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Articles:

RAWLS AND ENVY*

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In sections 80-81 of *A Theory of Justice*,¹ John Rawls seeks to rebut in advance the charge that his principles of justice are “based in part on envy” (p. 538). I wish to examine the significance of this charge, summarize Rawls’s reply, assess the latter’s validity, and conclude with some remarks on the import of envy for Rawls’s political philosophy.

1.

Why should Rawls be concerned with this objection before it has actually been raised against his theory? The reason, he tells us, is that “many conservative writers have contended that the tendency to equality in modern social movements is the expression of envy” (p. 538). This accusation Rawls sees as directed against egalitarianism in general, not merely against certain forms of that doctrine. It would, therefore, apply to his conception of justice (“democratic equality”) which, by his own account, is a form of egalitarianism:

While there are many forms of equality, and egalitarianism admits of degrees, there are conceptions of justice that are recognizably egalitarian, even though certain significant disparities are permitted. The two principles of justice fall, I assume, under this heading. (p. 538)

The difference principle is a strongly egalitarian conception . . . (p. 76)

The egalitarianism of Rawls's two principles becomes clear when we recall the provisions of the general conception from which they are derived:

All social primary goods - liberty and opportunity, income and wealth, and the bases of self-respect - are to be distributed equally unless an unequal distribution of any or all of these goods is to the advantage of the least favored. (p. 303)

There is, then, no doubt as to the fundamentally egalitarian character of Rawls's conception of justice. Rawls is right in thinking that he has to answer any plausible charge leveled against egalitarianism as such.

But what is the nature of that charge, and is it plausible? At first one might try to answer these questions by consulting some of the "conservative writers" whom Rawls seems to have in mind. But Rawls gives the name of only one such writer, Helmut Schoeck, together with a general reference to a number of other authors mentioned or quoted in Chapters XIV - XV of Schoeck's book, *Envy: A Theory of Social Behavior*.² Unfortunately, Schoeck's own argument turns out to be almost wholly sociological and psychological, failing to add up to a philosophical case against egalitarianism. Furthermore, it would be very difficult to construct such a case from the statements of the many authors quoted by Schoeck. I therefore propose to leave aside Schoeck's arguments about egalitarianism and to try to reconstruct such a philosophical case from other indications given by Rawls. I say indications, because regrettably Rawls has not stated precisely the charge he is trying to refute. My own reconstruction will have two alternative values: (1) it is probably the argument that Rawls has in mind, and (2) if it is not, then at least it constitutes the real point at issue.

The indications in Rawls's text from which I shall try to reconstruct the argument are the following. He is concerned with the possible reproach that "the principles of justice are based in part on envy," are "the expression of envy," "give voice to envy," and "spring from envy" (p. 538). What could such a reproach add up to when directed at a contractarian form of egalitarianism? It would mean that the conception of equality chosen "would be adopted in the original position only if the parties are assumed to be sufficiently envious" (p. 539).

Now, suppose the principles of justice *were* in this sense founded on envy. What would be the objection? The objection would be that *envy is a vice* (pp. 532, 534). We obviously cannot have principles of justice whose very derivation depends on giving expression to a vice. *This* is the reproach which Rawls believes that he has avoided.

Let us restate the charge more precisely in order to clear it of all suspicions of being an instance of the genetic fallacy or a form of *ad hominem* argument. Envy is no blind feeling, but an emotion and a vice. As such, it must have an inner structure. It must be based upon perceptions and involve appraisals. It must seek satisfaction by altering circumstances. Envy therefore has certain interests. How, then, could a conception of justice be "based on envy"? By being derived from a set of premises, one of which asserts as a moral imperative that the interests of envy must be satisfied. Such a conception of justice *would make the interests of envy its own* and in that sense would be "based on envy." This is not to say that the advocates of such a conception would themselves be envious. They might have any number of motives, such as the desire to placate envy. But, at any rate, such motives would be irrelevant to the argument.

