as philosophers now put it, subjective preferences) (I.6, p. 24). However, Hobbes also claims that "all men agree on this, that Peace is Good" (I.15, p. 80). He further holds that certain forms of cooperative behavior are causally necessary for the attainment of peace. Thus, reason may derive hypothetical obligations or "oughts" of the following form:

If x wants G , then x ought to do M .

In the present instance, G is peace, which Hobbes takes to be an instrumental good, common to all individuals and desirable in so far as it is necessary for self-preservation; and M is cooperative behavior, in the case of the second and third laws of nature, transferring rights and keeping covenants, which, when performed in conjunction with others' performance of the same, will help to effect the achievement of peace.⁹ Hobbes thus offers a contractarian theory of claim-rights, since the interpersonal obligations entailed by such rights result from contracts, and the obligations to keep these

contracts are derived by means of hypothetical imperatives (cp. II.21, p. 111). Strictly speaking, there are no natural claim-rights for Hobbes, only natural liberty-rights.

The Lockean Theory

Locke derives a more robust set of natural rights than Hobbes, including claim-rights which entail interpersonal duties:

The *State of Nature* has a Law of Nature to govern it, which obliges every one: And Reason, which is that Law, teaches all Mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his Life, Health, Liberty, or Possessions [II.6].¹⁰

The natural rights of individuals are in turn derived from the law of nature. For example, Locke infers from "the Fundamental Law of Nature, Man being to be preserved, as much as possible," that it is "reasonable and just I should have a Right to destroy that which threatens with Destruction" (III.16). Locke rejects Hobbes' identification of "the State of Nature" and "the State of War," and asserts that "Men living together according to reason, without a common Superior on Earth, with Authority to judge between them, is *properly the State of Nature*. But force, or a declared design of force upon the Person of another, where there is no common Superior on Earth to appeal to for relief, is *the State of War*" (III.19). Individuals form governments to safeguard their natural rights to "their lives, liberties, and estates" (IX.123). In political society, the law of nature continues to serve as what Robert Nozick would call a moral "side constraint" upon positive, written laws, "which are only so far right as they are founded on the Law of Nature, by which they are to be regulated and interpreted" (II.12).

Here Locke identifies "the Law of Nature" with "the Law of Reason" (cp. *First Treatise*, I.101), contending that "it is certain that there is such a Law, and that too, as intelligible and plain to a rational Creature, and Studier of that Law, as the positive Laws of Common-wealths, nay possibly plainer..." (*Second Treatise*, II.12. This confident statement is qualified in IX.124.) However, Locke's actual appeal to Reason relies upon an unargued theistic premise:

For Men being all the Workmanship of one Omnipotent, and infinitely wise Maker; All the Servants of one Sovereign Master, sent into the World by his order and about his business, they are his Property, whose Workmanship they are, made to last during his, not anothers Pleasure.

From this premise he derives several conclusions: (1) Since God furnished humans with like faculties and made them to share "all in one Community of Nature," he did not establish any such subordination among humans which would authorize some to destroy

or consume others (in contrast, God did make the lower animals for the use of human beings). (2) Every human being "is bound to preserve himself, and not to quit his Station wilfully." (3) By the same reasoning, "when his own Preservation comes not to competition, ought he, as much as he can, to *preserve the rest of Mankind*, and may not unless it be to do Justice on an Offender, take away, or impair the life, or what tends to the Preservation of the Life, Liberty, Health, Limb or Goods of another" (II.6). In conclusion, Locke derives a more robust set of natural rights than Hobbes, which entail interpersonal obligations to respect the exercise of these rights, but this derivation relies upon an undefended theistic assumption: that human beings are the creatures and property of a divine craftsman, who has assigned to them duties, which are the source of their claim-rights and interpersonal obligations.

THE ARISTOTELIAN CONCEPTION OF NATURAL RIGHTS

Just as Locke bases individual natural rights on natural law, Aristotle, on my interpretation, makes similar use of the principle of natural justice (identified with natural law in the *Rhetoric*¹¹) as the foundation for natural rights. There is, however, a very important difference between Aristotle's treatment of natural justice in the *Ethics* and Locke's theory: Aristotle treats natural justice as part of, rather than prior to, political justice, which he defines as the justice which "is found among associates in a life aiming at self-sufficiency, who are free and either proportionately or numerically equal" (*NE* V.6.1134a26-28).¹²

The reason for this close connection between natural justice and political justice will become clearer in the sequel. But the import of this claim will be more evident if we take note of some important associations of the term "political," *politikon* for Aristotle, which are lost in English translations. (1) "Political" or *politikon* means "of or pertaining to the *polis*," i.e., the Greek city-state. Although *polis* is commonly rendered as "state" or as "city," these English words have misleading implications (particularly "state," with its suggestions of a modern nation-state with a bureaucratic structure and great resources for coercion). Again, neither English word captures the Greek term's normative implications of a comprehensive community (*koinonia*) which aims at the good life and self-sufficiency. Hence, I shall use the transliterated term "polis." (2) *Politeia* is variously rendered as "constitution" (by Jowett and most translators and commentators), "regime" (by Strauss, seeking to avoid the legalistic connotation of "constitution"), and "political system" (by Irwin). Each of these translations, in fact, captures an aspect of Aristotle's idea of *politeia*, which comprehends the governing structure or organization and the way of life of the polis, as well as, more concretely, the regime or government (*politeuma*). (3) The "political" is also associated with the *polites* or "citizen" (fortunately, there is consensus on how to translate

this term), who is defined as someone who has the right or liberty (*exousia*) to participate in the offices of the *polis* as determined by the *politeia* (cf. *Politics* III.1.1275b17-21; IV.1.1289a5-18).

If natural justice is one part of political justice, the other part is conventional or legal (*nomikon*). The latter is defined as "what originally makes no difference [whether it is done] one way or another, but makes a difference whenever people have laid down the rule— e.g. that a mina is the price of a ransom, or that a goat rather than two sheep should be sacrificed..." (1134b20-22). Aristotle recognizes that there are many areas in which the particular character of justice must be determined by means of agreement among those who establish the laws. To this extent, he would agree with contractarian theorists who argue that where parties have no objective basis for arriving at a rational decision, they must reach a decision by means of mutual agreement.¹³ Nevertheless, Aristotle criticizes the claim that political justice is merely conventional, and he concludes his discussion with the important claim that only one constitution is according to nature the best everywhere (1135a5). This clearly implies that he regards natural justice as a standard by which different constitutions can be evaluated and compared on a normative scale as better or worse.

Aristotle distinguishes different specific forms of justice, each of which has political applications. Distributive justice or proportionate equality is explicitly connected with the evaluation of different constitutions as ways of distributing political authority (V.4.1131a25-29). Corrective justice is a way of restoring deviations from just distributions which have resulted from involuntary transfers and is applied in the judicial part of the constitution (cf. V.5.1132a6-7). And commutative justice or proportionate reciprocity, which governs voluntary exchanges among members of a community, is said to preserve the *polis* (V.5.1132b33-34; cp. *Pol.* II.1261a30).

Distributive justice has an especially important place in Aristotle's analysis and evaluation of constitutions. The constitution of a *polis* embodies a specific conception of distributive justice and of the ends of human life: "a regime (*politeia*) is an arrangement in cities (*polises*) connected with the offices, [establishing] the manner in which they have been distributed, what the authoritative element of the regime is, and what the end of the partnership is in each case" (IV.1.1289a15-18).¹⁴ According to Aristotle's principle of distributive justice, more meritorious persons should receive greater rewards, in proportion to their greater merit. For example, if x contributes twice as much to a business venture as y , then x should receive twice as much of the profits. The result of applying this principle is *tadikaia*, the set of "just claims" or claim-rights of the individuals subject to the principle. Aristotle applies this same principle to the assignment of political rights or *ta politika dikaiata* (cf. III.12.1282b29). There is a dispute over the correct standard of merit or desert in this context: "everyone

agrees that what is just in distributions must fit some sort of worth, but what they call worth is not the same; supporters of democracy say it is free citizenship, some supporters of oligarchy say it is wealth, others good birth, while supporters of aristocracy say it is virtue" (*NE* V.3.1131a25). Aristotle's own position is that moral virtue and what this implies and requires are the relevant criteria for assigning political rights.

According to Aristotle's analysis, the principle of distributive justice may justify a system of equal natural rights:

...persons similar by nature must necessarily have the same right and merit according to nature; and so if it is harmful for their bodies if unequal persons have equal sustenance and clothing, so also in what pertains to honors, and similarly therefore if equal persons have what is unequal. [*Pol.* III.16.1287a10-16]¹⁵

This passage describes an argument which Aristotle attributes to "some," but he restates the crucial premise without reservation at III.17.1287b41-1288a5): "From what has been said, at any rate, it is evident that among similar and equal persons it is neither advantageous nor just for one person to have authority over all..."

Aristotle recognizes—indeed, he emphasizes—that his principle of natural justice could be used to justify an absolute kingship as the best constitution, given the assumption that there is someone who is so superior in virtue to the other members of the polis as to be "like a god among human beings" (III.13.1284a10-11; IV.2.1289a39-b1). However, in book VII he rejects the assumption that there could be people who are "as different from the others as we believe gods and heroes differ from human beings." Even for the polis of our prayers, he reasons, "since this is not easy to assume, it is evident that for many reasons it is necessary for all in similar fashion to participate in ruling and being ruled in turn. For equality is the same thing for persons who are similar, and it is difficult for a regime to last if its constitution is contrary to justice" (*Pol.* VII.14.1332b23-29).¹⁶ In the best polis, all of the members who can share in the best life will be citizens and all the citizens will have equal political rights.

The theory of natural justice also underlies the classification of constitutions into correct and deviant forms (*Pol.* III.7). Correct constitutions rest upon natural justice and govern with a view to the common advantage (*to koinē sumpheron*). A deviant constitution contravenes the principle of justice and common advantage, and violates the rights of the citizens: "Any monarchy must necessarily be a tyranny...if it rules in unchallenged fashion over persons who are all similar or better, and with a view to its own advantage and not that of the ruled. Hence [it is rule over persons who are] unwilling; for no free person would willingly tolerate this sort of rule" (*Pol.* IV.10. 1295a19-23; cp. V.10.1313a3-10). It is noteworthy (though not

often noted), that Aristotle here recognizes that unjust rule involves coercion, because naturally free people are unwilling to have their rights violated. A constitution conforms to natural justice only if it is voluntary and has "the consent of the governed."

THE ARISTOTELIAN DERIVATION OF NATURAL RIGHTS

The Aristotelian derivation of natural rights differs from that of both Hobbes and Locke in that it is ultimately grounded in his teleological view of human nature. According to Aristotle, a teleological explanation includes the final cause, "the end or that for the sake of which a thing is done," e.g. when a person takes a walk for the sake of health. Aristotle uses such explanations throughout his natural treatises, especially, the biological works, to understand sexual reproduction, presence and structure of various organs, and specific physical and psychological processes within organisms like breathing, sleeping, hearing, and thinking. His ethical and political writings draw upon his teleological view of human nature at various crucial places. For example, his well-known analysis of flourishing or happiness, the ultimate end of human action, turns on the claim that a human being, in contrast to other species of life, has a special function (NE I.7.1097b34; cp. "special parts" at EE II.1.1219b38). The *Politics* defines happiness as "the actualization and complete practice of virtue" (*energeian kai chresin aretes teleian*, VII.13.1332a9). This closely parallels the definition of the *Eudemian Ethics*: "the actualization of a complete life expressing complete virtue" (*zoes teleias energeia kat' areten teleian*, II.1.1219a38-39). Aristotle gives a complete analysis of virtue, distinguishing moral virtue from intellectual virtue, and distinguishing theoretical and practical parts of the latter. In the *Eudemian Ethics*, the actualization of all of these sorts of virtue or excellence are constituents of happiness or the ultimate human end.¹⁷ The account of the ultimate good in the *Nicomachean Ethics* is more controversial, but the most plausible interpretation is that study or theoretical activity is the supreme part of the human natural end: "what is proper to each thing's nature is supremely best and pleasantest for it; and hence for a human being the life expressing understanding (*nous*) will be supremely best and pleasantest, if understanding above all is the human being. This life, then, will also be happiest" (X.7.1178a4-8). Yet the other life is happiness in a secondary sense, because it also realizes a natural human end: "In so far as he is a human being, however, and [hence] lives together with a number of other human beings, he chooses to do the actions expressing virtue" (8.1178b5-6). He makes similar arguments that the virtue of friendship realizes natural human ends (cf. NE IX.9 and EE VII.12). Finally, a crucial argument for the claim that the polis exists by nature is that it is necessary in order to realize human natural ends (*Pol.* I.2.1252b30-1253a1).

Natural justice, which was seen in the previous section to be the source for Aristotelian natural rights, is also based in his teleological view of human nature. This is implied by his argument in *NE* V.7 that the existence of natural justice is compatible with variation, when it employs an analogy between natural justice and the natural superiority of the right hand.¹⁸ The teleological basis of justice is also indicated by the arguments of the *Politics*, most notably I.2 and III.6. In I.2, as was mentioned above, Aristotle argues that the polis exists by nature because human beings realize their natural ends in the polis: "while coming into being for the sake of living, [the polis] exists for the sake of living well" (1252b29-30). The theory of natural human ends is also presupposed in his argument that human beings are political animals: nature makes nothing in vain, and human beings are the only animals endowed by nature with *logos* (speech or reason). Human speech serves to reveal the advantageous and the harmful, and hence also the just and the unjust; and the partnership or community in these things makes a household and city (1253a7-18). Aristotle further argues that because human beings cannot realize their natural ends apart from the polis, the legislator is the greatest of benefactors.

For just as man is the best of the animals when completed (*teleothis*), when separated from law and adjudication (*dike*) he is the worst of all. For injustice is harshest when it is furnished with arms; and man is born naturally possessing arms for [the use] prudence and virtue which are nevertheless very susceptible to being used for their opposites. This is why, without virtue, he is the most unholy and the most savage [of animals], and the worst with regard to sex and food. [The virtue of] justice (*dikaiosune*) is a thing belonging to the city (*politikon*). For adjudication is an arrangement of the political partnership, and adjudication is judgment as to what is just [1253a31-39].

This argument makes it clear that justice, understood as a part of the political, is something which human beings must have in order to fulfill their natures. Aristotle restates this argument using the notion of the common advantage (*to koine sumpheron*) in III.6:

It was said in our initial discourses...that man is by nature a political animal. Hence [men] strive to live together even when they have no need of assistance from one another, though it is also the case that the common advantage brings them together, to the extent that it falls to each to live finely. It is this above all, then, which is the end for all both in common and separately... [1278b17-24].

Aristotle is arguing here that the polis is needed in order for individual human beings to attain their natural ends of life and happiness. And in order to realize their natural ends, the polis must be arranged or organized in accordance with justice or the common advantage. Accordingly, nature, which "does nothing in vain," endows us with

a capacity to speak of advantage and justice and with the impulse to live in communities. Justice or the common advantage is the principle which recognizes the claim of *each* of the members of the polis to realize their natural ends as far as they are able (cp. III.6.1279a17-21). Hence, "the common advantage" for Aristotle refers to the *mutual* advantage of each individual, rather than the overall or general advantage, *a la* utilitarianism.

In order to see how the natural rights which follow from Aristotelian natural justice entail interpersonal obligations, we need to see how obligations generally are derived in Aristotle. Aristotelian obligations resemble Hobbesian obligations in so far as they are hypothetical in character. That is, they have the general form: "If *G* is *x*'s goal, then *x* ought to do *M* [as a means to *G*]." However, Aristotelian obligations or "oughts" differ from Hobbesian in that they are conditional upon the individuals' *objective* natural ends rather than their *subjective* preferences. Aristotle provides examples of these "objective hypothetical oughts" and their enactments in *De Motu* 7: e.g. "I need a covering, a coat is a covering: I need a coat. What I need I ought to make, I need a coat: I make a coat." The examples of making a coat or building a house illustrate also the manner in which human deliberation, choice, and action contribute to the fulfillment of natural ends. Aristotle's teleology includes a notion of hypothetical necessity. *X* "must" have *M* in the hypothetical sense when the following conditional statement is true: "if *x* is to realize its natural end *E*, then *x* must have *M* [as a means to *E*]." When Aristotle says that "nature does nothing in vain," he means that when nature provides living things with something (e.g. hair on the human head), it is providing them with something which is hypothetically necessary (hair is needed to protect the head from excess of heat or cold). But nature does not always provide human beings with what they need in order to realize their natural ends. When nature fails, human beings must employ their capacities of deliberation and choice in order to find out what they need to attain their natural ends, as is illustrated by the examples of making a coat or building a house (cp. *Pol.* VII.17.1337a1-3). This provides the ground for obligation in practical reasoning. When doing *M* is necessary for individuals to achieve their ends and it is open to their decision, they have an objective hypothetical obligation to do *M*.

The Aristotelian derivation of natural rights differs from the natural rights theories of Hobbes and Locke not only in presupposing a teleological theory of natural ends, but also in proceeding from the premise that human beings are political animals, in the sense that they require a specific social context in order to realize their natural ends. Hobbes objects to this premise, appealing to his observations of human behavior: human beings are continually in competition for honor and dignity; they distinguish between their own good and the common good and naturally seek the former; they use their reason to question the existing order; they use their voice to misrepresent

good and evil; and when they are at their ease, they use their wisdom to try to overthrow legal authorities (*Lev.* II.17, pp. 86-87; cp. *De Cive*, Pref., 10; I.2). Aristotle is not ignorant of such facts; indeed, he calls attention to them frequently in *Politics* IV-VI. But he does not see them as undermining his claim that human beings are social animals. Hobbes, in contrast, regards these facts as refuting Aristotle's claim, because he conjoins them with other philosophical theses: the thesis of value subjectivism, that good and evil are the objects of our subjective desires and aversions; the thesis of narrow psychological egoism (cf. *Lev.* I.14, p. 69); and the thesis, shared with Hume, that reason is not a primary motivating force, but merely an instrument or "slave of the passions." Aristotle rejects all of these theses. He maintains the thesis of value objectivism, that good and evil are defined with reference to our natural ends, specifically, the activity of higher human capacities. These capacities are discoverable by means of rational inquiry and may not be the object of a person's strongest desires. And although Aristotle holds that people have a natural desire of self-love, he also argues that human beings can fully realize their natural ends only in a social context based upon justice, virtue, and friendship. And he believes that reason by identifying the means to human natural ends can motivate human beings to act accordingly.

In conclusion, the basis for the Aristotelian derivation involves the following premises:

1. Human beings ought to carry out those actions which are necessary for their natural ends, viz. life and happiness.
2. Human beings are political animals; i.e. they can realize these natural ends only by participating fully in a specific community, namely, the polis.
3. Participating fully in the polis requires acting according to the principles of justice or the common advantage.
4. The principles of justice or common advantage assign rights protecting the advantage of each of the participants.

It follows that individual human beings, in order to realize their natural ends, ought to participate in a polis, a cooperative social arrangement in which they respect one another's rights. Citizens ought to treat their fellow citizens justly, and those in authority ought to govern the polis with a view to the advantage of the ruled and of themselves only incidentally (i.e. in so far as they are citizens). This also provides the basis for distinguishing between correct and deviant constitutions. Constitutions are correct (deviant) to the extent that they do (do not) respect the natural rights of the members of the polis.

CONTRASTS WITH MODERN NATURAL RIGHTS THEORIES

Although Aristotle criticizes the more extreme features of Plato's political ideal, such as communism and the dissolution of the family,

his own political theory contains a number of authoritarian features in comparison with modern liberalism.¹⁹ Nevertheless, Aristotle's undeniable illiberal tendencies are due not to a denial of natural rights, but to other parts of his political theory. Three of the most important differences, as I shall now argue, concern his view of equality, or freedom and liberty, and of the relation of the individual to the polis.

Equality

Modern liberals maintain that natural rights belong to all human beings equally. (Earlier liberals confined these natural rights to self-ownership, rights to own and transfer property, and rights against coercion by others, whereas later liberals have emphasized instead rights to welfare provided by others and certain civil liberties.) A conspicuous point of difference from modern liberalism is his explicit rejection of the claim all human beings have equal rights by nature. Thus, Aristotle defends the institution of slavery on the grounds that some persons are natural slaves (*Pol.* I.4-7). He argues that the master-slave relation exemplifies a natural relation of ruler and ruled. Hence, natural slaves may be justly treated as property of naturally free persons. Similarly, he contends that "the relation of male to female is by nature a relation of superior to inferior and ruler to ruled" (I.5.1254b13-16). Hence, although women are nominally citizens (cf. I.13; III.2), they should not have the rights to political participation which Aristotle takes to be definitive of citizens (cf. III.1).

Although such inegalitarian claims surely reveal an illiberal side to Aristotle's thought, they are not inconsistent with a natural rights interpretation. For Aristotle agrees that slavery would be unjust if it rested on force rather than on a difference in nature (*Pol.* I.3.1253b20-24). Such a criticism is sometimes justified, for example, when Greeks are enslaved by other Greeks. But he argues that slavery is not unjust or contrary to nature when it involves a natural slave, who "participates in reason only to the extent of perceiving it, but does not have it" (I.5.1254b22-23). Lacking the rational faculty, specifically, calculation and deliberation, the slave is naturally dependent upon others for guidance. Because of this natural dependence, Aristotle claims that slavery is a mutually advantageous relationship: it benefits the slave as well as the master (I.6). Similar claims are advanced regarding the dependence of women and children: "The slave is wholly lacking the deliberative element; the female has it but it lacks authority; the child has it but it is incomplete" (I.13.1260a12-14).

However, as remarked in section 3, Aristotle also argues from his theory of natural justice that those who are equal and similar by nature should have equal rights and share in "political rule," and should not be subject to despotic rule. Modern natural rights theorists may be understood as extending this argument of Aristotle's to all

human beings. To wit, Locke argues for natural equality of all human beings in the state of nature along these very lines: "...there being nothing more evident, than that Creatures of the same species and rank promiscuously born to all the same advantages of Nature, and the use of the same faculties, should also be equal one amongst another without Subordination and Subjection..." (II.4). Locke thus accepts the principle of natural justice but rejects Aristotle's claim that human beings differ significantly in the natural capacities. In this he follows Hobbes, who also argues for the natural equality of human beings in the state of nature. The crux of Hobbes' argument against Aristotle is that all human beings possess the capacity of deliberation: "For Prudence, is but Experience; which equall time, equally bestowes on all men, in those things they equally apply themselves unto" (*Lev.* I.13, pp. 60-61). Hobbes' argument shows that the anti-egalitarian features of Aristotle's theory are the result of an unfortunate misapplication of his theory of natural rights, not of the lack of such a theory.

Freedom and Liberty

A second point of difference between Aristotle and modern liberals concerns their emphasis upon freedom or liberty. Aristotle does not altogether disvalue freedom (*eleutheria*) or liberty (*exousia*), for he reckons them as external goods needed for the exercise of moral virtue and, hence, for attaining the good life (*NE* X.8.1178a33). Further, political justice presupposes that the parties are free and equal persons (V.6.1134a25-28). Also, as noted in section 3, Aristotle thinks it a mark of the correct constitution that the citizens give their consent to the rulers. Nevertheless, Aristotle is a trimmer on the subject of liberty. He tends to regard it as only an external good and not as essential to the good life. Here he seems to have been influenced by Socrates' arguments that freedom and liberty, like other external goods, can be possessed in excess, which can both impede the good life and jeopardize the constitution (cf. *Pol.* V.12.1316b21-27). "Freedom" was a catchword for Greek democrats, who, Aristotle says, defined it as "living as one wants" (VI.2.1317b11-13; V.9.1310a31-32). (It should be noted that these democrats did not add the limitation "so long as one does not trespass upon the equal rights of others.") Aristotle objects against this conception of freedom on the grounds that it is inimical to a life of moral virtue and leads to the violation of the rights of others, e.g. to the confiscation of the property of the wealthy by the democratic majority. This is a point on which Locke consciously separates himself from Aristotle and Robert Filmer. Locke rejects Filmer's definition as "a Liberty for everyone to do what he lists, to live as he pleases, and not to be tyed by any Laws," and contends instead that freedom must be understood as subject to law, either civil law or natural law. Hence, freedom, for Locke, is "Liberty to follow my own Will in all things, where the Rule prescribes not; and not to be subject to the inconstant, uncertain, unknown, Arbitrary

Will of another Man. As Freedom of Nature is to be under no other restraint but the Law of Nature" (IV.22). Locke thus takes the crucial step beyond Aristotle of seeing natural rights as providing a sphere of liberty for the individual right-holder.

The Individual and the Polis

Aristotle also differs from Hobbes and Locke in his claims that human beings are political animals and that natural justice is part of political justice. These claims are based on his view that human beings flourish and realize their natural ends only if they participate in the polis. It is not obvious that these claims are incompatible with a liberal theory of politics. However, when Aristotle makes the stronger claims that the polis exists by nature and that the polis is prior to the individual, he is advancing positions which are fundamentally at odds with liberalism.²⁰ For these doctrines imply that the polis is a natural entity rather than a human artifact, and that the individual is morally subordinate to the polis. Aristotle seems to accept such implications when he argues in support of a public system of education that "one ought not even consider that a citizen belongs to himself, but rather that all belong to the city [polis]; for each individual is a part of the city [polis]" (VIII.1.1337a27-29). Aristotle thinks that the priority principle justifies the ruler in using coercion against the members of the polis, for example, to habituate them to become morally virtuous. This is to be sure an illiberal inference. However, Aristotle does not agree with Socrates in Plato's *Republic* (and he would not agree with Hegel) that the polis is a "social organism," whose natural end is distinct from and irreducible to the happiness of its individual members; indeed, he repudiates such a view, asserting instead that the polis can be judged to be happy and virtuous only if all of its individual citizens are happy and virtuous (cf. II.5.1264b15-22; VII.9.1329a23-24). Hence, the point of the claim that the polis is prior to the individual is to assert that individuals can realize their ends only as parts of the polis and that they should be subordinate to the moral authority of the polis and its rulers. The point is not to deny that they have a natural right to realize their ends and to flourish within the polis.²¹

Aristotle's doctrine that the polis is prior to the individual as well as his views on equality and liberty account for many of the authoritarian features of his political theory. They help us to understand why his theory of natural rights did not lead him in a more liberal direction. But they do not show that he does not have a theory of natural rights. On the contrary, he has every right to be regarded as a founder of this tradition.²²

1. John Hospers, *Libertarianism: A Political Philosophy for Tomorrow* (Los Angeles: Nash, 1971), p. 50.
2. For evidence of this ancestry see Tibor R. Machan, *Human Rights and Human Liberties* (Chicago: Nelson-Hall, 1975); John Finnis, *Natural Rights and Natural Law* (Oxford: Clarendon Press, 1980); and Henry Veatch, *Natural Rights: Fact or Fiction?* (Baton Rouge, LA: Louisiana State University Press, 1985).
3. See, most notably, Alasdair MacIntyre, *After Virtue* (Notre Dame University Press, 1981), who denies that there is even a term in ancient Greek closely translated by "a right"; and Leo Strauss, *Natural Right and History* (Chicago: University of Chicago Press, 1953), who finds a fundamental dichotomy between classic natural rights (or natural law doctrine) and modern natural rights (the natural rights theory from Hobbes and Locke).
4. I have developed this line of interpretation in a series of conference papers: "Are There Any Rights in Aristotle?" (Society for Ancient Greek Philosophy [SAGP], October, 1984), "Aristotle and Natural Rights" (American Association for the Philosophic Study of Society [AAPSS]/American Philosophical Association [APA], December, 1984), "Aristotle on Property Rights" (SAGP/APA, March, 1985), "Political Rights in Aristotle's Best Polis" (SAGP, October, 1986), "Political Rights in Aristotle's Polity" (AAPSS/APA, March 1987), and "Aristotle on Nature, Law and Justice" (University of Dayton Conference on Aristotle, November, 1987). These papers have been more concerned with close *exegesis* of Aristotle's texts than the present essay, which is interested in comparisons and contrasts with Hobbes and Locke as modern natural rights theorists.
5. Two essays which argue that Lockean conclusions can be supported by Aristotelian premises are Tibor Machan, "An Aristotelian Foundation for Natural Rights?" *This World* 11 (Spring/Summer, 1985): 83-87; and Douglas Rasmussen, "Conceptions of the Common Good and the Natural Right to Liberty," in Rocco Porreco (ed.), *The Georgetown Symposium on Ethics: Essays in Honor of Henry Babcock Veatch* (University Press of America, 1984), Henry Veatch, *op. cit.* and David L. Norton, *Personal Destinies* (Princeton University Press, 1976), also draw upon Aristotle's ethics in making a case for basically individualistic, albeit non-Lockean, theories. See also Jack Wheeler, "Rand and Aristotle: A Comparison of Objectivist and Aristotelian Ethics," in Douglas J. Den Uyl and Douglas B. Rasmussen (eds.), *The Philosophic Thought of Ayn Rand* (University of Illinois Press, 1984), which compares the ethical theory underlying Rand's theory of rights with Aristotle's.
6. I have benefitted from John Gray's *Liberalism* (University of Minnesota Press, 1985), which discusses the relationship between the natural rights tradition and modern liberal theories.
7. Thomas Hobbes, *Leviathan*, ed. C.B. Macpherson (Penguin, 1980). References to Hobbes are to book, chapter, and page (1651 edition) of this work, unless otherwise indicated.
8. In Hohfeld's sense, *x* has a "claim-right" against *y* to a state of affairs *s* if and only if *y* has a duty to *x* to bring about *s*. In contrast, *x* has a "liberty-right" or a "privilege" against *y* to *s* if and only if *x* has no duty to *y* to bring about not-*s*.
9. I have benefitted from the interpretation of Jean Hampton, *Hobbes and the Social Contract Tradition* (Cambridge University Press, 1986), pp. 42-57.
10. John Locke, *Two Treatises of Government*, ed. Peter Laslett (Cambridge University Press, 1963). References to Locke are to chapter and paragraph of the *Second Treatise*, unless otherwise indicated.
11. Aristotle's treatment of natural law in the *Rhetoric*, *Magna Moralia*, and *Nicomachean Ethics* raise difficulties of interpretation which space does not permit me to discuss here. The main problem is that the *Rhetoric* seems to endorse a popular, theistic notion of natural law, similar to Locke's, which is inconsistent with the concept of natural justice developed in *Magna Moralia* and *Nicomachean Ethics*. I argue that Aristotle seeks

to accommodate the popular notion of natural law as far as possible in his own concept of natural justice, which is grounded in his teleological theory rather than in theistic dogma, in "Aristotle on Nature, Law and Justice" (cf. n. 6 *supra*).

12. Aristotle, *Nicomachean Ethics*, trans. T. H. Irwin (Hackett, 1985). Translations from *NE* are from Irwin.

13. This may be why he appears partially to agree that "the law itself as a whole is a sort of agreement" (*Rhet.* I.15.1376b10). But note the counter-argument at 1376b23-26 as well as the arguments of *Pol.* I.6 and III.9, where he rejects thorough-going contractarian theories of justice.

14. Aristotle, *Politics*, trans. Carnes Lord (University of Chicago, 1984). I follow Lord's translation except for the passages mentioned in the following notes.

15. *Pace* Lord I take *auto* and *auten* to be attributive rather than predicative in the phrase *to auto dikhaion...kai ten auten axian*. The phrase refers to a substantive claim-right possessed by equal and similar persons.

16. I follow the MSS. and Dreizehnter, Ross, and Newman, rather than Lord, who inserts *toi dikhaioi after tauton*.

17. Cf. John Cooper, *Reason and Human Good in Aristotle* (Cambridge MA: Harvard University Press, 1975), pp. 116-119.

18. I examine the teleological explanation of right-handedness in Aristotle's biological treatises in "Aristotle on Nature, Law, and Justice" (cf. n. 6 *supra*).

19. Cp. John Gray, *op. cit.*, p.3.

20. This point is rightly stressed by Strauss, *op. cit.*, p. 183.

21. Cf. David Keyt, "Three Fundamental Theorems in Aristotle's *Politics*," *Phronesis* 32 (1986), 54-79. Keyt argues that "The polis exists by nature" and "The polis is by nature prior to the individual" do not follow from Aristotle's premises and, in fact, are inconsistent with other Aristotelian tenets. He characterizes these claims as a "blunder" at the beginning of the *Politics*. These doctrines also help to account for the anti-liberal features of Aristotle's thought which I discuss in "The State and the Community in Aristotle's *Politics*," *Reason Papers* 1 (1974): 62-69.

22. I am grateful to A. G. N. Flew for pointing out several deficiencies in the previous draft.

TOWARD A GENUINE PHILOSOPHY OF THE PERFORMING ARTS

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We philosophers must honestly confess that there is no distinctive "philosophy of the performing arts." Still less is there a distinct philosophical literature on the performance aspects of music, theater, or dance. This is not to say that much ink has not been spilled on the aesthetic aspects of objects that happen to be, for example, musical or are performable. (Most of the examples and issues I address in this essay will for convenience be musical, but are straightforwardly translatable into the other performing arts.) What is missing is a unified theory that addresses, for example:

- (a) The ontological issues relating an art work and a performance of it,
- (b) The phenomenological or epistemological issues relating an *experience* or *conceptualization* of an art work and of a performance of the work,
- (c) The intentional, and action-theoretic issues involved in the creation of, and experience of, arts works and performances.
- (d) The normative issues relating the *value* of an art work and the *value* of a performance of it.

It is true that there has been some work on the ontological issues in the Goodman tradition. There is also a hint of the intentional and action-theoretic richness of art in the works of Nicholas Wolterstorff.¹ But for reasons that will become clear, this work does little more than scratch the surface.²

As evidence of this philosophical omission, we can cite the following examples, all rather commonplace in artistic and popular discourse about performance, but about which all philosophical theories of art I know would have little or nothing to say.

(1) The proverbial man in the street easily makes a distinction between value in an art work, and value in a performance of it: we can have polished, earnest performances of works of little merit, and we can have dreadful performances of wonderful works. The latter is an especially frequent occurrence in our house, recognized even by my 4-year-old son, when I almost daily attack the helpless keyboard works of Bach and Brahms. The normative realm is so horribly neglected in modern aesthetics, and especially for performance works, that current philosophical theory cannot even begin to make sense of these remarks. (Try, for example, applying Beardsley's criteria to a *performance* in a way that distinguishes them from being used in evaluating the *work*.)

(2) Anyone remotely interested in music of the past (especially Baroque and pre-Baroque music—now extending to Classical and Romantic music, and with parallels in theater) has certainly gotten wind of the fierce polemic and hard battlelines being drawn on the issue of authenticity in performance: “perform works the way their creators intended them to be performed” is the battle cry. But why? What do we want out of performances, today? What is it that composers *intended*, and do the proponents of this view really mean “intended”? Isn't, say, a coveted “authentic” rendering on compact disk of the keyboard music of Bach a contradiction in terms? Would a live performance on a synthesizer from precisely sampled harpsichord sounds be less authentic? Notice I here also raise questions about the phenomenology of the experience of recorded music. Again, philosophers have been of little help—since analytic aestheticians have scarcely noticed the intentional and action-theoretic elements of art works, and their structuralist counterparts across the big water (for quite different reasons) have felt ill at ease with the notions of artists' intentions and meanings (mainly, I suspect, because it would allegedly deprive interpreters of the works of some freedom).

(3) Anyone who has tried their hand at musical or theatrical performance has experienced first-hand the gulf between technical skill and accuracy on the one hand, and performance “artistry” on the other. The distinction arises in learning, first playing, rehearsing, or judging performance works. The bungling of a single pitch (say, the root in a crucial cadence) can render a performance worthless, while sometimes extensive technical flaws will scarcely flaw the performance. I'll call this the “wrong note” puzzle: wrong notes alone are neither necessary nor sufficient for rendering a performance bad, yet are frequently treated as such. When do they lower the merit of a performance, and why? The wrong note puzzle of course actually pinpoints the lack of any articulated theory of value for performances.

A sound, distinctive philosophical theory of the performing arts ought to have something to say about these and other issues in performance, and current theories' lack of an ability or willingness to deal other than casually with them (e.g., in sloganeering with

"intentions don't matter"; "aesthetic value theory is uninteresting") suggests serious inadequacies, and perhaps even faulty goals and topics.

A notable exception to the modern tendency in aesthetics to avoid normative issues altogether can be seen in John Hospers, *Understanding the Arts*. Here we see not only discussions of evaluation and criticism, but also suggestive discussions of the interrelationship between ethics and aesthetics. There is also a thoughtful discussion of artists' intentions.

A THEORY OF ART

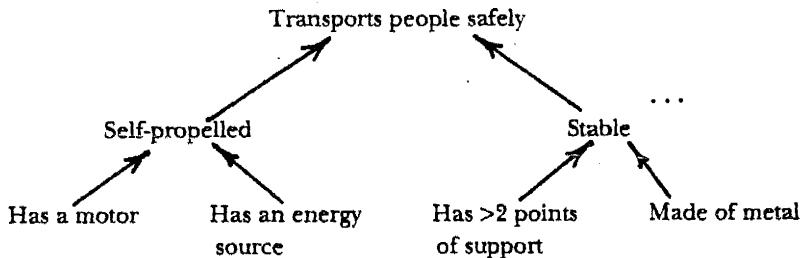
Before continuing, I should lay all of my cards on the table and say something—however dangerous this may be in exposing myself to criticism—about what I think art works really are, and how they are experienced. What is distinctive about my view is my drawing upon modern philosophy of mind and action theory.³ This maneuver sadly fits all too well into the tradition of desperately searching for good ideas to inject into aesthetics by looking elsewhere: aesthetics as metaphysics, as phenomenology, as psychology, as mathematics, as philosophy of language, as possible-worlds semantics, as semeiotics, and so on.

I distinguish sharply between art works and non-artistic aesthetic objects, and especially between our experience or conceptualization of each. A real philosophy of art would stake out a subset of the experiences of objects or events that the experiencer regards as being (causally) connected with the plans, deliberations, and ultimately intentions of another mind/agent. The experience of an object or event as art then demands an action-theoretic perspective, and the object or event, to the extent it is understood at all, is considered within the framework of the attributed "practical reasoning" of its maker. I use "practical reasoning" here in the Aristotelian sense to indicate a means-ends hierarchy of intentions endorsed by the agent. Not all artifacts are (considered as) works of art however, and thus art works must involve distinctively artistic "final ends" or some other characteristic property of the means-ends hierarchy.⁴

What I am of course already suggesting is that before we can have a distinct and satisfying theory of the performing arts, we need first a distinct and satisfying theory of art as artifact—as the product of planning, deliberation and intention of an agent. With no *act* of creation, there is no art work. With a different *act* of creation, the resultant work would have been different. From these pleasantries, we can begin crafting a philosophical theory of art that is at the same time attractive, and underdeveloped in the literature. We would need of course first a theory of the nature of actions and their individuation.⁵ An action requires an originating mind, because it requires an origin in planning, deliberation and a culminating intention. The cognitive contents of these mental activities are

intentional—and hence very sensitive to the way in which they are described. It is blatantly false, to say, for example, that Bach intended his works not to be played on the modern Steinway. He never had a concept of “a modern Steinway.” It is true, although of less worth than we might hope, to say: Bach did not intend his works to be played on the modern Steinway (since he had no thoughts whatever about “a modern Steinway”). But in this sense, he presumably also did not intend his works to be played in New York State, in the twentieth century, on a 300-year-old instrument (namely, what is now an authentic Baroque instrument), in Carnegie Hall, on the radio, and so on through other features we never worry about “violating.”⁶

The manifold properties of a complex art work or performance presumably mark numerous intentions, related hierarchically. Let us call the properties of an artifact that were planned, deliberated upon, and chosen, its *artifactual properties*. (In the case of art works, we would call them *artistic properties*, and minimally these properties must be causally traceable back to the artist’s consideration of them.) Now artifactual properties—at least of sanely created artifacts—can be arranged in a hierarchy of intentions connected by means-ends relations.⁷ That is, one artifactual property is believed by its maker to be a means for achieving another. So, for a car we might have:



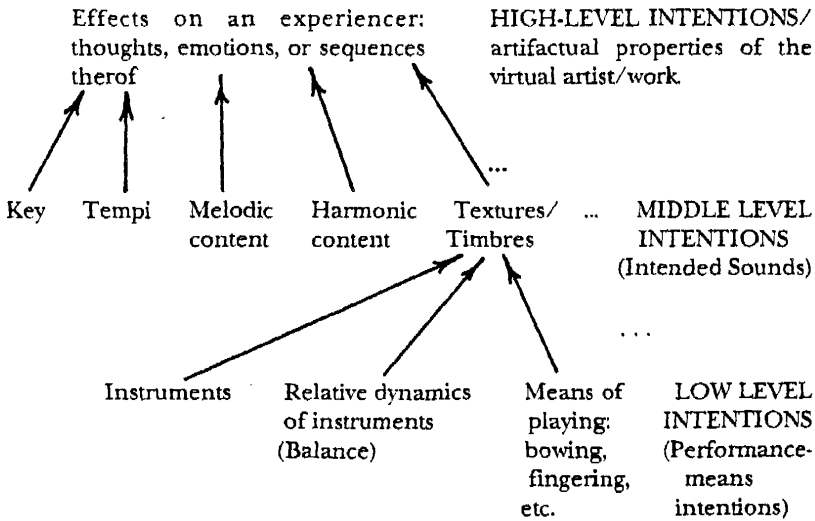
The arrows: $A \rightarrow B$ indicate that the agent believed A was a means of furthering the achievement of B . Such a display organizes the steps in planning, and ultimately creating, an artifact that we attribute to the artifact’s possibly idealized maker. Even where we, as a contemplator of an artifact, have little detailed conception of this hierarchy, we assume there is one—if the object is contemplated as an artifact at all. Our “understanding” of the artifact is complete to the extent that we recognize its actual artifactual properties as artifactual properties, and can place them in what was the maker’s hierarchy. Of particular interest is the “top-level” artifactual property, such that we do not actively contemplate it as a further means, but only as an end. We call such top-level properties—and there may be more than one—the *purpose* of the artifact.