We may, then, summarize the imagined objection to Rawls's argument in the following way: (1) the principles of justice are based on envy in the sense that they have been derived from an argument asserting the interests of envy; (2) but envy is a vice; (3) therefore the principles of justice must be rejected upon moral grounds.

Now, if this is the objection to his theory that Rawls has in mind, then he is right to take it seriously. And even if he does not have it in mind, he should consider it. Let us see if his attempted vindication of his principles successfully answers the objection or has any prospect of doing so.

The strategy of Rawls's defense is as follows. He starts by giving a definition of envy which he regards as appropriate. Then he divides the argument for the principles of justice into two parts. The first part consists of the chain of inferences leading up to the final choice of the principles by the parties in the original position. The second part consists of a reassessment of the principles so chosen in order to determine whether they are consistent with the stability of society. Applying his definition of envy to the first part of the argument, Rawls concludes, as I interpret him, that no premise asserting the interests of envy thus defined enters into the choice of the principles of justice. Indeed those principles turn out to be antithetical to the interests of envy. Therefore, democratic equality *considered qua justice* is not derived from envy. Proceeding to his examination of the second part of the argument for the principles - that is, their reassessment in terms of stability - Rawls concedes that this reassessment does give

some consideration to the interests of envy. But he concludes that this consideration is both morally unobjectionable and appropriate.

2.

A close look at both the component steps and the logical structure of this rebuttal is a necessary prelude to assessing its validity. Let us take up the component steps first, beginning with Rawls's definition of envy.

We may think of envy as the propensity to view with hostility the greater good of others even though their being more fortunate than we are does not detract from our advantages. We envy persons whose situation is superior to ours (estimated by some index of goods . . . [the primary goods]) and we are willing to deprive them of their greater benefits even if it is necessary to give up something ourselves The individual who envies another is prepared to do things that make them both worse off if only the discrepancy between them is sufficiently reduced. Thus Kant, whose definition I have pretty much followed, quite properly discusses envy as one of the vices of hating mankind. (p. 532)

Envy, then, has several necessary conditions according to Rawls: (1) the focus of the envious person's concern must be on the mere "discrepancy" between himself and the envied person, that is, their disparity with respect to the possession of the goods in question; (2) he must see his own position in this respect as inferior; (3) he must view this fact not only with regret, but with chagrin and even hostility, implying at least a minimal readiness to act to alter the situation in his own favor; (4) he must be ready even to accept loss to himself in order to bring about this end. These necessary conditions set the stage for the rest of Rawls's argument, thus some preliminary comments are called for.

In the first condition above, I have used the word "mere" to indicate that the person who feels envy does so even though the person he envies has a right to his superior advantages or possesses them justly. Rawls brings this out clearly in his comparison of envy with resentment:

A further point is that envy is not a moral feeling. No moral principle need be cited in its explanation. It is sufficient to say that the better situation of others catches our

attention. We are downcast by their good fortune and no longer value as highly what we have; and this sense of hurt arouses our rancor and hostility. Thus one must be careful not to conflate envy and resentment. For resentment is a moral feeling. If we resent our having less than others, it must be because we think that their being better off is the result of unjust institutions or wrongful conduct on their part. Those who express resentment must be prepared to show why certain institutions are unjust or how others have injured them. What marks off envy from the moral feelings is the different way in which it is accounted for, the sort of perspective from which the situation is viewed. (p. 533)

If envy does not wax on grounds of the envied person's unjust possession, neither does it wane on grounds of his just possession. Its "perspective" is amoral, and it is ready to act in either case: "We are prepared to deprive them of their greater benefits." Envy both in perspective and in action is blind to right and justice.

Having defined envy and distinguished it from resentment, Rawls argues that envy is not to be found among the motives of the parties in the original position. The reason is that envy is absent from his own list of such motives, a list that he has fixed by stipulation. Envy is excluded from this list because it is a special psychological propensity which may or may not occur or which may occur with varying intensities in different persons. Such propensities have to be left behind the veil of ignorance by the very nature of Rawls's argument (pp. 530, 143-4).

Nor can it be argued, he continues, that envy is introduced into the original position because the other conditions of the position provide for it. He is here thinking of the circumstances of justice, the formal constraints of the concept of right, the list of alternative conceptions presented to the parties, and, no doubt, the veil of ignorance itself. Indeed, "each of the stipulations of the original position has a justification which makes no mention of envy. For example, one invokes the function of moral principles as being a suitable general and public way of ordering claims" (p. 538). Finally, Rawls points out, the very conception of justice - democratic equality - chosen by the parties is antithetical to the interests of envy. For that conception provides for inequalities on condition that the least well off representative man thereby achieves a betterment of his position. But this is precisely the exchange that the envious man of Rawls's definition would *refuse*. Thus "the content of the principles" is antithetical to "the characterization of envy" (p. 538). Rawls maintains that these considerations, taken together, show that the first part of the argument for the principles is

envy-free.

But what of the second part of that argument, namely the reassessment of the already derived principles in terms of stability? That reassessment is necessary, according to Rawls, because any threat to the stability of a society governed by any conception of justice will “undermine the arrangements it counts to be just” (p. 531). Since envy, by Rawls’s definition, is “a form of rancor that tends to harm both its object and its subject” (p. 533) (it harms its subject for instance by the loss he is willing to take), it is “collectively disadvantageous” (p. 532) and, when aroused to a certain extent, will render the social system both “unworkable and incompatible with human good” (p. 531). The well ordered society must, then, be such as not to arouse envy to any considerable degree. Any proposed conception of justice must pass this test.

How, then, would Rawls’s principles minimize the occurrence of envy? It is hard, at first glance, to see how they would do so at all, since Rawls’s envious man would by definition reject the difference principle and continue to nurse his rancor. One would think that the envious man would be a continued threat to stability. To deal with this problem, Rawls introduces the concept of “excusable envy.” A society based on his principle should greatly reduce excusable envy. As I interpret it, Rawls’s argument runs something like this: The total amount of envy in a society is made up of excusable envy plus inexcusable envy. Democratic equality reduces the amount of excusable envy, thereby reducing the total amount of envy and contributing to the stability of society. The inexcusably envious who remain are not a large enough group to be a real threat. I am not certain that this is what Rawls means, but I cannot see what else he could mean.

Now, what is “excusable envy”? Well, Rawls tells us,

Sometimes the circumstances evoking envy are so compelling that given human beings as they are no one can reasonably be asked to overcome his rancorous feelings.

A person’s lesser position as measured by the index of objective primary goods may be so great as to wound his self respect; and given his situation, we may sympathize with his sense of loss. Indeed, we can resent being made envious, for society may permit such large disparities in these goods that under existing social conditions these differences cannot help but cause a loss of self-esteem. For those suffering this hurt, envious feelings are not irrational; the satisfaction of their rancor may make them better off. When envy is a reaction to the loss of self-respect in circumstances where it would be unreasonable to expect someone to feel differently,

I shall say that it is excusable. Since self-respect is the main primary good, the parties would not agree, I shall assume, to count this sort of subjective loss as irrelevant. Therefore the question is whether a basic structure which satisfies the principles of justice is likely to arouse so much excusable envy that the choice of these principles should be reconsidered. (p. 534)

This passage attributes the excusability of certain cases of envy to their supposed rationality. In these cases the satisfaction of envy would make their subjects better off instead of worse off. Those who are excusably envious are not, then, willing to take a loss in order to satisfy their envy. They would, presumably, accept the "deal" offered by the difference principle if they lived in a society whose basic structure were governed by Rawls's conception of justice. What they would - excusably from Rawls's point of view - do in less egalitarian societies is something that Rawls seems willing only to hint at.