Phenomenologically, my main thesis is that art works are species of artifacts, and that the experience or conceptualization of an object as art is therefore a species of the experience or conceptualization of an artifact. This means that understanding (or "interpreting," as artistic discourse typically has it) an art work consists in attributing certain plans, choices and intentions, arranged in a means-ends hierarchy, to a regarded creator. The language of artistic discussion, as well as the actual phenomenology of artistic experience, strongly supports such a theory, formalists be damned. By a "formalist" I here mean someone who believes we never do, or perhaps more prescriptively, never should, consider the thoughts and intentions of its creator when we experience or think about an "art" work. (For formalists, there is then typically no basic distinction between art works and other aesthetic objects.) The positive contribution of this fairly obviously overblown and underjustified formalist thesis is to place distance between the artist's actual intentions that are perhaps obtainable through sources other than thoughtful inspection of the works artistic properties, or that are now utterly unknowable, on the one hand, and legitimate possible "interpretations" of the work on the other. But one need not endorse the formalist thesis to accomplish this. We can distinguish between the actual artist's thoughts and intentions, and those that a thoughtful and sensitive interpretation of the work would attribute to such a work's maker. We could restrict this latter conception of the artist's intentions to those intentions plausibly derived by restricting ourselves to the work alone, or to this and other works known to be by the same artist, or to this work and others in the same period or style, or to the work and what can be known with certainty about the artists's intentions from non-artistic sources.

One conception of the agent "behind" an art work I have called the *historical artist*—whose known plans might be very thin, or even demean or trivialize our experience of the work; the other, I have called the "virtual" or "ideal" artist.⁸ I think once we realize that *our* goal in interpreting an art work is not just an historical interest in the artist's actual intentions, but also (or even primarily) a maximalization of possible artistic experience from this object—what it can do for *us*—then there is no need completely to tie our interpretation to the historical artist, and the wind is completely taken out of the formalist's sails, without throwing overboard all conception of the art work as artifact—that is, as the intentional product of an agent. In fact, the tension between historical facts and our virtual image of an artist explains some of the perplexity and richness in our experience of art works (e.g., the dramatist's conception of Mozart as court urchin, versus the conception of him that emerges from his later works).⁹

THE PERFORMANCE OF WORKS

Let us jump directly to the consideration of the means-ends hierarchy associated with a performance work, specifically a musical one:



Even quite a simple piece of music has its origins in a hierarchy much more detailed than the one above. Observe that I have delineated three layers of intentions: (I) High level intentions—the thoughts or emotions the composer wishes to cause in the experiencer, (II) the sounds the composer believed would cause these and with which he wished the experiencer to be presented, and (III) the instruments and means of playing them that he believed would produce these sounds. These layers are incomplete in several ways. First, a philosophically-sensitive composer might have intentions about the sound-sensations a listener was to have, that is, a layer between (I) and (II). The composer might also have intentions about the physical circumstances of experiencing the sound—hence categorizable as II—that are not strictly intentions he wished the experiencer to be presented, and (III) the instruments and means of playing them that he believed would produce these sounds. These layers are incomplete in several ways. First, a philosophically-sensitive composer might have intentions about the sound-sensations a listener was to have, that is, a layer between (I) and (II). The composer might also have intentions about the physical circumstances of experiencing the sound—hence categorizable as II—that are not strictly intentions

concerning sounds: the receptivity or education of the listener, performed in a church, performed by a "live" human being (e.g., a virtuosic work), and so on. Also, there may be means-ends hierarchies *within* some of these layers (especially in I).

A performance of a work is an action or series of actions in which it is the intention of an agent (the performer) to fulfill the intentions of another agent (the composer). Some of the performance properties of the work are thus traceable to the composer (through the intentions of the performer to fulfill the composer's intentions), and some may be traceable only to the intentions of the performer. For example, rubato in a passage may not be believed with certainty by the performer to be the composer's intention (although it cannot be the case that the performer knows the composer intended there at this place to be no rubato); the performer typically believes or assumes the rubato furthers some higher level intention of the composer—for example, that it heightens the intended emotional affect.

To experience an event as a performance of a work is to regard the event as the product of those who intend to fulfill (what we regard as) the composer's intentions. Whether they successfully do so, or whether they do so in a way that is readily recognizable as having such intentions raise different issues—how we come to regard the performers as having these intentions.

A composer in conceiving a work realizes that the means of producing sounds, the nature of the sounds, and the high-level effect will be causally mediated by another agent—the performer. He believes that this performer—who might be the composer at a later time—will intend to follow the composer's intentions. His practical task then is not to produce an event that conforms to the hierarchy, but to produce a guide to his intentions that capture the salient features of this hierarchy for a well-intentioned performer. His efforts are constrained by limits on his and the performer's time in indicating and comprehending detail, by the available notational system, by his intentions and assumptions regarding the score reader, and so on, all in his effort to leave indications that will bring the performer optimally to fulfill the above plan. In the performance arts, there are two artifacts ("artifactual events"). The primary artifact is an event that fulfills the artistic plan.¹⁰ Being an event, it is however transitory. The secondary artifact (a score or script) is the set of indications to an agent on how the primary artifact is to be produced.

Thus when we as performers, or as experiencers of a performance, see in a Bach manuscript, 'Für Clavier' Or more typically, 'A Clav'), this notation should bring us to the following thoughts:

- (1) This is an indication to performers of some element of the primary intention-hierarchy. In making this indication, Bach had certain beliefs or assumptions about the thoughts it would create in someone who sees the indication, and the actions he or she would then take.¹¹

- (2) Recognition that this is primarily a performance-means indication (a "low-level" intention), and contemplation of what precise such means Bach would have expected or intended a contemporary reader to grasp. "Clavier" happened to be, then and now, the vaguest indication of an instrument with one or more keyboard. Organ? With pedal? With what action? Harpsichord? How many manuals? With what stops and couplers? Clavichord? Early Piano-Forte? With what temperament? And so it goes.
- (3) Contemplation of why these performance means were intended. For what end, in terms of intended sounds, were the proposed performance means thought to contribute? In other words, what were the intended sounds? A "critical" question: does fulfilling the apparent performance-means intention in fact best fulfill the apparent sound intention?
- (4) Finally, contemplation of why these sounds—and ultimately, why the performance means—were proposed. For what artistic final end, in terms of an effect on a listener, were these sounds believed to contribute? In other words, what was the purpose or purposes of the work? A "critical" question: does fulfilling the apparent sound intentions in fact now best fulfill the apparent "final" intention?

With my two "critical" questions I do not necessarily mean to suggest that the composer when he conceived the work did not know what performance means best then achieved a desired sound, or what sounds best then achieved a desired effect. I rather mean to pose the dilemma of what we are to do today—*within* the framework of the slogan, "Follow the composer's intentions"—when, for example, an instrument not then existent, such as a synthesizer, could now better achieve the intended sound intention of, say, clarity of a dense contrapuntal texture, than could following the intended performance means. Observe that it is not true that Bach intended the work not to be played on a synthesizer. Our choice as performer is sometimes whether to fulfill as best we can a performance-means (low-level) intention, or a sound (middle-level) intention. We sometimes cannot optimally satisfy both. Compounding this dilemma is the fact that performance-means intentions are epistemologically more secure, whereas sound intentions, and especially, high-level intentions, are conjectural, having been inferred by a listener or performer from indications concerning low- and middle-level intentions.

More dramatically perhaps, a composer's beliefs about which sounds best produce a given effect in a listener are now sometimes false about a modern listener. The intervention of hundreds of years of musical history, new instruments, and vastly changed associations of instruments, changing tastes in techniques (vibrato, lack thereof), textures, or keys—think of the soporific, dusty effect of the sound of the organ in our secular age, or the association even the educated listener has today with the hunting horn—have altered what sounds would best produce a given effect. Admittedly, melodic, harmonic and rhythmic properties have been somewhat more stable in their

effect on listeners, at least since the Renaissance and the emergence of diatonicism. But these properties, because of the parallel evolution of a notational system that allows the score to indicate these with the lack of ambiguity Goodman glories in, are not the subject of "intentions"-wars.¹² It is rather with regard to the para-notational intentions that the battles rage—over precise performance means, such as instruments, technique, acoustical setting and forces, exact pitches, temperament, as well as concerning the "purposes" of works.

I would like to be able to say that many commentators on authenticity in performance practice have explicitly or implicitly acknowledged my hierarchical analysis of means and ends, and their relative importance. This is not generally the case. But occasionally one does see a glimmer of my view. Consider, for example, this description of the attitudes of the Stuttgart Bach-interpreter Hellmuth Rilling:

He does not believe in the "authentic performance" movement—or rather, he has his own competing concept. "There is authenticity of the spirit, authenticity of experience," he says. "It comes from confrontation with the content of the music and the texts. Of course we think about musical questions, about the phrasing and the correct way to interpret the notation." But if these questions are central, he suggests, the center is actually missed: "It is not the particular concept of sound that is important, but rather the strength of the message that comes through the sound."¹³

One pernicious tendency in the musicological performance-practice literature is a blurring of the exact propositional attitude a composer had to a property of a work or performance. Bach may well have *expected* his works to be performed by mediocre, male, Saxon string players, wearing wigs and playing instruments made from trees felled before 1750. He may also have expected that his works would never be performed in the New World. Yet it would be perverse to insist upon following as many as possible of these expectations—unless we are more interested in performing what Bach actually heard, as opposed to what he wanted to hear. What is missing is that insofar as the "following of intentions" is an element of performance, we should fulfill most seriously *intentions*—matters of deliberation and choice.¹⁴ Such a blase confusion of expectation (or some other "weak" attitude) with intention will of course reduce the playing of the best works in a period to the pedestrian, but documented, then-common standard of performance, as opposed to what the composer actually desired, or to what a sensitive modern performer, contemplating other aspects of the work, might find the best way to achieve the work's apparent high and middle-level intentions. This seems to be Lukus Foss' point, when he says:

To play Bach *a la* Baroque means to play him like all the Baroque

mediocre music. A genius doesn't fit into Baroque practice; genius falls out of it."¹⁵

The problem is again an epistemological one: it is easier to document what the "standard practice" in a period was, than to document what a composer desired, but had no reason to expect he would achieve in his time.

THE NORMATIVE ASPECTS OF PERFORMANCE

The criteria by which the merit of an art work are correctly judged (as *art work*) presumably resemble the criteria for judging any artifact. The merit of an art work is presumably a function of (1) how effectively the intended means do in fact contribute to the intended means (purpose) of the work, and (2) how worthwhile that purpose is. This of course reminds one of Goethe's formula for evaluation: (a) What was the artist trying to do? (b) Did he do it? (c) Was it worth doing?¹⁶

One might condescendingly say that Berlioz's *Symphonie Fantastique* is good, *for that sort of thing* (praise of 1, condemnation of 2). Or one might say that the Schumann's *Rhenish Symphony* is nobly conceived, even though its execution was bungled—e.g. in the development section of the first movement (praise of 2, condemnation of 1). One might also criticize a work for not having any clear purpose—but this seems implicitly to suppose that every artist intends to project a recognizable purpose, and that therefore the artist's means have failed to achieve this (failure of 1).

The criteria by which the merit of a performance are judged are presumably a consequence of our conception of the actions of the performers. Our conception of these actions is what we regard the performer as "intending" to do. To regard the work as a performance of, say, Bach's *Italian Concerto* at all, we must regard the performer as intending to comply with what we regard as the means-ends hierarchy for the work. For the non-professional musician, the conception of what this is might be very sketchy, and consequently, the criterion for what it is to perform the work is rather lax. For someone with a fuller understanding of the work, the standards are necessarily higher. There may even be an agreed-upon criteria for performance that cannot always be applied by an individual listener: what a "reasonable" person who knows the score would say. Observe that performance mistakes, even serious ones, will not render an event a non-performance, unless they bring the listener to regard the performer as not intending to follow what the listener believes constituted the composer's intentions. I use "regard" as a blanket attitude-term to cover: imagine, assumes, believes, believes strongly, and so on.

A more interesting case is posed by a situation in which a listener regards a performer as not intending to follow what the listener regards

as a composer's intention (even if the performance *largely* complies with the listener's conception). Does this render the event a non-performance? This is not an easy question, but whether it is indeed rendered a non-performance is a function of several factors:

- a) Whether the performer's action is believed to be willful (intending not to follow the composer's intention),
- b) The "stability" of this intention within the listener's conception of the total hierarchy, and
- c) The extent to which the intention is a means that is regarded as contributing to the achievement of other stable—especially high-level—intentions.

The worst such case is one in which the listener regards the performer as willfully intending to "perform" the work in a way that conflicts with the listener's conception of the work, that the violated intention is extremely stable or secure within this conception—meaning not subject to easy revision¹⁷—and that violating this intention would greatly hinder the achievement of what the listener regards as a stable, important intended effect of the work. I, for example, react with horror at Leonard Bernstein's suggestion (in *The Joy of Listening*) that the *St. Matthew Passion* is best seen as a "dramatic" work, and should be staged quasi-operatically. Bernstein is willfully going against what he must know are Bach's sacred intentions for the work, my own conception of this work includes essential Lutheran, pietistic elements, and insofar as we know the work's precise purpose, it is broadly religious.

Since however we so rarely denounce a purported performance of a work as in fact a non-performance—except in a moment of rhetorical excess, to convey a strongly negative value judgment—we should perhaps move on toward the more substantial issue of value in performance.¹⁸ Whether a performance is a "good" one is presumably a function of its success as an "intentional gesture": how well the performer succeeds at what we regard him or her as intending (or better: at what performers should intend). What then is it—other than following what *we* regard as the composer's intentions—that we regard a performer as intending?

As I have already suggested, the main goal of performance is the optimal fulfillment of the means-ends hierarchy attributed to the composer. But this is often fraught with difficulty. The composer may have had mistaken beliefs about how (then) best to achieve an end. The composer's proposed means may not now be the best way to achieve an intended end. There may be "dangling" intentions: apparent intentions that are neither plausible final ends nor means to any end that we can figure out. Finally, we might be unsure what *are* the most plausible and worthwhile low, middle, or high-level intentions to attribute to the composer.

This last difficulty, hierarchy incompleteness, can have two sources. (a) If we feel beholden to explicit indications by, and biographical information about the composer, a "slot" in the hierarchy about which the composer surely had some conception may be underdetermined by available evidence. (b) If the completion of our interpretation of the work is based upon a plausible "internal" reconstruction from more stable elements of the hierarchy (e.g., unequivocally notated properties), it may well be that there are plausible alternative reconstructions of an intention in a slot in the hierarchy. This incompleteness particularly infects high-level intentions, since little or no concrete evidence of the exact content of the work's purposes may exist (or have ever existed), outside of indicated lower-level intentions. Indeed, the purpose may be best or only representable to mortal man in strictly musical terms. As I have also noted, the attribution of higher-level intentions is typically inferential, being based upon plausible explanations of why the composer left us the lower- and middle-level indications he did. This inferential process is probabilistic or abductive, and laden with a high degree of incertitude.

My guess is that it is in part the task of the performers to complete this hierarchy as best they can, and to "project" it in performance—i.e. make it recognizable to a listener. This will mean "filling in" a plausible interpretation of the work. To the extent a performer does have such a fuller conception (even when not verbally communicable), the performer has an interpretation of the work, performs the work musically and sensitively, and is him—or herself also an "artist." Incidentally, one of the oddities of the narrowest form of the "follow the intentions" school of performance practice is that there seems no place for performance *artistry*: there are composers, there are musicologists, and then there are those who do what they're told, the "performers."

Our assessment of the merit of a performance will then be a function of at least four dimensions:

1. The extent to which the composer's regarded hierarchy is in fact fulfilled (as opposed merely to regarding the performer as *intending* to do so).
2. The extent of the recognizable completion of the means-ends hierarchy beyond the bare skeleton already shared by virtual composer, virtual performer, and listener.
3. The coherence of the completing elements of the hierarchy: the effective contribution of each apparent means that the performer has added to each apparent end, and
4. The intrinsic merit of the proposed final end(s)—that is, is it the most satisfying, worth experiencing or contemplating, plausible such purpose of the work?

Wrong notes are presumably a sin against (1). A "flat" performance, or one that just "follows the score" is a sin against (2), the artistic

mandate of the performer. Heavily ornamenting an austere work, deliberately not ornamenting a Rococo one, extreme rubato in a straightforward, classically-drawn work, deliberately avoiding rubato in a tender one, and so on, are presumably sins against (3)—and perhaps (1) as well. Staging Bach's *St. Matthew Passion* as a raucous, entertaining *Singspiel* is a violation of (4)—and probably more incidentally violates (1) and (3).

APPLYING THE PHILOSOPHICAL THEORY TO PERFORMANCES

Of the three commonly-discussed performance issues mentioned at the outset of this essay, we are in possession of the theoretical equipment to answer, or at least discuss, two of the three. The criteria of merit in the *work* are clearly independent of the criteria of merit in *performance*.¹⁹ Wrong notes detract from the merit of a performance to the extent that they reduce (1), the fulfillment of the composer's regarded hierarchy. But they can do this in two senses: they by definition fail to achieve an intended *sound* (a middle-level intention), but they may also significantly hinder the achievement of a high-level intention, such as a mistake in a resolution intended to be emotionally "wrenching." The error is "serious" only if it does the latter. A wrong note may also mar the recognizability of the performer's proposed completion of the hierarchy (2).

It is the issue of authenticity to which I want to return, however. First, we must review some observations. The stable, typically notated, elements of a means-ends hierarchy are largely low- and middle-level intentions, with at best some constraints on plausible high-level intentions. Yet these indicated intentions were contemplated by a composer only as *means* to middle- or high-level intentions; they are, to this extent, from the composer's own view "less important." But we come to attribute these higher-level ends to a composer primarily on the basis of these indicated means (Bach's largest composition of 1736 *could* have been—a bit out of character, perhaps, knowing Bach and as we do—an opera buffa. But the title *Passio secundum Matthaeum*, the scriptural paraphrases, and the nature of the proposed sounds all belie this.)

Furthermore, fulfilling a performance-means intention may no longer be the best way to fulfill—or may even hinder the fulfillment of—a plausible intended effect. That is, there may now no longer be a single clear way of optimally fulfilling the hierarchy (Factor 1 in the goals of performance). The lower-level intentions or expectations may have epistemological (or other) priority, while the conjectured higher-level intention has a natural hierarchical priority in view of its being the composer's end or goal, not merely a tool for reaching it.

Lurking in the vicinity of really serious performance issues, such as, say, whether to play Bach's non-organ keyboard works on a period harpsichord or on a piano, are fascinating and complex artistic, and ultimately philosophical, questions. The issues are not merely ones of fashion and taste, as our chattering performers and conductors would sometime have it.

Insofar as Bach had *expectations* concerning the *sounds* of these works, they were probably of harpsichord sounds. Yet even if it were a full-blown conscious intention for harpsichord sounds, the proper description of the content of this intention is relative to his then-available choices.³⁰ The content of this intention is carefully described as something like: not for a sound like that produced by an eighteenth century German clavichord, organ, or forte-piano, and "something like" that produced by a harpsichord. But in what respect *not* like an organ, and in what respect *like* a harpsichord? In having a rapid decay and highlighted attack (unlike the organ), in being loud enough to be heard in a small hall (unlike the clavichord), in sounding non-exotic (unlike the forte-piano of the day)? Bach certainly did not intend or expect the instrument to sound quaint, or "scholarly," or "as not the kind of sound with which popular songs of the day are accompanied"—all of which the harpsichord unavoidably does now. He surely wished or expected its sound to be familiar, unpretentious, and accessible (perhaps, as accessible and familiar as possible).