Rawls next tells us that the main motivational basis of excusable (?) envy is a "lack of confidence in our own worth combined with a sense of impotence" (p. 535). (I have inserted the question mark because Rawls seems subtly to shift his ground at this point; I will have to leave the discussion of this matter to Section 3) Rawls's problem, then, is to discover what features of the basic structure of society lead some people to have a lack of self-confidence, and whether democratic equality tends to minimize such features. Rawls believes that the main features of a society detracting from its citizens' self-respect are (1) civic inequality, (2) the visibility of social and economic inequalities, and (3) the absence of some "constructive alternative to opposing the favored circumstances of the more advantaged" (p. 535). He then argues that the principles of democratic equality provide against the first by the political liberties they guarantee. The second is provided against by the lesser income spread allowed and by the fact that "the plurality of associations in a well ordered society, with their own secure internal life, tends to reduce the visibility, or at least the painful visibility, of the variations in men's prospects" (p. 536). As for the third, democratic equality would seem to offer as many constructive alternatives as any other conception of justice. Rawls adds an additional advantage: since claims on "social resources" are disconnected from both the concept of desert and the standard of perfection, "no one supposes that those who have a larger share are more deserving from a moral point of view" (p. 536) or are being rewarded for any excellence they display. The principles of democratic equality, therefore, "underwrite their self-assurance" (p. 536). On all these counts, democratic equality turns out to contribute to the stabi-

lity of society because of its tendency to placate envy. The principles of justice do not, then, have to be reconsidered because of any difficulties that might arise in this area. Furthermore, our consideration of the principles of justice under the heading of stability has been morally innocuous, for we have not *derived* them in this part of the argument.

Rawls is willing to admit that what he calls "strict egalitarianism" may be based on envy. Strict egalitarianism, as we have seen, is "the doctrine which insists upon an equal distribution of all primary goods" (p. 538). As I interpret Rawls, he would apply the term "strict egalitarian" only to a person who, knowing the economic law that incentives lead to growth in the "social product," still insists on equal distribution. Such a person would be envious in the sense defined by Rawls because he would be hurting himself by refusing to accept the "deal" offered by the difference principle. On the other hand, a person unaware of this economic law and acquainted perhaps only with "zero-sum" conditions in what Rawls calls "poor peasant societies" (p. 539) might insist on equal distribution of primary goods, thinking that one man's gain is inevitably another's loss. Such a person would be motivated by resentment, not envy, for he would think, however mistakenly, that unequal distribution inevitably means the imposition of losses on some men without compensation. "In this case, it would be correct to think that justice requires equal shares" (p. 539). The advocate of such a policy would not be a strict egalitarian in the sense defined, only an unenlightened one. When we compare the three conceptions of justice - strict egalitarianism, unenlightened egalitarianism, and Rawlsian democratic egalitarianism - we find that, in Rawls's view, only the first provides for the satisfaction of the claims of envy. The last two are absolved.

Rawls now believes that he has demonstrated (1) that the principles of justice are innocent of the charge that they provide for the satisfaction of the claims of envy, and (2) that a society based on the principles of justice would be unlikely to encourage widespread envy, and therefore would be more stable than many other societies. He is claiming, therefore, that his proposed society is innocent of a vice and is the possessor of an additional virtue. Let us see how these claims stand up.

3.

Taking up the steps of Rawls's argument one by one, let us begin by examining his definition of envy. How far is it in accord with ordinary usage? Assuming that dictionaries reflect the latter to a reasonable

degree, I have extracted several examples. In each case the definition chosen (1) states a current meaning, (2) comes closest of all other definitions under that entry to the definition given by Rawls, and (3) implies, either explicitly or implicitly, that what is being defined is a vice. Implicit designation of a vice would consist in the absence of any other definition under that entry that is close to Rawls's and expresses greater opprobrium in its choice of words. I may add that I cannot find examples that disagree with the following.