More importantly, we must ask what it is that Bach might have wished us to be able readily to *hear* in his works, and for which the harpsichord was then the best means. The harmonies? Lines of counterpoint? Cross relations? Dynamic contrasts between voices or sections (one function of couplers or the buff stop)? Timbre contrasts (another function of couplers or stops)? And still more importantly, what was to be the intended effect of these sounds, or the range of plausible, worthwhile intended effects: a vehicle for displaying the virtuosity of the performer, some intellectual-emotional affect, an awe of occasional earthly beauty, awe of human creativity, or of the work of God's creatures? We need to pose these questions for two reasons. First, if we blindly follow the performance-means indication, but do not wonder what sounds or effect this was believed to be a means for achieving, then we may fulfill only the lower-level intention. We might perform the work without switching manuals or registration, when this may have been the very reason Bach indicated the harpsichord. Second, and more controversially, we need to understand our permissible "degrees of freedom" if we are contemplating performance in an un-intended/expected way in order now better to fulfill a plausible purpose of the work.

If the purpose of a work was primarily to serve as a vehicle for the display of virtuosity, then the choice is clear. Let the work be played on the now more difficult instrument, at a grueling tempo.

But there are other dimensions to the dilemma. The standards of harpsichord playing will never be what they once were (in part because of the break in the tradition that occurred in the nineteenth century). The standards of piano-playing, and the number of sensitive performers *and listeners* is so much higher that one must have the suspicion that to demand that Bach be played on the harpsichord is to leave the interpretation of his work to other than the best performers and listeners. Baroque ears and minds, more than Baroque instruments and techniques, are gone forever. Insofar as we can guess what Bach would have expected or intended about the quality of the performers and listeners, no composer would be happy with the noble grimaces of well-intentioned performers and listeners, when he had a choice of the best performers of the day. Add to this the effects on a listener that a harpsichord unavoidably today has (quaintness, scholarliness, a performer's statement of his position on performance practice, etc.) but that Bach did not expect or want, and the inadequacy of the harpsichord in achieving some of important effects Bach probably wished (dynamic and phrasing subtlety, hinted at by the Bach family prejudice for private performance on the clavichord) when compared with instruments available today, such as piano or velocity-sensitive synthesizer—and one has a strong *prima facie* case against performance on the harpsichord, even within a framework dominated by “following Bach's intentions (expectations).” My argument for this claim relies on the assumption that one can intelligently treat these intentions only within an attributed means-ends hierarchy: a schema of the artist's practical reasoning.

But then again, the plausible purposes of a sublime work are so difficult clearly to describe or anticipate, that it is possible that the most worthwhile purpose we could ascribe to the work might best merge only in a performance that preserves the harpsichord-sound intention. This point has merit to the extent that our (or a performer's) attribution of a purpose is “unstable.” If we have a stable conception of “the” purpose of the work, such that the harpsichord hinders or does not especially further this purpose, then compliance with the harpsichord intention is not required in order optimally to fulfill the means-ends hierarchy. I myself doubt, however, whether attributed purposes are so clear and stable—or should be so stable—that they could completely loosen the grip of following the intended sounds. In a search for plausible, worthwhile artistic purposes to attribute to a composer in a work, following the indicated sounds or performance means provides the first and often, most valuable, available resource. This is hardly to counsel that all or most performances should do so, as the more missionary-spirited of the antiquarians would have it.

Observe that I have given a limited defense only of occasionally following expected para-notational sounds, and not of following intended or expected *performance means* (as contrasted with intended sounds). Unless a work's purpose is virtuosic—i.e., to be difficult to

play—or unless there is a technique (fingering, perhaps) that is required to play an instrument and when using this technique somehow independently furthers higher-level intentions in the hierarchy, then there is no additional need to fulfill the performance-means intention. In other words, if our conception of the intended *sound* is stable, and we know that the performance-means intention was nothing but a means for achieving this intended sound, then surely there is no reason for a performer to fulfill the performance-means intention, when there is any reason (convenience, expense) not to fulfill it. This *IS* to follow the composer's practical thinking—including what would be his sensible intentions about performance convenience.

A FINAL EXAMPLE OF THE AUTHENTICITY PROBLEM

Consider this performance problem: should an American church performance of a Bach cantata or chorale be in the original German, or in English—if we wish optimally to fulfill the composer's intentions? The problem was an actual one for me, a philosophical American-Lutheran church musician. I happened to have no practical problems. Every member of the choir as well as the organist had studied, and sung, German; two were native speakers, one had been a German major. (We could of course be still fussier than almost any American performance is: should eighteenth century grammar and pronunciation be preserved, that is "corrected" even in the *Bach Gesellschaft* edition: 'funden' instead of 'fanden', 'kömmt' instead of 'kommt', etc. We could also worry about capturing the strong Saxon, or even Leipzig, accent that Bach would have heard.)

The primary tension is this. On the one hand we have clear indications of a middle-level intention for the sound of spoken German. These intended sounds are woven together with musical ingredients to achieve some religious-emotional-intellectual effect. There are semantic implications and effect (e.g., tone painting, or the unmistakable reverence for "Luther-German") that are lost in a language other than German. We can of course *tell* listeners that the language is intended to sound like Luther's Biblical German, but Bach intended or expected a listener to hear it directly and without scholarly advice.

On the other hand, Bach was a self-conscious post-Reformation church musician. An *important* element of Luther's liturgical goals, and a heritage of the Reformation, very active still in Bach's day, was that all substantive religious texts *be in the native language of the audience*. There is a great deal of evidence that Bach was aware of, or even endorsed, this principle: his use of Latin is restricted to titles (intended for the musicians, not the congregation) and to texts setting parts of the Ordinary (the masses and fragments of them), or other well-known texts (the *Magnificat*). Bach was something of a collector of Latin church music; and he taught Latin in the Thomasschule.

Remember too that his choice of setting German over Latin texts was made in a context where Latin was probably better understood by educated and attentive members of the congregation than German is today even by our best-educated American musicologists.

We have here the most dramatic possible case of an instance where a middle-level intention (for spoken German sounds) does not now, in the US, further a high-level intention: the immediate integration of the text into one's native speech. The religious importance of endorsing the Reformation tradition, and perhaps more importantly, of making religious texts and ideas part of one's *everyday* life is hopelessly blocked by singing in German. German would become in America the new Church Latin. One's only regrets, then, about using an English translation would be twofold: (a) how much using English interferes with intended effects that require integrated musical and linguistic elements (e.g., syllabization), and (b) how seriously one sees "direct speaking of the text to the listener" as a main, plausible goal of Bach, and a "worthwhile" one for us now to fulfill. Given a certain sacred context, I suspect (b) approaches being a mandate, and (a) raises only negligible problems. Consequently, "fulfilling Bach's intentions" may require performance in English!

CONCLUSION

I cannot claim to have solved all of the philosophical and methodological issues involved in performance. The authenticity-controversy in particular raises substantive issues about the proper contribution of historical facts to our conception of an art work, as well as about the exact nature and reliability of the historical data, that I could not hope to address in a single essay. There are also interesting, closely-related issues that I have not discussed—such as colorization in the "presentations" of films, or the phenomenology of the experience of recorded performances. What I have sought to do is to show the fruitfulness—or even necessity—of injecting a serious element of action theory and the theory of practical reasoning into the development of a philosophical theory of the performing arts.

This paper is an outgrowth of my polemical "The Composer's Intentions: An Examination of their Relevance for Performance," *Musical Quarterly* April, 1980. The views are from a larger manuscript, *A Philosophy of Art: Art as Artifact*. Discussions of intention, planning, action theory and practical reasoning that I alluded to are being modeled in computers, and this research is supported by grants from the National Science Foundation and the SUNY Buffalo Graduate Research Initiative.

1. Especially in his *Works and Worlds of Art* (Oxford: 1982).
2. The broadly "symbolic" tradition that deals with the syntax, referents, meanings...of art works, from the works of S. Langer through that of Goodman and his followers,

to Jackendoff and Lehrdahl, and assorted semioticians, is of course very extensive. My difficulty with, say, analysis in the Goodman vein is that it begins with an idealized and artificial conception of a symbol, whereas I think that an individual's judgment of whether an entity is a symbol, what notational system it is probably "in", up through what the symbols refers to or means, is properly analyzed only within the framework of (what we believe are another persons's) intentions to communicate, to form in others thoughts and actions, and so on—in other words, philosophy of language is properly a branch of action/artifact theory—as hinted in the works of H. P. Grice and the speech-act theorists.

3. See my "Art, Artifacts, and Regarded Intentions," *American Philosophical Quarterly* 23 (1986): 401-408. In action theory, I am thinking especially of recent work by G. Harman, M. Bratman, H. N. Castaneda, and M. Brand.

4. In "Art, Artifacts, and Regarded Intentions," *op. cit.*, I attempt a characterization of the distinctive artistic final ends. The details are not here important. Observe that I speak of performances as "artifacts." This is a little odd, since they are typically series of actions or gestures. But because they are not single actions, and exhibit some of the layers of planning and intentions we see in artifacts, I prefer to treat them as "artifactual events" (as opposed to the more usual artifactual "objects").

5. Theories of action and events, and their individuation are slowly coming available through the works of D. Davidson and those mentioned in note 3. There is still very little discussion of artifacts that is here useful.

6. We could hold that a performance of a work is one that fulfills as many of the artist's intentions and expectations are now possible. This is a view suggested to me by J. Levinson in conversation. This view seems to me, however, to attach too much importance to mere expectations, and to fail to appreciate the relative importance of various intentions/expectations within the composer's plan.

7. Actually, the ordering is induced on intentions by the beliefs about the utility of the means-intention for achieving the ends-intention that we attribute to the artifact's maker (not their *actual* utility, or *our* beliefs about their utility).

8. See "Art, Artifacts, and Regarded Intentions" and several recent works by Alexander Nehemas.

9. The extent to which believed historical data does or should contribute to our conception of the hierarchy is extremely problematic. In "The Composer's Intention..." *op. cit.*, I rejected the view that historical data should serve as anything more than a source of possibly worthwhile intention-attributions. In "Art, Artifacts, and Regarded Intentions," *op. cit.*, I more temperately argue that an historical datum, in some people and insofar as they are aware of it, constrains the imaginable or plausible intentions they can attribute to an artifact. The implication is roughly that for the highly imaginative—one is tempted to say, "creative" or even "artistic"—interpreter, not even what is *known* for certain about the artist's intentions constrains what intentions he attributes to the (virtual) artist. For others, (only) ignorance is bliss—in giving them license to attribute satisfying intentions.

10. Metaphysically, these are actually artifact- and event-types respectively.

11. The appreciation of this or any indication in a notational system presumably follows an analysis like that proposed by H. P. Grice—i.e., inferences to intentions via "implicatures." It is not the simple "application" of a reference/meaning "system."

12. In a sense that Goodman makes a technical observation about the semantics of our musical notational system—namely its ability to indicate pitch-relations and rhythm univocally—certain features of the pitch/rhythm skeleton have become the "core" or essential properties in our traditional/Western conception of a work. An interesting question, of philosophically marginal interest perhaps, is whether the notational system grew in response to a need to notate these features that were already deemed "important," or whether they become important because the notational system enshrined them as at least univocally communicable. In my vocabulary, features of the pitch-rhythm skeleton are among the most "stable" in our conception of the work.

When compliance with this core is largely present in an event, we on this basis abductively come to attribute an intention to perform the work to the performers. (But see note 16.)

13. *New York Times* (April 12, 1987) II p. 18.

14. An expectation that is not an intention should *prima facie* be followed principally when we have reason to believe that the composer assumed fulfilling it contributed to a feature he did intend (i.e., deliberate about and choose). Otherwise, fulfilling the expectation is supererogatory.

15. *New York Times* Jan 3, 1988, p 32 H.

16. See John Hospers, *Understanding the Arts*, (Englewood Cliffs, NJ: Prentice-Hall, 1982), p. 86.

17. The "stable" points in a hierarchy are analogous to similarly stable sentences in a conceptual scheme or in a scientific theory. Why they are stable is similarly complex: historical-psychological plausibility, a reinforced social conception of the work, strong evidential support, worthwhileness for us in so considering the work, and so on.

18. Usually, no single intention is so stable or essential a component of our conception of the work, and we rarely have solid evidence for our beliefs about what precisely a performer intends (vs. what a performer *says* he or she intends). Even my assessment of Bernstein's opinion requires taking his words at face value, as understanding an operatic-dramatic staging as necessarily precluding an introspective-religious one, and of reading "operatic" to mean "frivolous"—a reading weakly supported by gossip about Bernstein's personality, perhaps. In other words, it might be difficult for a performer to be able to convince us that his performance really does conflict with our interpretation of the work, when it seems largely to agree with our own interpretation (in, say, its middle-level relative-pitch and rhythm skeleton).

19. The model also provides for an assessment of merit in the listener's role: how extensively, and how plausibly, the listener attributes a means-ends hierarchy to the composer and to the performer on the basis of experienced physical properties.

20. This remark assumes a non-standard view about the description of the content of an intention (or belief). I assume that having an intention (i.e., intending) is an "historical" notion, requiring certain earlier processes to have taken place— notably, some planning, deliberation, and choice. These are three separate processes that themselves require an ability to contemplate a "thought-object" and to manipulate them in certain ways. I also assume that the proper description of what this choice was—i.e., of the content of the intention—is relative to these earlier processes: what was considered, as well as the collateral cognitive attitudes (e.g., means-ends beliefs) the agent applied in planning, deliberating, and choosing. The proper description of Bach's intention that a performance of a cantata be in German is relative to such factors as whether he was forced to so perform them by the pastor or city council as a condition of his job, or whether he himself took seriously Reformation-era mandates. The description is also relative to the range of options contemplated (did he ever think of going "all the way" with regard to the Christian-historical tradition and performing the works in Greek or Aramaic?).

Discussion Notes

NOTES ON DIPERT'S REVIEW OF *THE EVIDENCE OF THE SENSES*

I would like to address several of the points made in Randall R. Dipert's review of Kelley's book, *The Evidence of the Senses*.

Dipert argues that Kelley's treatment of Kant is "profoundly uninformed." Kelley's treatment fails, Dipert says, because he does not address Kant's "main argument," which is, Dipert asserts, an "extensive and subtle argument based on our conceptions of space, time and cause." (p. 60) According to Dipert, "Without reading Kant, a glance at the table of contents will tell one this." Perhaps so, but when one reads more deeply, one discovers that Dipert is incorrect. Kant's main argument against realism in the *Critique of Pure Reason* does *not* rest on the categories of space, time and cause.

Kant's motivating question is, "How are *a priori* synthetic judgments possible?" (B1⁹) The intuitions of space and time and the category of causality are needed for Kant's argument because they serve as example of such a *priori* synthetic judgments. But Kant's fundamental argument for idealism (and against realism) rests on his view of intuition or immediate awareness.

In Kant's view, direct awareness cannot by its nature be mediated. Kant follows the British Empiricists in holding that the entire process that gives rise to awareness leads to the construction of (or constitutes) a representation of the world. In the last stage of perception, the mind "intuits" this representation to bring it into consciousness. One becomes immediately aware of the representation, but not of the world ("as it is in itself"). (Complications ensue as Kant develops his system. For instance, because causality is a category, part of the way that these representations are organized, the process just described is not really a causal or even a temporal process.)

The key to his argument is the concept of "intuition". Part of its effect is illustrated in a key passage, B67-69, which Kant concludes (B69):

[the mind] then intuits itself not as it would represent itself if immediately self-active, but as it is affected by itself, and therefore as it appears to itself, not as it is.

Kant defines intuition as "that through which [a mode of knowledge] is in immediate relation to [an object]." (B33)

Kant's treatment of space is derivative to his concept of intuition. He begins by arguing that the properties of space are a universal aspect of our experience (e.g., "We can never represent to ourselves the absence of space," (B38) and "geometrical propositions are one and all apodeictic." [B41]) But he concludes (B41) from this very universality and necessity that

...the intuition [of space] has its seat in the subject only, as the formal character of the subject, in virtue of which, in being affected by objects, it obtains *immediate representation*, that is *intuition* of them.

Intuition, be it noted, must be immediate. But our experience of external objects is not immediate; part of that experience "has its seat in the subject." So we don't actually experience (or intuit) the external object. (Kant's argument in this passage rests upon his conception of the *a priori* and of its relationship to necessity, developed earlier. Kant's conception of the *a priori* is tightly linked to his model of human consciousness. But he is, essentially, arguing here that the *a priori* character of our spatial intuition can only be accounted for by the role of the subject in constituting the object of intuition. And the critical point for Kant is that some aspect of this intuition be *a priori*.)

Dipert suggests that if Kelley does not understand what Kant's arguments are, "he should bow out of historical criticism." (p. 61) Notwithstanding, Kelley does present the essence of Kant's argument. His view does not, apparently, agree with Dipert's. But why doesn't Dipert at least indicate *Kelley's* conception?

Kelley has in fact shown considerable insight in isolating the kernel of Kant's argument. As he puts it, (Kelley, p. 22, at the end of the paragraph quoted by Dipert):

A faculty of awareness, Kant argues, has a specific constitution. It is something definite, it has an identity. And it must function in a specific way, determined by the identity it has. The nature of its response to objects outside it is determined by its own constitution. As a result, he argues, consciousness cannot passively mirror a world outside: its own identity gets in the way, distorting the reflection. The fact that consciousness has an identity prevents it from grasping the identities of things outside it.

And, over the next several pages, Kelley sketches the way that Kant develops his argument from his view of human consciousness.

PRIMACY OF EXISTENCE

Kelley presents an argument that the "primacy of existence" is an axiom. What he means by this is that this concept cannot be proven, but must be taken as a starting point for any philosophical discussion. Dipert agrees that the primacy of existence cannot be proven, and attempts to catch Kelley out trying to prove an axiom. He attributes to Kelley the following argument (p. 61):

I am aware of [my awareness itself?]
as non-creative.

Therefore, awareness is non-creative.

Dipert, apparently, constructs this argument by finding the premise in Kelley's book and then supplying the conclusion himself. But he misconstrues Kelley's intention and the argument is a straw man.

For Kelley, the primacy of existence is the view that

objects exist independently of the subject. Awareness is nonconstitutive, the identification of things that exist and are what they are independently of the awareness of them. (p. 27)

Kelley argues, as Dipert acknowledges, that this thesis must be taken as axiomatic. He then proceeds to provide an argument, not for the truth, but for the axiomatic status of this proposition. And he takes pains to point out how far his own argument parallels Descartes' *cogito* and to attribute his basic argument to Plato.

As part of this discussion, Kelley argues (Kelley, p. 31-33) that the "claim that the objects of awareness depend on consciousness...is simply unintelligible." (Kelley, p. 32) This conclusion is supported, in part, by Kelley's phenomenological analysis. Kelley's intention here is to support his view that the primacy of existence is intelligible. And, of course, he is counting on there being an independent reality to argue about (as, in Kelley's view, his opponents must tacitly do as well). Perhaps Dipert dislikes this argument as well. But he needs to identify Kelley's argument before he can reject it.

Dipert's failure to come to grips with Kelley's approach is compounded when he says (p. 62):

But saying that we are certain we do not intentionally create our environment, or that we are certain we do not intentionally infer anything when we perceive an object before us, does not serve to establish that some element of our consciousness is not making a contribution to our *awareness*. (emphasis added)

Kelley would agree! Indeed Kelley's analysis of the contribution that our physiology makes to our awareness runs throughout his discussion of perception.

However, the relevance of this sentence is Dipert's subsequent move from "awareness" to "content". He writes (p. 62):

Just because we do not "feel" our creativity hardly implies that our consciousness is making no contribution and that reality "determines" the *content* of our consciousness.... (emphasis added)

But this begs the question: What does Dipert mean by the word "content"? Is the "content of our consciousness" reality or is it some feature of our awareness? Dipert's formulation suggests the latter.

Kelley's position is not put in these terms; he writes: "The object of awareness is the object as it actually exists." (p. 31)

So there are two possibilities. Perhaps Dipert equates "content" with some feature of the awareness. If so, his remark may be valid but it does not meet Kelley's position. Or Dipert's "content" may mean the same thing as Kelley's "object". But then he has done nothing to justify his move from "awareness" to "content".