Envy: 3. The feeling of mortification and ill-will occasioned by the contemplation of superior advantages possessed by another.)³

2a. A painful or resentful awareness of an advantage enjoyed by another, accompanied by a desire to possess the same advantage.⁴

To envy is to feel spite and resentment because someone else possesses or has achieved something that one wishes he had himself. (*The award has made him envy you and he is no longer your friend.*)⁵

Jealous - Envious: A person is jealous of intrusion upon that which is his own, or to which he maintains a right or claim; he is envious of that which is another's and to which he has no right or claim. One is envious who begrudges another his superior success, endowments, possessions, or the like. An envious spirit is usually bad.⁶

To vary our sources, I shall add a definition from a dictionary which is both older and in another language:

Envy (Neid): 3. Today as in earlier language envy means that state of mind, characterized both by odium and by self-torment, which is distressed at the perception of the prosperity and the superior merits of others, begrudges them these things and usually wishes at the same time to destroy them or to possess them oneself. Synonymous with grudgingness, the evil eye.⁷

Leaving the question of ordinary usage aside, let us look at a sample of definitions of envy given by moral philosophers in the past.

Aristotle:

Envy means being pained by people who are deservedly prosperous. To see whether the good man is envious, you must ask who is envious and what is envy. For if envy is pain at the apparent prosperity of an honest man, clearly the good man is not envious, for then he would be a bad man.⁸

St. Thomas Aquinas:

Another's good may be reckoned as one's own evil, insofar as it conduces to the lessening of one's own good name or excellence. It is in this way that envy grieves for another's good¹⁰

Envy . . . is always sinful.¹¹

Envy is a mortal sin.¹²

Envy is . . . a capital vice.¹³

Spinoza:

Envy is hatred insofar as it affects man so that he is sad at the good fortune of another person and is glad whenever any evil happens to him.¹⁴

Butler:

Emulation is merely the desire and hope of equality with, or superiority over others, with whom we compare ourselves To desire the attainment of this equality or superiority by the particular means of others being brought down to our level, or below it, is, I think, the distinct notion of envy. . . . [Envy is an] unlawful passion.¹⁵

Finally, there is the definition of Kant, which Rawls associates with his own:

Envy (*Livor*) is the propensity to view the well-being of others with distress, even though their welfare is in no way detrimental to one's own.¹⁶

What do we learn from a comparison of these definitions of envy with Rawls's? First and most important, there is a crucial provision present in Rawls's definition, but absent from all the others, whether they are given by dictionaries or moral philosophers. Rawls's provision is that the person who feels envy must be willing to accept

a loss to himself in order to reduce the disparity between himself and the envied person. Rawls regards this as a *necessary condition* of envy: he who is not prepared to accept such a loss is not envious. Kant's definition, which Rawls tells us he has "pretty much followed," seems to fall short of this provision.

This clause in Rawls's definition is *essential* to his claim that the interests of envy are not provided for in the first part of the argument for the principles of justice. Indeed, if we examine one by one each of the conditions of the original position - the rationality of the parties, the circumstances of justice, the formal constraints of the concept of right, the list of alternative conceptions presented to the parties, and the veil of ignorance - we will find that not one of them provides for the interests of envy in the *Rawlsian* sense. Not one of them panders to that vice which refuses to accept the betterment of one's own position in return for permitting another to have more primary goods than oneself.

But what if we take the other definitions listed above? (1) We find the each of them either explicitly or implicitly identifies envy as a vice. (2) But we find at the same time that none of them specifies as a necessary condition of envy the willingness on the part of the envier to accept loss to himself in order to bring his rival down. On the contrary, they do not even mention such an extreme attitude. Of course the willingness to accept such a loss might be regarded by those offering the above definitions as a *sufficient* condition of envy, but there is no reason to suppose that they would require it as a *necessary* condition. And certainly usage reflects the truth here. For why should envy have to be implacable in order to be envy? This is not true of any other vice. We know that a person may be deflected from pursuing one of his vices by a cleverly considered appeal to another of his vices. Are we to assume that no one ever suffers from envy unless it is his *strongest* vice? Is there no way to bribe an envious man?