PERCEPTION AND DIRECT AWARENESS

Dipert's discussion of Kelley's views on direct awareness (pp. 62-64) challenges Kelley's ability to distinguish perception from other, possibly related, phenomena. He seems to be making one of two points. Either he is saying that Kelley does not distinguish perception from numerous other psychological phenomena, or he is suggesting that a theory that accounts

for perception is also obliged to account for its perceptual cousins, such as memory, alleged "unconscious" inferences, computation, and calculation.

A logical starting point for a discussion of Kelley's views on perception would seem to be Kelley's definition of perception (p. 144): "the direct awareness of discriminated entities by means of patterns of energy absorption by sense receptors." This does, in fact, distinguish perception from Dipert's entire list of perceptual cousins.

Unfortunately, except for a brief reference to something in Chapter 6, there is little in Dipert's review to suggest that he read Kelley's book beyond page 143, the first page of Chapter 5. Had he turned the page to page 144, he would have encountered this definition. He would find it unnecessary to ask, as he does, "What is the "Realist theory of perception" that [Kelley] defends?", implying that no answer is given in the book. He would also have encountered, on pages 147-153, a distinctive view of "direct awareness," one of the central elements of Kelley's definition, and an entire chapter, Chapter 5, devoted to an exposition and *defense* of this definition.

For instance, in explaining what he means by direct awareness, Kelley distinguishes perceptual awareness from conceptual or inferential awareness on the one side, and passive awareness on the other. (Perception isn't passive; it involves attention.) Furthermore, he distinguishes his own conception of direct awareness from the various ones in the representationalist tradition.

Dipert's discussion on page 64 brings up alleged "unconscious" cognitive processes which, for Dipert, include "computation", "calculation", and "inference". He begins by indicating Kelley's rejection of the view "that any processing of receptor responses must involve computation of inference" (quoted by Dipert from Kelley, p. 69). And Dipert replies (p. 64), "The real problem is whether there can be unconscious/unintentional calculation, computation or inference in any meaningful sense." But Kelley's argument against this view spans 16 pages and, although Dipert disputes Kelley's conclusion, he offers no hint of Kelley's argument.

"Inference" and "calculation" arise as concepts of consciously directed activity. If the perceptual process required such activity, then perception would not be direct. So as part of Kelley's defense of perception as direct (pp. 63-79) he argues exhaustively against such a view, specifically challenging the "claim that the percept is produced unconsciously out of some more primitive cognitive state." (Kelley, p. 63) Drawing on examples from Gibson's theory of stimulus invariants, Kelley presents perception as a physiological process and argues that trying to describe this process as somehow involving inference or calculation is neither justified nor helpful.

In opposition to his thesis, Kelley considers the views of D. W. Hamlyn, Helmholtz, R. J. Richards, R. L. Gregory, Jerry Fodor, Zenon Pylyshyn, P. H. Lindsay, and Donald Norman, who typically argue to the effect that only inference or calculation could account for the degree of specificity of our perceptions. But at the root of these various arguments Kelley generally finds either the Kantian premise that consciousness constitutes its own object or the diaphanous model of direct awareness. So Kelley's earlier arguments for rejecting both the Kantian thesis and the diaphanous model lead him, therefore, to reject these arguments as well.

If Dipert sees a problem in this line of argument, he should have pointed it out.

Dipert exhibits particular difficulty with Kelley's refusal to grant hallucinations a status on a par with perception. Now Kelley's reasons are

clear enough: hallucinations are an essentially different phenomenon from perception. As we have seen, Kelley does not take definitions lightly. He certainly does not, as Dipert seems to imply, assert definitions arbitrarily and then use them to deduce "analytic" conclusions. Rather, he accepts and discharges the burden of using a definition to isolate an aspect of the world in essential terms. In this case, Kelley holds that perception is a type of awareness and hallucinations are not. So the two phenomena differ in an essential respect and should be studied as distinct phenomena.

Almost none of Kelley's extensive analysis of the relationship between (perceptual) awareness and its object nor the extensive experimental data on perception that he cites have any bearing on hallucinations. And hallucinations, though they are given their due (see, e.g., pp. 133-38; pp. 217-18; and pp. 236-38), are not Kelley's primary interest.

What objection can Dipert have to this procedure? He says that Kelley's theory is uninteresting. Does this mean that hallucinations are interesting but awareness isn't? Why?

Dipert's answer is to ask, rhetorically, (Dipert, p. 66), "How does he test whether he is perceiving the object?" This, of course, is an important and legitimate question. He could have found Kelley's answer to it in Chapters 6 and 7 which comprise Part II, entitled "Perceptual Knowledge."

Did Dipert really read these chapters? The question needs to be asked, because at one critical point he attributes a view to Kelley that is directly contradicted in Kelley's book, is nowhere supported in the book, and that is contrary to everything in Chapter 7.

On page 65, Dipert places quotation marks around the statement, "Perceptual judgments are never mistaken." Dipert does not, quite, attribute these words to Kelley, but in his next sentence Dipert attributes the thought to Kelley ("This last assertion is of course especially curious, and requires us to turn to Kelley's analysis of 'illusions'.")

Perhaps Dipert missed Kelley's statement about illusions, in connection with the fallacy of the bent stick, (p. 93): "That form is apt to be misleading, and the person may make the *wrong perceptual judgment* about it," (emphasis added)

After all, one sentence on a page with many other sentences is easy to miss. But Chapter 7, entitled "Perceptual Judgments" is *devoted* to developing a theory of the justification of perceptual judgments. The title doesn't, perhaps, give it away. (Tables of contents can be misleading, after all.) But this chapter deals with perceptual judgment as a fallible cognitive activity, potentially mistaken, and hence in need of justification.

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1. In Kant scholarship, this citation format refers to the page number in the second German edition of the *Critique of Pure Reason*.

KNAPP ON KELLEY

KANT'S ARGUMENT

Knapp conflates evidence/data with logical foundations. Kant's arguments as every commentator I know sees it, is to adduce examples of various synthetic *a priori* judgments of a particularly important and appealing sort (time, space, cause). He then seeks to explain these data by positing the faculty of intuition. Now, intuition is the logical foundation of the judgments: its existence explains why the judgments exist. Perhaps, and this is important, there are other explanations of these data. Now, not addressing the motivation, the facts from which the faculty of intuition was abducted, but rather talking only about their logical foundation (intuition), is a serious flaw in one's appreciation of the argument-structure. For one then owes us an explanation of the data that provide some evidence for the existence of this intuition: a theory that ties together judgments about space, time, cause, free will, etc. Kelley doesn't give one. Thus when Knapp writes: "For Kant's argument fundamentally depends not on particular examples, but on the central notion of awareness, i.e. intuition." we have a mess indeed. That there *are* examples of synthetic *a priori* judgments is essential for the argument for intuition. If there were none, Kant gives no reason for thinking that we would be justified in thinking there is intuition. The *Kritik* is not just opining about a mysterious faculty of intuition, with various synthetic *a priori* judgments thrown in as amusing examples. When one looks at Kant's earlier writings on space, and the historical context of the debate, it becomes clear that Kant thinks he is giving very good reasons for thinking there is a faculty of intuition. Again, the major commentators agree. (It is true that the particular examples are unimportant, so long as there are some. Kelley either owes us a—difficult to obtain—argument that there are *no* synthetic *a priori* judgments, or that there is alternative explanation of them. He gives neither.)

I don't regard Kelley's analysis of Kant all that important—except insofar as he likes to reject views contrary to his own whenever they are tinged by any degree by any Kantian influence (e.g., Helmholtz).

PRIMACY OF EXISTENCE

Repeatedly, (p. 2 bottom; p. 6-7) Knapp quotes what I say—which are clearly my paraphrases. Then he says something to the effect that I am attempting to mislead the reader into thinking Kelley states this. But Kelley doesn't mean

this...and then refers to a whole chapter, or a large range of pages. Knapp must appreciate my difficulty in a short review in paraphrasing Kelley, since *he doesn't ever succinctly paraphrase* him either. Nor does he ever show that what Kelley says is flatly incompatible with what I attribute to him. He just refers to large chunks of text or obscure quotations. Paraphrasing is difficult—particularly when one is as evasive as Kelley (a permissible philosophical activity). Particularly amusing is Knapp's attack on my suggestion that Kelley does not define perception: "Is [Dipert's point] that Kelley doesn't define perception? He devotes an entire chapter to the task."

Now, definitions don't take entire chapters! Observe that Knapp himself does not try to paraphrase Kelley's point either!

It is true that Knapp, quoting Kelley does give us: "perception = direct awareness of discriminated entities by means of patterns of energy absorption by sense receptors." But of course we don't have a usable absorption by sense receptors." But of course we don't have a usable definition of "awareness", other than axiomatic truths about it. (Which characteristics are part of the definition of awareness, and which are the "axiomatic truths" about awareness? Who knows?)

But I give an alternative death-blow to the usefulness of this definition when I argue that definitions of perception/awareness cannot refer to the internal physical observations (energy absorption...sense receptors), because these are only known to be true through perception! Thus how could we *know* when we have a case of *this sort of* perception/awareness if the reliability of our senses is exactly the question. Until a critic *understands* the thrust of this objection, (they are free to give argument against it), I refuse to discuss Kelley's views with them; their brain is not turned on.

It is obtuse not to at least anticipate this difficulty in the first place, and doubly of Knapp not to notice how worthless it makes much of Kelley's empirical observations about perception.

In all humility, I think I have probably missed something in Kelley's argument. I have the sense that there might be more to it (or to the general direction of the discussion) than I give credit. But what he says is pretty murky, and fatally falls prey to my objections. Until someone has the courage to paraphrase or reconstruct what Kelley is saying, in other than Kelley's murky chapter-long "definitions"—Knapp certainly does not help at any point in clarifying or rephrasing succinctly what Kelley is saying—then I can't see what in my review is false.

The review is not perhaps as serious as it should have been in carefully paraphrasing or reconstructing Kelley's position. But this is because I haven't figured out how to do so—and neither has Knapp.

The criticism of my overly-glib handling of unconscious inference/computation, calculation is probably correct. But I don't see Knapp giving arguments, other than intimidating lists of *famous people* whose views Kelley rejects.

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THE NEW MODES
OF CONTRACTARIANISM:
A CRITICAL REVIEW

Morals By Agreement. By David Gauthier. Oxford: The University Press, 1986.

Persons, Rights, and the Moral Community. By Loren Lomasky. Oxford: The University Press, 1987.

Both of these books are seminal contributions to the sub-genre of contractarian social philosophy. Gauthier's represents the culmination and synthesis of over two decades of work scattered throughout many journals and anthologies, while Lomasky's work, not unlike Nozick's *Anarchy, State, and Utopia*, emerges in full form with little prior journal exposure. They also differ radically in style and method, although they share a common destination: a contractarian derivation of neo-liberal rights and institutions.

Before examining each work separately, it behooves us to see what they share in common. Both take radical exception to a prevailing meta-ethical doctrine, which Gauthier labels *universalism* and Lomasky terms *impartiality*. Gauthier contrasts the *universalistic* conception of rationality with what he calls the *maximizing* conception, the latter of which he endorses.

On the maximizing conception it is not interests in the self, that take oneself as object, but interests of the self, held by oneself as subject, that provide the basis of rational choice and action. On the universalistic conception it is not interests in anyone, that take any person as object, but interests of anyone, held by some person as subject, that provide the basis for rational choice and action. If I have a direct interest in your welfare, then on either conception I have reason to promote your welfare. But your interest in your welfare affords me such reason only given the universalistic conception. (Gauthier, p. 7)

Similarly, Lomasky erects as what he terms 'the foil' a picture of impartiality as the hallmark of moral rationality:

On this account, morality involves treating all persons alike, though of course not in the simple-minded sense of acting in precisely the same way toward

everyone. Rather, impartiality involves weighing all ends by the same standard of value and striving to maximize the sum of this value irrespective of whose particular interests turn out to be favored. Impartiality is not indifferent *to* persons; it is indifferent *among* persons. (Lomasky, p. 23)

Both Gauthier and Lomasky, to their credit, attempt to offer an alternative to this standard 'impartial universalism'. For both, it is the considered preferences, or interests, of individuals that form the basis for (moral) rationality. Both attempt to arrive at a neo-liberal social philosophy from the starting point of quasi-Hobbesian individuals via contractarian methods. The radically different styles and methods of the authors, however, makes for difficult joint-review. It will be best if we look at each work separately, in summary fashion, and then step back and compare them.

Gauthier is attempting, in his own words, "the rational reconstruction of morality." By this he means an answer to the question, "What would rational, reflective individuals in a 'state of nature' agree to, as they bargain their way to basic rights, rules, and institutions?" He claims to demonstrate that morality "can be generated as a rational constraint from the non-moral premises of rational choice." (p. 4) Gauthier is out to derive a basically Lockean world from Hobbesian actors and methods, refurbished and updated with the formidable arsenal of contemporary game—and decision theory.

Gauthier begins with a fairly standard account of economic (practical) rationality as the maximization of (subjective) utility. This can easily be paraphrased into 'pursuit of (perceived) self-interest', but Gauthier resists this, stressing instead merely that agents act to maximize the fulfillment of *considered* preferences, whatever the content of these preferences. By 'considered' Gauthier means both informed *and* reflective; thus differing from a strict doctrine of *revealed* preference, i.e., actual choice. He synthesizes aspects of various philosophers: Moral principles are derivable and bind (if at all) through *reason* rather than sentiment. [Kant] Reason is, however, strictly instrumental [Hume] and preferences are both subjective and relative. [Hobbes and Hume] Rationality *consists in* satisfying standard consistency criteria (e.g. transitivity). But utility functions, being subjective and relative, are essentially non-comparable. Rational agents act to maximize their own expected utilities, regardless (often merely oblivious) of how this affects others' utilities (any desire regarding *other* persons is already accounted for in the agent's utility function).

The entire background problem of Social Contract, i.e., multiple interaction situations among numerous individuals, is introduced in Chapter 3. In a multi-person world, the perennial problems of social philosophy arise in cases of strategic interaction where outcomes depend jointly on the choices (actions, strategies) or *other* rational agents, i.e., where *each* agent must take into account the actions (strategies) of others in making his own choices. Allowing mixed strategies, there will always be *at least one* equilibrium, a set of strategies from which no agent gains by defecting. Problems arise, however, in Prisoner's Dilemma-type situations; all equilibria *may* be sub-optimal in the sense of yielding all agents less utility than they would receive from some other outcome. (The now-familiar example is an arms race in which both sides would prefer mutual disarmament to mutual armament, but each prefers to remain armed whether its opponent disarms or not. Mutual armament is the only stable equilibrium, but it is sub-optimal.)

Before going on to (re)construct a rationale for cooperation, Gauthier includes a fascinating Chapter 4 on "The Market: Freedom from Morality." Gauthier argues that in perfectly competitive markets Prisoner's Dilemma situations cannot arise, and thus they constitute a "morally free zone" where most moral constraints are superfluous since each person acting in his own interest works to the mutual advantage of all. The only constraints implied in such contexts are those *presupposed* by market processes, i.e., no force or fraud. Problems arise, however, even in market contexts, in two ways: (1) *which* optimal outcome is arrived at crucially depends on the set of *initial endorsements* (possessions, capacities, etc.) [as has been pointed out ceaselessly by e.g., Hillel Steiner]; and (2) markets 'fail', i.e., real markets consist of networks of transactions which generate significant *externalities* (uncompensated effects, on third parties).

Prisoner's Dilemma situations and market failure together give rise to problems of how and on what terms purely rational agents will achieve cooperation. For Gauthier, the core of a rational social morality consists of two essentially Lockean notions: no parasites and no free-riders. The former is any displacement of the costs of one's activities onto others, as when Upstream dumps toxic waste into the river, thus polluting Downstream's drinking water. The latter is any enjoyments of the benefits of cooperation that provides public goods that are worth their cost without being willing to pay one's fair share of those costs. The common principle behind these notions is: so far as possible, moral rules should be such that if the rules are obeyed, the acts (and ensuing benefits or harms) rebound only on the agent himself. Gauthier identifies, and extensively discusses, three principles which flesh out this Lockean morality: (1) constrained maximization; (2) minimax relative concession; and (2) the Lockean Proviso. This latter, as might be expected, is simply the pre-bargaining stipulation that no one can better his position through interactions that *worsen* another. This stipulation is obviously normative, yet pre-contractual (pre-bargaining), which if not a contradiction is at least a paradox, considering that Gauthier's whole project is to generate *moral* principles from *non-moral* principles. What is the rationale for the Proviso? "Without limitations that exclude the taking of advantage, a rational individual would not dispose himself" to comply with cooperative agreements. (p. 255) This seems circular at best, since Gauthier's program is the *generation*, not postulation, of normative principles. To say, in effect, "but my program won't get off the ground without it (the Proviso)" is lame, if not question-begging.

Granting the Proviso, we can now consider Gauthier's solutions to the bargaining problem, i.e., how to 'divvy up' the 'co-operative surplus.' Gauthier sees the problem of just social principles as essentially how to allocate shares of the cooperative surplus generated by interaction among individuals, given the existence of Prisoner's Dilemma situations and externalities. He argues that rational agents would reach the following solution to this problem. For each agent there is a no-agreement utility level corresponding to the initial bargaining position—this is what the agent could expect to obtain *without* cooperative interaction (if the Proviso is satisfied). An agent's *maximal claim* is the highest utility it is possible for the agent to receive while all others receive at least their 'no-agreement' utilities, i.e., the outcome that channels all benefits from cooperation to her (the agent) such that it is just marginally the case that no other cooperator or coalition would do better either withdrawing or excluding her from cooperation. An agent's *concession* at a

given outcome is the difference between her utility at the outcome and her maximal claim. Her *relative concession* is the ratio of her concession to the utility difference between her maximal claim and her no-agreement level. Rational bargainers will agree on that outcome which *minimizes* the largest relative concession that has to be made by someone—this is Gauthier's principle of minimax relative concession, or equivalently, maximum relative benefit.

There are several problems with each of these three principles, but space being at a premium I will adduce just a few. Regarding the Proviso, Gauthier's ultimate rationale for it seems to be this: the prospect of the emergence of society (and hence of an ever-growing cooperative surplus) makes adoption of the Proviso rational for all person. While this effectively rebuts my earlier criticism, in and of itself *this* rationale is questionable, and nowhere in the book does Gauthier argue for it. Regarding the constrained maximization, why should we suppose that Gauthier's Hobbesian egoists will adopt it? Gauthier does argue extensively for this, but, as usual, there are some questions.

Chapter 6 introduces the notions of constrained maximization, along with the notions of straightforward maximization and broad and narrow compliance. A constrained maximizer is one who acts exactly as would a straightforward expected utility maximizer except that the former is ready to cooperate if (1) the utility she can expect if others also cooperate is not less than she could expect if everyone acted as a straightforward maximizer, and (2) the utility she can expect if others also cooperate approaches the outcome determined by minimax relative concession.

Gauthier's argument for constrained maximization is essentially in the form of posing a decision problem: Does the *disposition* toward constrained or straightforward maximization (as a standard of practical reason) yield a higher expected utility pay-off for the agent (within a relevant social context)? Gauthier argues that the choice of constrained maximization actually does better in utility terms. Thus, the devil is out-foxed. Or is he?

Assume an environment containing both constrained maximizers and straightforward maximizers. Assume also that all persons are 'translucent', i.e., all persons in this environment can be judged by any other agent to be either a constrained maximizer or a straightforward maximizer with better-than-random probability of being correct. A disposition toward constrained maximization is rational only in an environment *already* dominated by constrained maximizers. What this demonstrates is the rather weak conclusion that a group of constrained maximizers will fare better than a group of straightforward maximizers. But the question is, How, in an environment of iterated Prisoner's Dilemma situations, do straightforward maximizers ever 'switch' to becoming constrained maximizers? An evolutionary learning model (such as Axelrod's) might be invoked to show that a tendency exists for the constrained maximization disposition to arise, and thus vindicate Gauthier's position that constrained maximization as a rule or policy is rational. But it hardly follows, as Gauthier nonetheless seems to believe, that *particular acts* of constrained maximization are rational.

In sum, Gauthier's book is the most ambitious attempt to date to ground social morality in something more rigorous than a set of coherentists' equilibrating reflections. As such, it should be studied, as should the surrounding literature it will no doubt generate. Gauthier wields game and decision theory with aplomb, and provides excellent expositions of more technical points. He also applies his theories and ideas to such questions

as inter-generational justice and the nature of a liberal individual. It is, without doubt, one of the most important contributions to contractarian theory since Rawls' *Theory of Justice*.

Radically different in style and method is Loren Lomasky's *Persons, Rights, and the Moral Community*. As its title indicates, Lomasky ranges over quite a lot of territory which is of contemporary importance, including many topics thought intractable. Lomasky begins by criticizing the contemporary 'rights explosion,' the 'heady proliferation' of rights to various and sundry things. He correctly points out that the term "right" is a very special and powerful term. "Rights stake out chunks of moral turf that others are forewarned not to trespass; they issue demands with which other *must* (the 'must' is moral, not causal or logical) comply." Hence, we should be at least cautious, if not skeptical, about many contemporary rights-claims.

Skepticism regarding specific rights is not to carry over to the idea of rights as such, however. Unless one is prepared to embrace ethical skepticism generally, rights have their proper (and fundamental) place in the scheme of things ethico-political. "Even if a full-blown theory of rights that is massively supported by our best moral reasoning were conveniently at hand, it does not follow that we could thenceforth eschew talk of rights in favor of reference to the underlying theory." (Lomasky, p. 12) Indeed, why should we abandon the shorthand but powerful terminology of rights? "To insist that this cumbersome machinery [of a full-fledged ethics] be hauled out in its entirety each time one ventures into normative analysis is as perverse as the insistence that all talk of 'electrical charge' or 'cold front' be accompanied by the respective physical or meteorological theories within which they function." (pp. 12-13)

Having established (1) rights terminology cannot be dispensed with, but (2) the concept of rights is such that its domain is *limited*, Lomasky goes on to tackle the tough questions, some plausible answers to which must (logically) be offered to substantiate any theory of basic rights. Indeed, Lomasky understandably (though merely passing) criticizes Nozick, Dworkin, and even Rawls for not offering such a foundation. What then is Lomasky's foundation; what is his starting point? He builds implicitly on the work of Gewirth, Williams, Norton, and others, but his foundation for rights is nonetheless original and plausible. It is this: Individuals are *project pursuers*; they have unique values and commitments, and they have reason to value those ends that are distinctively theirs in a way no one with different projects does.

While this idea (a modified Bernard Williams notion) has much in common with the groundwork for basic rights formulated by Machan, Mack, Pilon, and Pollock (among others), Lomasky only occasionally alludes to these authors. There are elements in Lomasky's thought which have obvious affinities to these and other philosophers, and it is worth noting a few of these influences, as well as how Lomasky modifies or diverges from them. Lomasky is sympathetic for example to Gewirth's attempt to ground basic ethics (and, fortiori, basic rights) in the fact that human beings are *agents*, i.e., self-directing and conative beings. The "bare fact of agency," however, is insufficiently robust to sustain a coherent set of rights, according to Lomasky. Thus, he borrows Bernard Williams' instructive emphasis on *projects*, i.e., regulative ends which comprise or extend throughout individuals' lives, play a central role in the person's on-going activities, and provide structural stability to the individual's life. Project pursuit implies that persons require some degree

of non-interference in regard to their on-going activities which constitute their lives. Recognition of basic rights in the form of side constraints safeguards individualism as utilitarian morality cannot.

Lomasky, as noticed above, constructs an alternative to what he calls "the foil," i.e., the (meta) ethical view, modeled on *prudential* decision-making, whereby the ethical decision-procedure involves being indifferent or impartial among persons (*impartial* regarding values and the projects associated with them), and is based on an *impersonal* standard of value. Interestingly, Gauthier, as noted above, provides a very good characterization of this meta-ethical model. "It is not interests in anyone, that take any person as an object, but interests of anyone, held by some person(s) as subject, that provide the basis for rational choice and action." This 'foil' is at odds with project pursuit. Whereas the key element in the foil's conception of moral reasoning is (a specific and not uncontroversial notion of *impartiality*), project pursuit ineluctably implies a kind of partiality and personalism. This is *not* to say that individuals totally lack the ability to empathize, or that

project pursuit insulates one from all reason to consider the well-being of others and to take another person's good as providing reasons to bear on one's choice of conduct.... It would be entirely fallacious to conclude that persons enjoy carte-blanche to engage in completely selfish behavior, mindless of the well-being of others. Concern for the personal dimension of morality is not equivalent to the endorsement of egoistic rapacity. (Lomasky, pp. 30, 35)

In contrast to "the Foil," then, Lomasky is concerned to defend a sort of (meta) ethical individualism in which the human being, as the subject of conation and conative activities, is given its due.

How, then, do we derive rights—or, in general, *any* other furniture of social morality—from such a context? While Lomasky's persons are not Hobbesian straw men ("rapacious egoists"), they are not merely partially differentiated integers, "partners in the human enterprise to which all...efforts must be devoted. There is no such thing; there are only the various personal enterprises in which individuals enroll themselves and which provide them with irreducibly personal ends that they strive to realize." Rather there is middle course between the Charybdis of "the Foil" and the Scylla of Hobbesian atomism: moral community is possible because project pursuit almost inescapably involves essential reference to the well-being of others. Hence, a theory of basic rights as side constraints is *prima facie* plausible.

After a Chapter 3 defending project pursuit as a basis for (social) ethics against various possible criticism, in which he discusses the idea that some (though by no means all) value is posterior to choice and therefore personal, Lomasky tackles the rough core question: "How can one go beyond the bare recognition of others as project pursuers to a rational motivation to respect them as project pursuers?" (p. 62) Granted that individuals, as project pursuers, have reason to value their *ability-to-pursue-projects*, what is the motivation to universalize this in the inter-personal realm, and thus establish rights as inviolable constraints? Lomasky suggests a combination of three reasons.

First, there is what could be called the sociobiological or species-solidarity argument. Human beings are *not* organisms who totally lack empathy for their fellow human beings. "Rather, human beings are social animals whose survival is predicated upon their being the beneficiaries of altruistic concern

of limited yet crucial scope." This quasi-Aristotelian, sociobiological explanation of intra-species empathy and altruism does not go far (enough) in establishing interpersonal, inviolable side-constraints.

The second argument is one suggested by Thomas Nagel, and is complementary to the first. Nagel argues that the ability to recognize oneself as one person in a world containing other persons is logically sufficient to provide the basis for transmission of rational motivation. A's having end E' obviously provides B *at least some minimal reason* to act to advance E'. "Some reason" because value is *not* completely impersonal, and A's reason for promoting E' is different and stronger than B's reason. In other words, the recognition by B of a reason R as a reason for E' implies that B is not totally indifferent to E' obtaining. R is why E' should obtain. B's acknowledging that A has reason (understood personally) to bring about E' implies that there is (impersonal) reason to bring about E'; thus, B has some reason to advance A's pursuing E', only if B's commitment to his own project entails pursuing E', which is incompatible with E', does B not have reason on balance to promote E'. Thus, a bridge is provided between someone's *having a reason* and there *being a reason*, while not conflating the two.

This second argument, by itself, is also insufficient to generate a robust theory of rights. Lomasky offers a third argument. He asks us to imagine a world (not unlike the actual world) in which each person has reason to undertake activity to eliminate interference by others. "Because each project pursuer values his own ability to be a project pursuer, each has reason to act to bring about circumstances in which he will be able to lead a coherent life responsive to his own conception of the good." (p. 65)

But what strategy merits adoption? Lomasky adduces three possible strategies and illustrates them by means of a game-matrix. (pp. 65-75) Essentially, the possible strategies are: (1) "Active Aggression," the deliberate and systematic attempt to *remove* any and all other's ability to interfere with and thus impede one's own designs; (2) "General Neglect," wherein each person goes about his business, oblivious of others except when their activities clash, at which time they compete for success; and (3) "Active Deference," which is the deliberate and systematic attempt to avoid interference with and thus impeding the other's designs. Lomasky demonstrates that, for pure Hobbesian egoists, while mutual Active Deference has the highest joint-value payoff, with mutual General Neglect having the second highest joint-value payoff, both are unstable and will tend to degenerate to mutual Active Aggression, i.e., Hobbes' "war of all against all."

This situation is, of course, the now classic Prisoner's Dilemma. Lomasky, however, argues that we need not start with what I term reductive egoists (Hobbesian rapacious brutes). The first two arguments above suggest that we can reject this model of the human agents in favor of a more complex (but for all that more realistic) model, wherein human beings, while nonetheless self-interested expected utility maximizers, are also capable of empathy and even limited altruism. From such a revised starting point, Lomasky provides a cogent evolutionary-learning argument (based on what amounts to iterated extended Prisoner's Dilemma-type situations) to the effect that the persons will, by "invisible hand" processes, adopt a stable regime of mutual Active Deference. It is (at least partially) an *invisible hand* emergence because, while both A and B prefer deference from the other and have some initial willingness to defer, the resultant stable mutual Active Deference

equilibrium is not specifically aimed at by either person. If the solution is extended to a multi-person context, the invisible hand may or may not lead to a multilateral equilibrium of Active Deference, but Lomasky argues, such an equilibrium is the only *moral* equilibrium.

Lomasky considers next the amount and character of deference which should be the case in a moral community. One can imagine a 'fanatic' who prefers a state of mutual Active Deference. While being able to do little regarding the fanatic, Lomasky suggests the following principle which minimizes the number of persons who find the deference they receive from others insufficient compensation for the deference they must supply. "Generally: a stable regime of equal rights for all requires that the amount of required deference be close to the level of deference ideal for the least deferential members of the community."

Chapter 5 discusses the "two concepts of liberalism," classical and welfarist. The former (of which contemporary libertarianism is a radical sub-species) maintains that all (or very nearly all) the rights individuals possess are negative in character, i.e., entail non-interference or forbearance. The latter maintains that individuals have, in addition to negative rights, positive rights, i.e., rights entailing the provision by some individual or institution of a valued item(s). Lomasky reviews several arguments in favor of a welfarist interpretation of liberalism, including the argument from need, and concludes that while liberty-rights must be accorded overall primacy, there is still room, in extreme contexts, for the recognition of welfare-rights.

Chapter 6 provides a discussion of property rights within a liberal order that, while one of the most important and well-argued chapters in the book, is difficult to summarily discuss. I will only hit the highlights. Lomasky adduces a variation of the Lockean Proviso which is part of the basis for his theory of justice in property holdings: "Each person has reason to value a liberty to acquire and use goods equal to the liberty to acquire and use that which every other project pursuer enjoys. Not equality of holdings but equal liberty to acquire holdings is entailed by the normative theory of basic rights." (p. 123) Lomasky also argues that those in exigent straits may demand requisite welfare goods as a matter of right. (p. 126) His reasoning against the strict libertarian disconnects the theory of basic rights from its foundation project pursuer's practical reason. The entire rationale and system of rights is put in jeopardy should it be the case that in certain dire contexts one can either continue to respect others' rights or be able to pursue projects, *but not both*.

The most innovative aspect of Lomasky's book is his application of his theory to children. In the case of children, rights ascriptions are based on the fact that they are potential (and would-be) project-pursuers, and on the fact that they are related to actual project pursuers in bonds of recognition that make their good a concern for others. While the biological family holds the *primary* responsibility regarding the nurture of a child, this does not entail that exclusive responsibility lies therein. The rights of a child, both positive and negative, impose obligations on everyone. After discussing state education, and persuasively arguing for *laissez-faire* in educational matters, Lomasky turns to what I call the Indoctrination Problem, i.e., the potential for abuse such as to turn out not independently thinking and evaluating persons, but "evaluational clones" of the parent/educator, Beings who lack individuality or self-determination. Lomasky cautiously concludes that the burden of proof for interference with familial attempts to inculcate specific ideas or loyalties in children lies with those who propose interference.

In his penultimate chapter "At the Margin," Lomasky further puts his theories to the test by considering, in turn, fetuses and abortion, the mentally defective, the dead, and animals. I will briefly deal with his treatment of the first and last of these. Abortion is a controversial, and almost intractable, issue because various intuitions and established conventions collide here. The fetus *is* living, it *is* human, but is it a *person*? Does it have *rights*? Lomasky argues that even the issue of parenthood is not so important as the question of recognition and individuation. Infants are vastly more individuatedly recognizable and stand in vastly more individuating social relationships than do fetuses. Thus "it is reasonable *as a general policy* to recognize in infants, but not in fetuses, full standing as rights holders." The weak conclusion to be drawn is that abortion is *permissible*, though not necessarily *right*.

Lomasky rejects animal rights for the very straightforward reason that no animal qualifies as a project-pursuer. But to deny animal rights is *not* to deny animals moral standing. Most, if not all, of what can be said on the moral behalf of animals can be said without resort to rights. That animals are sentient, minimally conative, etc., implies moral consideration. Animals can feel pain, for example, and therefore it is morally wrong to inflict pain on them. And it is precisely *here* that I come to a slight disagreement with Lomasky, for while I am not of the same persuasion as, say, Tom Regan or Peter Singer, I nonetheless hold that it is coherent and even accurate to speak of certain contextual rights for animals, especially higher-order animals: an animal has a (near-) absolute right not to be tortured, for instance, by virtue of the fact that they would suffer (avoidably). On the whole, however, I am much closer (and sympathetic) to Lomasky's view than to Regan's or Singer's.

The two books here reviewed are both solid contributions to social philosophy. It is almost a cliché, yet nonetheless true, that a reviewer can rarely do justice to the subtlety, breadth, and depth of a good work in philosophy. But what a review *can* do is evaluate and recommend; I have tried to do the former, and I shall now do the latter. Both of these books should be read and absorbed by anyone working in moral and/or social philosophy. Both are rich in innovative argument, even sprinkled on occasion with wit and humor. There is much that I have not been able to touch upon, such as Lomasky's treatment of individualist anarchism or Gauthier's concept of the Liberal Individual; but what I have tried to do is provide both a summary and bit of criticism along the way. I will end with what I intend as a high complement indeed; Both works will undoubtedly generate a surrounding literature (an 'industry', if you will), most of it constructively critical, *all* of it in these authors' debts.

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John D. Barrow and Frank J. Tipler's
*THE ANTHROPIC COSMOLOGICAL
PRINCIPLE*

FAITH, HOPE, AND CHARITY

Our existence imposes a stringent selection effect upon the type of Universe we could ever expect to observe and document. Many observations of the natural world, although remarkable *a priori*, can be seen in this light as inevitable consequences of our own existence.

J. D. Barrow and F. J. Tipler

So soon as one thinks *anthropic cosmology*, one thinks *teleology*. In *The Anthropic Cosmological Principle*, John D. Barrow and Frank J. Tipler have presented the most exhaustive explanation in recent years of the connection between teleological thinking and the construction and interpretation of scientific theory.

After sketching the meaning of "anthropic principle," the authors devote the first two hundred or so pages to a historical survey of thinkers who defended, attacked, or tacitly accepted teleology. The chronological scope is impressive, and most of the reporting is accurate. On occasion, informed readers will be startled, however, as when they are told that "Parmenides claimed that a 'many worlds' interpretation of nature is necessary because of the non-uniqueness of the subjective element in our perception and understanding of the world." (p. 34) Despite such mistakes, the authors will no doubt succeed in impressing upon most readers the idea that teleology in human thought is traditional and, perhaps for that reason, justified and noble. They thus set the stage for the acceptance of the anthropic principle as a current expression of that noble tradition. (p. 109)

The singular reference of the book's title is somewhat misleading, since the authors identify and discuss three different anthropic principles: the Weak Anthropic Principle (WAP), the Strong Anthropic Principle (SAP), and the Final Anthropic Principle (FAP). Moreover, SAP has three different interpretations. Common to these principles and their interpretations is the idea that human beings, aside from their being the makers of scientific theory, are crucial constituents in any coherent, empirically based and falsifiable cosmology that human beings can construct. The "empirically based and

falsifiable" is important; the authors are quite disdainful of theology and speculative philosophy for the lack of objectivity therein.

Barrow and Tipler divide 'purposive' arguments into two types, called teleological arguments and eutaxiological arguments. (p. 29) Teleological arguments are further divided into two kinds: those based on sheer anthropocentrism, and those based on finalism. Thus, arguments based on the anthropocentric assumption that each thing has our benefit as its purpose are called teleological arguments, and those based on the finalistic assumption that all entities (including human beings) have some ultimate purpose are also called teleological arguments. Eutaxiological arguments are the standard design arguments, such as "Paley's Watch." The division of 'purposive' arguments is not arbitrary; its purpose is harmony with the different kinds of anthropic argument that concern Barrow and Tipler.

'Purposive' arguments, for Barrow and Tipler, are connected with causality and causal order. To claim that there cannot be order without that order's having a cause that is itself planned is to argue eutaxiologically. And to claim that causal laws dictate that order has to have some resulting purpose is to argue teleologically. (p. 29) WAP is based on eutaxiological thinking, whereas SAP and FAP are based on teleological thinking. SAP arguments tend to be anthropocentric; FAP arguments tend to be finalistic. Goey mixtures are not uncommon.

Of the three main anthropic principles, WAP is by far the most commonsensical. Barrow and Tipler give it this formulation:

The observed values of all physical and cosmological quantities are not equally probable but they take on values restricted by the requirement that there exist sites where carbon-based life can evolve and by the requirement that the Universe be old enough for it to have already done so. (p. 160)

In short, there are certain necessary conditions that any satisfactory cosmology must accommodate, namely, those conditions that will account naturally for our being here.

Although it is not a tautology, WAP has the same sort of self-evidence that "I exist" has. It becomes immediately obvious that any account of the world must account for the accounters, since they are constituents of the world. WAP, then, is a sort of guiding principle for cosmological thinking. Hypotheses about the formation of stars and galaxies, about the development of the heavier elements from hydrogen and helium, about stellar lifetimes, about the age and the size of the universe, are all 'conditioned' by our being here.

The most convincing portion of the book, as far as an anthropic principle is concerned, is the explication of modern cosmology in terms of WAP. Barrow and Tipler brilliantly display the breadth of their knowledge of cosmology, and the careful reader is alert to their concern for his understanding of the labyrinth through which they are leading him. He is alert as well to their concern for the scientific status of WAP.

The authors seem eager to give scientific credence to WAP by making it appear crucial to *predictions*. For example, in calculating the stellar production of beryllium from helium, and of carbon from helium and beryllium, Hoyle realized that unless carbon resonated at about 7.7 MeV, much less carbon would have been produced than is now observed to exist (and carbon-based life could not have evolved). Hoyle and others then sought and found the

predicted resonance. By playing on the parenthetical addendum of the second sentence previous, Barrow and Tipler claim that the discovery of that resonance "confirmed an Anthropic Principle prediction." (pp. 252f) The anthropic principle is of course unnecessary to the making of that prediction. What's relevant is the existing carbon.

Such strained interpretations of scientific prediction (see also, e.g., pp. 165, 184, 673f.) may reveal an emotional commitment by the authors to the anthropic principle. Sentiment aside, however, WAP can function as a preliminary test of any theory of cosmic or biological development. As a test of any such theory, given ourselves as part of the data to be accounted for, WAP can be only a coherence test; it does not yield explicit, verifiable predictions.

In shifting our attention from WAP to SAP, we shift from an empirically based guiding principle to an article of faith. Barrow and Tipler give a general statement of the Strong Anthropic Principle in this way:

The Universe must have those properties which allow life to develop within it at some stage in its history. (p. 21)

By one reading of that statement, it might seem but an innocuous restatement of WAP. Alas, telic 'arguments' just seem more palatable with a dash of ambiguity or metaphor. Reread the general statement of SAP, understanding that "must have" means cannot have been otherwise than to have"; and understand "allow" to be exactly as permissive as the "willing permission" of Augustine's omnipotent creator. This is the strongest reading of SAP, and it of course precludes all contingency.

There are, remember, three distinct interpretations of SAP. The first interpretation makes clearer than the general statement just what is at issue in the principle:

There exists one possible Universe 'designed' with the goal of generating and sustaining 'observers.' (p. 22)

The 'scare quotes' may have been intended to exorcise the supernatural aura of SAP; indeed, Barrow and Tipler do concede that this interpretation of SAP is religious. Yet the religious import was concealed in the general statement of SAP. This interpretation is the only unnamed anthropic principle in the book. Let's call it RAP. Whereas Hoyle defends this interpretation, Barrow and Tipler seem much more comfortable with the other two interpretations, which really have no necessary religious implications and which are only remotely RAP-like.