I submit that there is, granting that he has a slightly stronger urge, namely the desire to get a state-guaranteed free ride. This is to offer him a deal, a deal like Rawls's difference principle. Indeed, the difference principle is exquisitely tailored to a person of this type. Rawls, of course, would not admit that this stronger urge, even when a habit, is a vice, but that is not essential to our point. What is essential is that Rawls's difference principle makes the satisfaction of envy in the ordinary sense the criterion of justice, and even the substitute for economic progress, unless the other urge which we have just named is satisfied in its place.

The great difference between Rawls's view of envy and that expressed in the definitions quoted above now begins to emerge. The

latter regards as necessary to envy only two conditions: (1) chagrin that another person has more than oneself, and (2) unwillingness to modify this attitude in either feeling or action on the ground that the other is in rightful possession of his superior advantages. These two attitudes taken together are enough to make envy a vice; indeed the second involves a readiness to violate the rights of others. For the standpoint of the ordinary view of envy, readiness to accept the difference principle would not prove the *absence* of envy; rather it would prove that one is *willing to swallow one's envy for a consideration*. The very desire for this consideration would from some other moral perspectives only add a second, perhaps worse, vice to the first. But on Rawls's view, at least, acceptance of the trade-off would show innocence of envy. It is clear that these divergent views of envy reveal moral attitudes separated by a great gulf. What is important to see, however, is that Rawls's definition of envy is crucial to his defense of his own moral attitude. That being the case, the definition must be defended on independent grounds. Do such grounds exist? Is there, in fact, such an autonomous vice as is described in Rawls's definition? Or is it rather the case, as I submit, that what Rawls is discussing is merely the intensification of envy to the point where it becomes a person's dominant vice?

It is true that Schoeck sometimes speaks of envy in the way Rawls does. But he qualifies his position so that implacability is not presented as a necessary characteristic of envy. He says, for instance, that "the envious man will *often* suffer injury to himself so as to bring it on his fellow man"(emphasis mine).¹⁷ When the vice has become dominant in this way we can speak of *the envious personality*. It is this envious personality which is represented in allegories and morality plays as Envy with a capital E. This is the sense, I think, which Schoeck has in mind when he quotes proverbs like, "Envy devours its own master," "Envy flogs itself," "Envy cuts its own throat," and so on.¹⁸ But that extreme development of envy does not enter into Schoeck's formal definition. Rather, he identifies envy as

the state of mind of a person who cannot bear someone else's being something, having a skill, possessing something or enjoying a reputation which he himself lacks, and who will therefore rejoice should the other lose his asset, although that loss will not mean his own gain. (Emphasis mine.)¹⁹

Rawls, it seems, has constructed a sense of envy which is so narrow that it excludes many cases coming under the ordinary meaning. But it is on the basis of this ordinary meaning that a strong argument

can be brought against Rawls's egalitarianism.

Rawls seems to be vaguely aware that he is departing from the ordinary meaning of envy, and this awareness appears like the return of the repressed to haunt his very definition. Observe how in that definition he says "the individual *who* envies another is prepared to do things that make them both worse off if only the discrepancy between them is sufficiently reduced" thus making willingness to accept injury *essential* to envy. But observe also that a few lines before that, also within the same definition, he says that "we *envy* persons whose situation is superior to ours *and* we are willing to deprive them of their greater benefits even if it is necessary to give up something ourselves" (p. 532, emphasis mine). Here Rawls falls back into the ordinary meaning of envy, to which willingness to accept a loss is *accidental*. But these two meanings contradict each other, and Rawls must choose between them. If he chooses the ordinary and wider meaning, then under that concept will be included the case of the man in whom envy is a very strong urge and who will therefore hold out for absolute equality until he receives a bribe satisfying a yet stronger urge: to get something for nothing from the state. Surely it could not be denied that such a man's modified egalitarianism would in part be "based on envy." But if Rawls chooses the narrower meaning - as, of course, he does - then he can be accused of being arbitrary and tendentious. I believe that I have shown how arbitrary it is. In what sense can it be said to be tendentious?