The second and third interpretations of SAP both derive from construals of quantum mechanics. The second, the Participatory Anthropic Principle (PAP), says:

Observers are necessary to bring the Universe into existence. (p. 22)

The third, the Many-Worlds Interpretation (MWI), says:

An ensemble of other different universes is necessary for the existence of our Universe. (p. 22)

Although PAP and MWI seem unrelated, they are consequences of two different interpretations of the same equation in quantum physics.

In 1925, Schrödinger constructed a mathematical 'description' of electrons as *waves* around the atomic nucleus, rather than as the discrete particles of the Bohr atom. The following year, Bohr used Schrödinger's wave equation to construct (by squaring the amplitude) a probability wave equation expressing the probable position of a particle (electron, photon, etc.). The probability wave equation gives a neat 'description' of the light and dark bands in the double slit experiment using, say, a beam of photons. But consider a single particle. A single particle could be anywhere between any two adjacent nodes of the wave. Now, just where is the particle?

In an experiment to detect a single particle (say, by having a particle detector at each possible position designated by the wave equation) the particle will appear at one and only one place. But where was the particle *before* it was 'observed'? The two answers commonly given defy common sense: (1) the particle was literally nowhere, i.e., between each pair of adjacent nodes. Let's consider each answer in turn.

The first answer, that the particle is nowhere before detection, is based on Bohr's construal of quantum mechanics, and that construal is based on an *outré* epistemology. Barrow and Tipler quite correctly give Bohr's "empiricist principle" as "what cannot be measured, even in principle, cannot be said to exist." (p. 461) That statement is equivalent by transposition to saying: If we can say that a thing exists then we can, in principle, measure that thing.

That, of course, is the *reverse* of what is generally understood as the empiricist principle, which traces back to Aristotle's dictum that there is nothing in the intellect which was not first in sensation. Simply put, whatever we know of the world comes to us in experience. Thus, if we can measure (observe) something then we can say (claim knowledge) that it exists. This standard empiricist principle makes sense; Bohr's *outré* principle does not. The standard principle says that our knowledge derives from the world. The *outré* principle says that what we can know dictates what can be in the world. A poor epistemology here yields a dubious ontology.

That backward epistemology also transforms Heisenberg's uncertainty principle into an indeterminacy principle. Uncertainty is an epistemological condition. Indeterminacy is a metaphysical condition. Since the simultaneous position and momentum of, say, an electron cannot be *known* with certainty, the particle does not really *have* both. As Barrow and Tipler express it for Bohr, "these properties are 'real' only within the limits allowed by the uncertainty relations and the experimental apparatus chosen by the observer to measure them." (p. 461)

Barrow and Tipler use the "Schrödinger Cat Paradox" to help clarify what's at issue. (pp. 465ff) This clever fancy was concocted by Schrödinger in 1935. A cat is sealed inside a box containing an apparatus that will release cyanide gas upon activation by a single radioactive decay of a substance having a .5 probability of one decay per hour. For the sake of simplicity, assume that the activation of the apparatus, the release of the gas, and the death of the cat would be instantaneous. Now, at the end of one hour, is the cat dead or alive? Wave equations typically express numerous possibilities. Schrödinger's example is neat since there are but two possibilities: dead cat;

live cat. By Bohr's *outré* epistemology, the cat is neither dead nor alive until it is 'observed' to be one or the other.

The wave function, or psi function, 'describing' the hypothetical state of affairs:

$$\Psi = \frac{1}{\sqrt{2}} (\Psi \text{ dead} + \Psi \text{ alive}) \quad (\text{p. 465})$$

Each quantum state effect—the cat's being dead, the cat's being alive—is only a *possibility*; and one of the equiprobable possibilities will be actualized by the 'observer.' By opening the box and looking in, *we* actualize one possibility (probability = 1) and collapse the rest of the wave (probability = 0). Hence, we, as observers, bring reality into being. This interpretation gives us PAP. Without 'observers,' it's claimed, nothing is actualized as real and the rest of the wave doesn't get collapsed. But are we, human beings, really needed? Alternate claims are that (a) the cat is the 'observer' and that (b) the electronic detector is the 'observer.' It should be apparent that the adoption of either of these claims precludes any literally *anthropic* considerations. Perhaps only those who would be taken in by the backward empiricist principle would either accept the 'suicidal' cat option as anthropic or resort to considering an electronic detector to be an observer. As earlier noted, metaphor and equivocation are rife in these regions.

The psi function for Schrödinger's cat has yet another construal, one which conforms to the second answer to the question: Where is the particle 'described' by the wave equation? That answer was: At every possible position. Accordingly, Schrödinger's cat is both dead and alive, since the radioactive substance in the box both did and did not emit a particle within the hour. In more typical cases of the wave equation, each of the numerous possibilities is supposed under this construal to be real; but, since only one of the mutually exclusive possibilities can be actualized in this universe, there must be other universes in which those other real possibilities are actualized, i.e., a different world for each possibility. Hence, the Many-Words Interpretation of the Strong Anthropic Principle.

Common sense would have us back off for a moment to see what's going on. There seem to be at least two problems here. One is a matter of translation. Another is the ontologizing epistemology already discussed. And a possible third concerns, more generally, interpretation of what quantum mechanics is about.

The translation problem is one of *getting from the operators of the formal language, mathematics, to those of a natural language, English.* Just how do "x" and "+" translate into English? The best way to make the translation is through symbolic logic, since there is a clear correspondence between certain mathematical and logical operators, and the translation between logic and natural language is routine. The arithmetic "x" corresponds to the "∧" (conjunction) of logic, and the arithmetic "+" corresponds to the "∨" (disjunction) of logic. The "∧" translates as "and" in English; the "∨" translates as the weak disjunction of English, i.e., "either-or, but perhaps both."

The possibilities expressed in the wave equation are connected by "∧" and should be understood disjunctively, not conjunctively as they are in MWI. Moreover, since those wave function possibilities are mutually exclusive, only

one can be satisfied. But if any one of them is satisfied, the whole equation is satisfied since the possibilities are disjunctive. Since this universe satisfies the equations, the positing of multiple worlds violates Ockham's Razor. Only by misconstruing "+" as "and" would MWI be plausible.

Of course, Barrow and Tipler are not themselves responsible for MWI. They simply present the historical case as it is. Indeed, they even see the propriety of translating "x" as "and"; but they immediately translate "+" as "and" as well, as though "+" and "x" have exactly the same meaning. (p. 467)

The second problem originates with the backward epistemology: what we can claim to know determines what must be in reality. The von Neumann formalism of quantum mechanics is beautifully laid out. Using it, given the initial state of a system, we can deduce the range within which subsequent states will lie. Now, applying the backward epistemology, since we know the theory, and we know that the theory is highly confirmed, the world must conform to the theory. This is dogmatic metaphysics. What's more, either an 'observer' is needed to collapse the wave in order to actualize reality (PAP) or else, wave-collapse being unnecessary for actualization, the wave generates many realities (MWI). This is speculative metaphysics.

The more general problem concerns what quantum mechanics is about. It is commonly presented to us laymen as a description of the entities and processes underlying the world of our experience, i.e., as metaphysics. Physicists may dislike the label, but that's what it comes down to if theory is taken literally as a description of an occult reality. It might promote a better understanding of what they are about if physicists were to make a shift from the metaphysical stance to an epistemological one. Theory could then be explained as a description of the *way* we might make inferences about the world, including the limitations on (or built into) that method of inference. Then, Heisenberg's uncertainty principle, for example, would remain a principle of knowledge and not become a principle of ontology. Then, perhaps, such nonsense as PAP and MWI would not even occur to anyone.

The Final Anthropic Principle, FAP, adds hope to the faith required for SAP. Barrow and Tipler state FAP as follows:

Intelligent information-processing must come into existence in the Universe, and, once it comes into existence, it will never die out. (p. 23)

Alas, we are not the "it" that will never die out. We will be gone, as will the earth, the sun, and the galaxy, long before the long run of a large closed universe or of a flat universe. There is not even much hope for FAP in an open universe. (p. 670) Even in a flat- or closed universe, the information processors, if any, would not be based on the matter that we are familiar with, but on positronium, an ephemeral association of an electron and a positron (an anti-electron). Energy transfer within positronium is an 'unsolved problem,' as is the very possibility of the sort of organization of positronium 'atoms' that information processing would require. (p. 667) Hope alone seems to remain the 'justification' for FAP.

Despite the limitations of WAP and the failures of SAP, RAP, PAP, MWI, and FAP, Barrow and Tipler have written a fascinating book. The survey of twentieth century cosmology in Chapter 6 and the arguments against intelligent extraterrestrial life in Chapter 9 are excellent, and make the book

worth its price. There are, in addition, good discussions of interesting issues in biochemistry.

No-nonsense readers who expect straightforward clarity in what they read should approach *The Anthropic Cosmological Principle* with charity. The quotation at the beginning of this review is just one of many seemingly contrived lures in the book. Anthropic notions flourish in the compost of lax language and beguiled thought. With charity, we can consider the authors to be cunning storytellers who are not themselves seduced by their own figurative language.

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The Closing of the American Mind. By Allan Bloom. Simon and Schuster. 1987.

If you do not already know about this book, you have been marooned somewhere on a desert island. As of this writing, it is still on the *New York Times* "Best Seller" list, and the book has been number one on that list for many weeks. It is also a book which vigorously defends the importance of philosophy. Not since Ayn Rand have philosophy and mass consumption been so compatible. This combination is one among many of the ironies of this book, some of which I will discuss below.

As we all know by now, the book discusses the malaise of university education in this country and the loss of appreciation for, and meaning of, the liberal arts. Few read the great classics of philosophy and literature anymore, and when they do the works are treated at best as history and not as living sources of inspiration or guides to the meaning of life. Undergraduates who enter the university at an age which naturally thirsts for inspiration and meaning find none of it in today's universities (certainly not in philosophy departments). They either enter courses which will advance their "careers," or they are confronted with a smorgasbord of loosely connected obstacles known as the "liberal arts." If the student confronts Aristotle or Shakespeare at all, the treatment is often superficial and never as a serious candidate for a coherent world view. This thesis certainly rings true, and one must applaud Bloom's forthright statement of it. For me personally, however, there is a touch of irony in this message; for as an undergraduate in the late 60s and early 70s, my training in literature did not include reading classics like Shakespeare, but rather I was advised into more "relevant" courses which mainly consisted in reading a lot of Saul Bellow—the author of the foreword to Bloom's book!

Saul Bellow not only signifies a personal irony, but symbolizes as well Bloom's approach to philosophy. Quite simply, Bloom treats philosophy as if it were literature. The "story of philosophy" reads like a gothic novel in Bloom's hands. He unfolds the plot, lines up the protagonists (Plato, antiquity) and antagonists (moderns), abstracts the grand themes, identifies critical junctures in the story line, and clarifies the significant symbols and their meaning for us. In the end one feels like one has encountered the "deep" and profound, and one undoubtedly has. But the depth and profundity experienced have a decidedly literary tone to them—the kind of feeling one gets after finishing a moving novel or play. The intellect is engaged, but the end product is emotional. This is the best literature can do, and the best Bloom does for philosophy.

Philosophy, on the other hand, does the reverse. Our emotions may be engaged (though it is not necessary), but the end product is purely intellectual.

Here the *justification* for a conclusion is as important as the conclusion itself. In Bloom we find great themes pitted against one another; we find little of the justification and argumentation that stands behind those great themes. Without that argumentation and the evaluation of its merits, philosophy is indeed reduced to literature. (Of course, the arguments without the great themes characterize much of the contemporary penchant for seeing how many distinctions can be culled from the head of a pin.)

Bloom is unquestionably correct in pointing to the impoverishment of today's students as a result of their lack of proper exposure to the classics of philosophy and literature. But even if that problem were solved, the student would still possess some serious deficiencies not addressed well in Bloom's book. The main one being that there is little indication that one can *do* philosophy from Bloom's account (as opposed to read, understand, and admire it). Saul Bellow again comes to mind. Here is a man who actually *wrote* literature (so much so that the foreword is more about himself than Bloom's book.) He did not simply engage in scholarly studies of great literary figures. Yet much of the appreciation for the greatness of the main figures of philosophy, and much of what it means to take them seriously, comes from doing what they did. One comes to understand the difficulty of the task, the effort, the loneliness, the genius, the insight, and the learning required of oneself and mastered or confronted by others. This is not even to mention the possibility that one might make a contribution. The reader of Bloom's book, in contrast, is left with the image that philosophy is already done and that what one needs to do now is enrich oneself with it and choose sides (e.g., ancient or modern). Perhaps even choosing sides is doing too much philosophy, for part of what Bloom seems to mean by opening our "closed" minds is "keeping the conversation going"—that is, never drawing the conclusion that a great philosopher was wrong.

Bloom is correct in his claim that the modern mind, in the name of openness, has closed off the teachings of thinkers like Plato and Aristotle. If the conversation is kept going, their ideas would certainly benefit. But if truth is our aim, the mind must be prepared to close, although not be locked shut. Given the contradictory array of theses propounded throughout the history of philosophy, keeping the conversation going for its own sake is to play into the hands of the very relativism Bloom deplors—not all those theses can be equally true. If, on the other hand, there is no truth, then philosophy can indeed be effectively treated as literature, i.e., as a collection of perspectives on the human condition capable of enriching us emotionally.

If truth is possible, then philosophy must be done; one must engage in it, argue for the incorrectness of some theses and the correctness of others (no matter what their source), and defend a position. All this must be done in light of an appreciation of the *best* that can be said for the theories one rejects. The reason the closed mindedness that Bloom refers to is so troubling is because it is complacent and dogmatic and not grounded in a serious appreciation of the alternatives. But higher education is defective not just in failing to provide serious alternatives for reflection; but just as importantly, in failing to teach students how to reflect—that is, to think, judge, criticize, reason, and theorize abstractly. Philosophy offers this to students more than any other subject; yet not because these "skills" are peculiar to philosophy, but rather because the pursuit of truth has traditionally demanded them.

If one reflects for a moment on the main themes of this book—the importance of philosophy, the failures of contemporary or Deweyite education,

the search and need for meaning among the young, the closed-mindedness in the name of openness—one discovers that these themes were all fully elaborated a decade or more ago by Ayn Rand. The book contains only one negative reference to Rand; but that is perhaps unimportant since Leo Strauss is not mentioned often either, and he clearly towers behind this book. Nor would one expect Bloom to put the issue quite the way Rand did, so the point here is not to suggest that reading the one is like reading the other. Rather, the point is that the similarity of themes also betrays a fundamental difference: Rand clearly believed in objective truth, while nothing so clear is to be found in Bloom. Bloom offers neither a philosophy, nor a program of reform. There is simply the great debate and the fear it might fizzle out.

Rand became (and is) popular among students precisely because she offered a vision of the truth, however near or wide of the mark one believes that vision to be. One suspects, on the other hand, that Bloom's book will be discussed by a different audience, viz., faculty, administrators, parents and the like—what the 60s used to call "the establishment." This is because the book is essentially "safe." Now that the children of the "counter-culture" are about to enter college and the "counter-culture" itself integrated into the "establishment," attacks on relativism, drugs, and meaningless relationships are easy to make. Equally easy is the advocacy of the classics, discipline, and traditional values. Moreover, at the intellectual level bashing the Enlightenment is popular sport these days and thus a safe bet also. Never mind that two decades ago Rand, not to mention numerous conservatives, were making such points in print and were being ridiculed because of it, and that no sense of that history can be found in this book. Focus instead on the fact that these basic themes *can* be raised today without serious recriminations for the author—indeed the opposite. There are certainly public disagreements and controversies surrounding this book, but Bloom is not branded an "extremist" and summarily dismissed as others have been in the past. His theses are all now comfortable ones, suited to the democratic temperament of the moment in a way those same theses would not have been twenty years ago. For someone as rightly suspicious of democracy as Bloom is, the phenomenon of his book being a best seller should worry him. (It is evident, however, that Bloom did not set out to write a best seller.)

What would have been much less comfortable and more to the point would have been for Bloom to have done something like attack the public nature of our educational system. For all Bloom's abstract worries about democracy, the concrete fact that our educational system is thoroughly public and democratized is left unanalyzed. The public character of education is present at all levels of education, even the highest. One need only think of the controversy surrounding the Grove City and Hillsdale cases to realize that it is virtually impossible for *private* colleges and universities to remain free of the public domain. Bloom does draw comparisons between our institutions of higher education and the German ones prior to Hitler. He even recognizes the public nature of those German universities. Yet somehow the idea that state supported, financed, and/or influenced education may be a significant factor in the problems with education Bloom refers to does not register with him. Yet for a book that purports to examine the roots of our problems, leaving aside this issue, especially when the analogy is obvious, is surely mistaken.

When Bloom does examine the roots of the problems with education he identifies, he does so at an intellectual level. Yet as often as not he gets it wrong, or at least partially so. For Bloom our problems stem primarily from German philosophy and transplanted German professors (reminiscent of Leonard Peikoff's *Ominous Parallels*, sanctioned by Rand more than a decade earlier). Most Americans, however, could not even name a German university. They could, on the other hand, name the two most prestigious English universities. Although America is certainly a "melting pot," we are in essence British intellectually. German ideas, if they have any hold on us, must be first filtered through an *Anglo-American* consciousness. It is, for example, incredible to me that in a book which rails against relativism in values and searches for its roots in our culture David Hume is mentioned only once. Twentieth century British moral theories such as Emotivism and other forms of non-cognitivism which would naturally enter here are not given any importance either. Moreover, the Enlightenment, regarded also by Bloom to be a significant source of our problems, is primarily a British or British-French phenomenon. The Germans trailed behind, despite significant Enlightenment Liberals like Kant and von Humbolt. In essence, Bloom has gotten the influences exactly backwards. Apparently, a ranking of intellectual influences for Bloom from most to least important would look like this: German, French, English. I would suggest that the correct reading is the opposite.

For years the "Strausseans" have been trying to convince us of the importance of Nietzsche and Heidegger. But the case for these thinkers best analyzing the condition of modern man and the future of philosophy is quite separate from what makes sense as a thesis about the influences upon a failing system of education. Yet the two points are often conflated by Bloom. The matter is different with respect to the Enlightenment. Here intellectual sources may be appropriate guides to our practical problems. After all, America is a concrete product of the Enlightenment, so theoretical and practical concerns do become mixed. But Bloom's discussion strikes me as disingenuous at best, maybe even contradictory. Is there not something strange about holding the Enlightenment to blame for many of our ills while at the same time presenting its most conspicuous product (America) as a beacon for mankind's future salvation? And even if this were not America's "moment in world history," can the intellectual character of a regime be rejected without rejecting the regime itself? In this respect Marxists at least have consistency on their side. Bloom's program cannot be similarly clarified, and the ambiguities in Bloom's account keep the book well within the popular comfort zone. Had he been more forthright and less circuitous about the connection between the Enlightenment and our most deeply held values and institutions, the reception of this book might have been different.

But perhaps the message here is not that the Enlightenment was so bad, but rather that it got carried away with itself? It has gone too far, and we need to capture a sense of balance and moderation between it and antiquity which it replaced. The mean, however, does not lie in the middle between two extremes, but usually tends more toward one extreme than the other. Whatever the excesses to which the Enlightenment was prone, it may nevertheless be that "extreme" to which one should be more prone to err. That possibility is unexplored in Bloom's analysis. So even if we consider Bloom's effort to be one of moving us away from an uncritical acceptance of one extreme and back towards the mean, are we any clearer as a result

of his account about where we are to locate that mean? I think not. For all the brilliance, insight, interest, and perceptiveness of this book—and there is a lot of it, despite the fact that I have not emphasized it here—we are left rudderless. One fears that the undeniable virtues of this book will be forgotten and its message reduced to stale matters of curricular reform. Perhaps that result is inevitable when philosophy is praised but not practiced.

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Power, State and Freedom: An Interpretation of Spinoza's Political Philosophy. By Douglas J. Den Uyl. Assen, The Netherlands: Van Gorcum. 1983.

Many people do not realize that the reason why they are so often ripped off and mugged is that no one has yet produced a satisfactory political philosophy—which is also why we lost the Vietnam War, why terrorism triumphs, why Kennedy clobbered Bork, etc.

Evolution, which doesn't really care for either species or individuals, but cares more for species than for individuals, once solved the hardest problem of political philosophy—free riding—as a corollary to the invention of language.

Creatures without language are limited in their beliefs—anticipations of experience—to matters that impinge directly on their well-being: they have “sets” to the edibility of this, the danger of that, the tactical effectiveness of such-and-such a stratagem for capture or evasion. These simple beliefs—call them “low”—have the advantage of being nearly all true, for they concern survival and evolution weeds out the ones that misrepresent how things are.

With language come imagination and capability of lying and story-telling. Beliefs that are not true can now survive if they are about things and circumstances that do not make a direct and vital difference to survival. Call these “high” beliefs. Some of them, though literally false, can even enhance changes for survival if they promote individual vigor and social coherence: our chief is the great-great-grandson of the sun, my luck is bound to change for the better, the Powers that rule the world will aid us in our battle against the wickedness of our enemies, and they will surely punish me if I disobey the commands they transmit through the council of elders.

Low beliefs are the same for all peoples; high beliefs differ from tribe to tribe; nevertheless they are *beliefs*, sets toward experience. The propensity to have high beliefs, developed through the ninety-nine per cent of the human era when hunting and gathering in tribes of thirty or forty was the only mode of living, took on even more importance with the advent of agriculture and large communities. High beliefs were the glue holding these aggregates together as organic unities.

Of course that was (and is) not the only social function of high beliefs. They were the official answers to all questions about how things hang together, who causes them, and why. They defined and justified all values and all status that did not depend directly on demonstrable prowess. High beliefs were what gave meaning to existence.

But language led eventually to science, and as a result this neat solution came unstuck, creating a need that still remains unfilled.

Thales and his successors ruptured the invisible membrane that had kept high and low belief systems separated. For science too implies a world view, based, however, not on edifying fictions but on logical synthesis and extrapolation of low beliefs. (Logic and mathematics are low.) From Anaxagoras to Darwin and beyond, slowly but inexorably, the low beliefs have eaten up the high, even among the vulgar. This is good news and bad news. The good is that at last the received account of how things are is largely *true* (pace such people as Aristophanes, William Jennings Bryan, and Richard Rorty); the bad is that when high descriptive beliefs go, high normative beliefs cannot survive either—yet low beliefs seem incapable of grounding any evaluations beyond those connected to pleasure and pain as experienced by individuals. That seems insufficient either to justify or to motivate acceptable behavior.

Philosophy is the attempt to come to grips in some rational way with this theoretical and practical impasse. (What 'rational' signifies in this context is far from clear.) That is why all the really important philosophy was done in fifth and fourth century Greece and seventeenth and eighteenth century western Europe, the locales of the most seismic high/low crunches.

Political philosophers have two questions to answer, one easy, the other hard. The easy one is: why is it a good idea to have a State, that is, a hierarchical (leaders and followers) organization of people with compulsory membership and rules of behavior enforceable by physical coercion? The answer, provided first by Hobbes in the modern period, is that even the worst State is better than anarchy. Few have dissented.

The hard question is: Why should *I* support the State (by obeying its laws—including tax assessments, military draft, etc.)? It is not enough to reply: Because you just now admitted that the State is a good thing, hence good for you. All that follows from that admission is that it is a good thing for me that *other* people should obey the laws. True, if I disobey I lay myself open to the deliberate unpleasantness of the sanctions; but what if the risk of getting caught is slight or nil, and the gain of disobedience is great? Why shouldn't I be a free rider if I can? Game theory seems to endorse this as paradigmatically rational behavior, once the countervailing factors postulated by high beliefs have been eliminated.

Hobbes' philosophy, thought to be so hard-boiled, does not surmount the problem. All he says specifically about free riding (e.g. *Leviathan* chapter 15) is that it is hard to get away with. Moreover, his Laws of Nature, allegedly the dictates of reason, retain a crucial high-belief-generated normative element: I am obliged to *trust* the Sovereign to enforce the laws properly.¹ Even more obviously, the theory cannot account for my obligation to defend the Sovereign at mortal risk to myself, since I am supposed to subject myself to him in order to protect my life, and can never forfeit my right to do so.

Does Spinoza fare any better?

The view is widespread that in political philosophy Spinoza is a mere footnote to Hobbes, differing in a preference for democracy and offering a defense of free speech but otherwise sharing his principles. One of the many merits of Professor Den Uyl's excellent book is its showing of profound differences at the ground level. One of them is that Spinoza's theory, unlike

Hobbes', is devoid of normative principles (except "to increase power," p. 154). It is concerned only to show what the State *is*, and what, in consequence, the individual confronted with its power *must* do. "The reader must continue to keep in mind," Den Uyl notes (8), "that Spinoza's natural law doctrine is actually a doctrine of natural laws in the current scientific sense." Spinoza thoroughly detranscendentalizes the State—a process that in his time and place mainly consisted in showing the irrelevance of the Bible to political debate.² Nor does the State have any moral foundation: moral rules are generated by the State, not vice versa.³ And their sacrosanctity consists only in the *fact*, when it is a fact, that violators will be punished—here and now, of course. In the states of nature of both Hobbes and Spinoza, the individual has a right to all things that he has the power to obtain. But Spinoza's man, unlike Hobbes', never leaves the state of nature:⁴ power and right are coextensive, and even in society "one has the right...to break any moral rule provided that one has the power to do so." (9)

Spinoza was a "methodological individualist" (67) who held that "institutions are nothing more than individuals acting according to some specific pattern." As we are told in the *Ethics* (Part 3 Proposition 7), what any individual is, essentially, is a power of self-preservation. The State, therefore, is "not...something organic, but simply...the effective organization of individual power." (71) As it is a law of nature that every individual exerts its essential power to its fullest capability, the State comes about because social order is a necessary condition (as Hobbes emphasized) for the exercise of individual power. Social order is synonymous with (internal) peace. A condition of peace, security, and harmony, then, is what a State *is*. This is not the same as saying that the State comes into existence *in order to* produce peace. Unlike Hobbes, Spinoza did not believe that the general run of men can be moved by reason. Society is natural to humanity in that the existence of many human beings as isolated atoms is impossible—thought consideration of what such a "state of nature" might be like is useful for analytic purposes (what Den Uyl Teutonically calls "the absolute moment"). There are temporary and unstable conditions ("the intermediary moment"), however, in which men used to living in a State find themselves without one: Spinoza instances the Jews after the flight from Egypt. Even in such conditions, Spinoza believed, men would not form a State by voluntarily and rationally entering into a contract; rather, their passions would make them follow a "charismatic leader," a "hero founder," e.g. Moses, whose own motive was love of ordering people around.

"In essence," says Den Uyl, "Spinoza's prescriptive political philosophy amounts to little more than the recommendation that the *civitas* focus its attention on what is most fundamental to social order—namely, peace—and leave people free to pursue their own desires on all other matters." (118) He was a Minimalist, in the current jargon—but "by no means a theoretical libertarian," (91) because he was not opposed to a certain kind and degree of *paternalism*: when government acts *for the benefit* for the governed, it does not enslave them.

Indeed, Spinoza did not even envision separation of Church and State. All kinds of religious sects should be tolerated, he recommended, but the Established Church should be housed in magnificent structures while the Dissenters' chapels should be small and plain!

Perhaps it is a sufficient explanation of Spinoza's stance, that church-state separation was an idea whose time had not yet come. But it seems more likely that he advocated *subordination* of Church to State, as did Hobbes,

in the belief that inasmuch as most men are guided not by reason but by passion, high beliefs are indispensable for the preservation of social unity—peace. Which is (if I am right) Spinoza's solution, such as it is, to the hard problem of political philosophy: While fear of punishment can never be dispensed with, "the desire to obey and to enthusiastically follow the commands of the rulers is a more effective and efficient means of securing obedience" (84); and only high beliefs can produce this desire and enthusiasm. Though free of them himself, he did not envisage a day when the common people would be. Or, at least, he strove to postpone to day: how else are we to explain his opposition to having his *Tractatus* translated into the vernacular?

He was, I suppose, partly right and partly wrong. Right, in that the passion for high beliefs is built into the human DNA and will be around, if we are, for eons yet. Wrong, in that high beliefs are Protean in their contents and have moved away from their former focus on the Holy Scriptures and fastened upon even more sinister objects.

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Power, State and Freedom: An Interpretation of Spinoza's Political Philosophy is No. 5 in the series *Philosophia Spinoza Perennis: Spinoza's Philosophy and Its Relevance*.

1. See my article "More Than Consent: The Born-Again Hobbes," forthcoming in *History of Philosophy Quarterly*.
2. Three-quarters of the *Tractatus Theologico-Politicus* is devoted to this enterprise. It is one of the landmarks of Western thought, but fights a battle so thoroughly won—at any rate among educated people—that it is now tedious to read what Spinoza and his publisher risked their lives to bring us.
3. Hobbes made the same claim, but fudged it. Spinoza was consistent.
4. The author twice notes (15, 68) and twice forgets (23, 111) this pronouncement.

The Case for Animal Experimentation. By Michael Allan Fox. Berkeley: University of California Press. 1986.

According to Kant, the only reason why we should not be cruel to animals is that being so makes it more likely that we will be cruel to human beings. According to utilitarians, however, pains are intrinsically bad and enjoyments intrinsically good regardless of who has them, and since animals have pains and enjoyments as human beings do (far less complex, no doubt but no less real), these states of animal consciousness should be counted along with the states of human beings in estimating the total consequences of one's actions. This makes our calculations ever so much more complex—as if they are not complex enough already when considering only human beings—but they are necessary if one is to consider *all* states of consciousness. It is from this utilitarian point of view that Peter Singer wrote *Animal Liberation* and which spawned numerous other books. The main thesis of such works is that cruelty to animals, mistreatment of animals, and hunting animals for sport, are all morally wrong; and, what is more controversial, that using them in medical experiments and killing them for food is also wrong. Not to consider the welfare of animals on a par with that of human beings was called speciesism, no less a sin than that of racism and sexism.

As if this were not sufficient protection for animals, Tom Regan did Singer one better by presenting, in *The Case for Animal Rights*, a kind of animal deontology: It is not only wrong (anti-utility) to be cruel to animals, but, like human beings, they have a *right* to live and be well treated. At first it might seem that utilitarianism would do for animals everything that any animal could wish for, but there is a difference: on the utilitarian view, killing an animal painlessly would not necessarily be wrong (this would depend on the conditions), but in Regan's view the animal has as much of a *right to life* as human beings have. The animal is not a moral agent—it has no *active* rights; it is not wrong for the lion to kill the antelope, for it is not capable of moral choice. It would, however, be wrong for *us* to kill the antelope, for we *are* capable of moral choice. But the animal has *passive* rights—the right to live its own life and not *be* harmed by human beings.

Regan disapproves of all experimentation with animals, even experiments designed to cure human diseases and minimize human pain: if you can't cure the disease without using animals as means to your ends, says Regan, then you shouldn't do the experiments at all. According to Regan, it is wrong to kill animals for their skins and hides, even if human beings would suffer from cold if they lacked these things. It is also wrong to kill animals for food: if killing animals is the price paid for eating meat (and of course it is), we should do without meat entirely (including fish). Regan says it is even wrong to place animals in zoos, where they have no life of their own—they may be fed and cared for, as slaves in the American South were fed,

but they are not allowed to roam and forage for themselves; their strongest natural instinct is denied them in the confinement of zoos.

Professor Fox is opposed to all this—not that he favors deliberate cruelty to animals, or the infliction of pain when there need be no pain, or inhumane conditions in slaughterhouses and medical labs. But he is convinced that a certain amount of animal experimentation is necessary in order to save human lives. He gives ample data to support this conclusion (Chapter 4, "Animals in Research"). It sounds noble to say that no animal's life should ever be sacrificed to save that of a human being, but if your own child's life was at stake, and you saw her suffer and slowly die although her life would have been saved if some rats had been experimented on to test a vaccine, would you still say that it was wrong to experiment on the rats? (Most people would unhesitatingly kill rats when there is a rat infestation in their neighborhood; is saving children's lives a less worthy aim than ridding a neighborhood of rats?)

It is easy to say, as Fox does, that "unnecessary pain" should not be inflicted on animals, and that experiments should not be conducted on animals unless they are "necessary." We tend to nod in agreement and conclude that extremism on both sides has been avoided. When someone says that something is "necessary," however, the statement is incomplete unless the speaker addresses the question "Necessary for what?" Necessary to save human lives, we say. Very well: (1) Does it matter how many? The more human lives saved, the more justified? (2) If many are saved, does this justify *more* cruelty to animals than would be justifiable otherwise? It is strictly a numbers game—so-and-so many animals may be sacrificed to save so-and-so many human beings? (3) And what if we have no realistic estimate at the outset of the experiments how many human lives will be saved—we're sort of doing it in the dark but great things *may* come of it? What if we are conducting the experiments not for any specific purpose such as curing human diseases but simply out of intellectual curiosity or curiosity about nature? Some of the most productive and life-saving results have come from just such experiments—the saving of life was an incidental by-product of the experiment, quite unanticipated at the time, yet justified many times over in retrospect. For every such unexpected bit of ground-breaking there are dozens of experiments in which *no* life-saving or pain-saving results occurred at all—yet at the time of the experiment, the same considerations which would justify or fail to unjustify the one would justify or fail to justify the other. Is it right to place a long tube into the windpipe of a goose (causing it pain and discomfort) just to measure the blood pressure, simply out of intellectual curiosity?

(1) Consider the Drize test, in which chemical compounds that may be highly noxious are placed in the eyes of rabbits, in order to test the safety of cosmetics used by human beings. The rabbit cannot escape or engage in any behavior to remove the offending chemicals from its eyes. Persons who are not wedded to cosmetics are likely to say "The experiments may be necessary for testing cosmetics, but the end does not justify the means: this is not something necessary to life or even to health; it's better to do without the cosmetics." Again we are likely to nod approval of this reflection. But what if people are going to use cosmetics anyway? Should they do it strictly at their own risk? And even if cosmetics aren't important, isn't it important to protect people from harmful chemicals? Fox believes this is important enough to justify the experiments on rabbits.

(2) Chimpanzees are our nearest relatives in the animal world. They have the same blood type as human beings, and are used in the studies of blood diseases; surgery on chimpanzees has produced advances in organ transplants. If any animal experimentation is to be called "necessary," this would seem to be it, Regan to the contrary notwithstanding. But some of the experiments involve the infliction of discomfort and pain, and death for the animal may result if the experiment turns out differently than hoped for. What shall we say—"ten chimpanzee lives for one human life"? Many would say "Yes, at least that," citing differences between animals and people: that animals have no fear of death and people do, and that this makes an enormous difference; that the cow grazes contentedly in the pasture even an hour before it is herded onto the truck that transports it to the slaughterhouse, but this is far different from people being herded off to death-camps, knowing in advance what will happen. This is surely an important difference and in the utilitarian calculation of consequences the *dread of death* is a prime factor in distinguishing people from animals. But it is difficult to interpret the behavior of chimpanzees; do they possibly have a dread of death? And without this information, how are we to make a calculation of consequences in chimpanzee experiments? How, indeed, are we to estimate their degree of pain or frustration of desire compared with that of human beings?

(3) Whether one should test a drug on an animal surely depends on the probability of its success (must one have good reason for thinking that it quite probably will succeed, before undertaking it?). Medical experimenters often use the "LD-50" test: if 50% or less of the animals receiving the "lethal dose" die, then the experiment was worth it. In experiments Fox describes, the animals must be force-fed, and can't be anesthetized or prematurely euthanized. Surely, one is inclined to say, it would require a very important end to justify such a ghastly means. Yet if the end were the saving of a thousand children—would this be "worth it"?

(4) Many rhesus monkeys have been trapped in Asia and then transported overseas for experimentation. Through the years, says Fox, an average of 70% died on board ship on the way (even with great care taken to keep them clean and fed, and so on), and the remainder were subjected to tests on the effects of nuclear, chemical, and biological weapons, as a result of which they all died in the end. India and other countries have now forbidden the export of these monkeys. Is their use in these experiments "necessary"? That in turn depends partly on whether nuclear testing itself is "necessary." We feel that the monkeys should not be punished for the sins of human beings. Yet if we take nuclear testing as a given, it is important to know what its effects are (even in the making of safer and cleaner bombs in the future). If we don't want to put people on radioactive islands in the Pacific, and we need to take some close relative of the human species so that the results will be relevant to human beings, what is more natural than to take monkeys, who are chemical and biologically so similar to us? Unlike Regan, Fox believes that this kind of experiment *may* be "worth it." (That verdict of course is made by the human beings, not by the monkeys.)

Fox does correctly point out an inconsistency in people's thinking about animal experimentation. Those who oppose the use of animals for consumer product testing, he says (p. 187), are the very same people who are the most vociferous supporters of consumer protection (impossible without animal tests), or we do not have it: you can't have the results of testing without the testing.

(5) Some experiments use endangered species. Having a leg cut off is no more or less painful to a member of an endangered species than to a member of a very common species. Yet we are more inclined to be careful of the life of members of endangered species. Is there any justification for this?

(a) In the case of a child or a pet, we want to save the life of *this particular individual*. (b) In the case of an endangered species we want, I think, to conserve *any* members of the species, or preferably any healthy pair that can mate and thus render the species less endangered. In the first case we are concerned with a particular life, in the second case with any life within a certain species; but (c) in the commonest case, that of saving any life at all, even if that is the life of rats, Regan says it is our duty to save and preserve it just *because* it is a living thing with consciousness, and hence the "subject of a life." The fact that it is the subject of a life, not whether it belongs to a rare or a common species, is what makes it mandatory for us not to kill or injure it.

This is Regan's view, not Fox's. Indeed, anyone who takes Regan's view seems to "have nature against him." If many people feed the birds during the snowy winter when there is ice on the trees, there will be an overproduction of birds that coming spring, and many will die for lack of sufficient worms and other nourishment. Nature will restore her balance through killing off the excess, however cruel we find this restoration.

Moreover, those who say with Regan that it is the killing of animals that is wrong neglect an important feature of the situation. The elephant has become an endangered species in Africa, yet in the recent drought many elephants were shot by park rangers, because they would have starved otherwise, for lack of the enormous amount of green foliage each elephant requires every day. Animals can reproduce and soon return to their former numbers; what is fatal to their survival is the destruction of their habitat. When Botswanans raise cattle, they erect fences; when wire fences stand between lions and their waterholes, thousands of them die along these fences. When savannas are turned into wheatfields, wild animals can no longer survive. When conservationists want to ensure the continuation of a species, they are quite rightly first concerned with the habitat (as a necessary condition of such continuation), as opposed to Regan, for whom every life is sacred and for whom it is wrong to kill an elephant even to protect it from nature's slow starvation.

Fox safeguards his position by including in it certain customary qualifications, such as "only if necessary" and "only if no other means is available," (animal experiments being a last resort). But it does not escape vagueness for all that. When is the experiment "worth it?" How is animal suffering to be weighed against human suffering? What is one to do if no probability estimate can be made—and so on? By contrast, Regan's view which stops all these moves with a "verboden" sign before they start, seems like a relief. At least we know where he stands.

However, there is a crack in the wall. Regan says that if six men and a dog are on board a lifeboat that must be lightened else all will sink, it is the dog that should be thrown overboard rather than a person, because the dog has less inherent value than the person. The dog has a right to life (as do the rats in the house, even when we are trying to exterminate them), but the dog's right is overridden by the person's. This admission may seem a small one, intended as applicable only to lifeboat situations, but in

fact it can act as an opening wedge for far greater admissions. (1) If an Indian would die of cold in the north woods for lack of an animal skin to keep him warm, couldn't Regan also consider it right to kill the animal to save the man from freezing? Isn't the man the carrier of greater value than the animal, just as in the lifeboat case? (2) And if that is so, why not in the case of consuming animal food? People need complete proteins, which come from animals and fish and eggs. Couldn't one argue again that the life of the animal should give way to the life of the human being? In this case the animal's death is not *necessary* for the survival of the human being—but what if it is necessary for the all-round *health* of the human being? If people have no right to kill horses for their health, are we also denied the right to ride them? To hitch them to a plow? Isn't that using them too? Once the rights of a creature are not absolute but *prima facie*, more and more conditions can be "discovered" that override the right, and the right becomes ever less secure. Once this process of erosion has gone some distance, no animal can any longer rest secure with a mere *prima facie* right to its life and well-being.

Once it has taken this turn, the animal-rights position has become gradually indistinguishable from that of Michael Fox and other "moderates" whose view was originally presented as a sharp contrast to Regan's. The one may eat meat and the other not, the one may approve limited animal experimentation and the other not, but when it comes down to the real implications of their respective positions it is hard to tell the difference. Without the crack in the wall, of course, the contrast remains, and with it an unenviable choice between a view of extraordinary inflexibility (Regan's) and one whose elasticity (Fox's) leaves the issue of animal experimentation uncomfortably open-ended.

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