Rawls's definition of envy is tendentious because it is perfectly tailored to his difference principle. If it is urged that the difference principle is "based" on envy, he answers by defining envy in such a way that it could not serve as a motive for choosing that principle. But this is a circular argument. The objection was based on the common understanding of envy, and cannot therefore be circumvented by redefinition. Of course there can be no objection to moral philosophers giving their own definitions of virtues and vices. But this will not automatically dispose of objections to their theories that are based on common understandings of these traits. The conflict between common understanding and philosophical redefinition must be discussed and settled in the light of the realities being dealt with. Redefinition by itself will settle nothing.

The same studied and tendentious process of redefinition to which Rawls resorts in the case of envy is carried over into his treatment of jealousy, grudgingness, and spite. Rawls needs to redefine these traits because of the inner needs of his defense against the envy objection. Unsure that his defense has been decisive, Rawls proposes a kind of truce. After all, he points out, objections of this nature can cut both ways. If those who advocate the difference principle can be

accused of giving voice to envy, so those who reject it for less egalitarian conceptions can be accused of giving expression to vices which are the opposite of envy:

Jealousy and grudgingness are reverse, so to speak, to envy. A person who is better off may wish those less fortunate than he to stay in their place. He is jealous of his superior position and begrudges them the greater advantages that would put them on a level with himself. And should this propensity extend to denying them benefits that he does not need and cannot use himself, then he is moved by spite. These inclinations are collectively harmful in the way that envy is, since the grudging and spiteful man is willing to give up something in order to maintain the distance between himself and others. So far I have considered envy and grudgingness as vices. (pp. 533-4)

One could say to conservative writers that it is mere grudgingness when those better circumstanced reject the claims of the less advantaged to greater equality None of these charges and countercharges can be given credence without first examining the conceptions of justice sincerely held by individuals and their understanding of the social situation in order to see how far these claims are indeed founded on these motives. (p. 540)

We seem to have here a *tu quoque* argument, which Rawls then half withdraws on the condition that his would-be critics desist. The success of any such strategy depends, however, on common agreement that jealousy, grudgingness, and spite are, *as Rawls has defined them*, vices. In the absence of detailed demonstration by Rawls or initial agreement on this point by his opponents, our only resort can be to ordinary usage and our best available means reference to dictionary definitions. In making such reference, I shall follow the same principles I did in the case of the term envy. Also, I shall assume that Rawls is using the term "jealousy" as approximately synonymous with "grudgingness" and the term "spite" as a special intensification of grudgingness. There is some doubt as to whether Rawls regards simple grudgingness, before it reaches the point of spite, as a vice, but I shall assume that he does so on the ground that otherwise his introduction of grudgingness into the argument would be pointless. The following, then, are the dictionary entries which I think bear on the point.

Grudgingness: The condition of quality of being grudging, unwill-

ling, reluctant or stinting.²⁰

The quality or state of being grudging.²¹

Grudging: That grudges: . . . unwilling, reluctant, resentful, envying.²²

1: that grudges: UNWILLING, RELUCTANT, ILLIBERAL, UNGENEROUS.²³

Begrudge: To grumble at, show dissatisfaction with; esp. to envy one the possession of; to give reluctantly, to be reluctant.²⁴

Jealousy: 3. Solicitude or anxiety for the preservation or well-being of something; vigilance in guarding a possession.²⁵

4b. in respect of success of advantage: Fear of losing some good through the rivalry of another; resentment or ill-will towards another on account of advantage or superiority, possible or actual on his part; envy, grudge.²⁶

1a. a jealous disposition.²⁷

2. a zealous vigilance.²⁸

Jealous: 1c. hostile toward a rival or to one believed to enjoy (as a possession or attainment): ENVIOUS, RESENTFUL.²⁹

Spite: 2. A strong feeling of contempt, hatred, or ill-will; intense grudge or desire to injure; rancorous or envious malice.³⁰

2a: often petty ill-will or hatred toward another accompanied with the disposition to irritate, annoy or thwart; envious or rancorous malice.³¹

Looking over these definitions, one cannot help being struck by the fact that they answer so little to Rawls's requirements. For what Rawls needs is (1) a vice, which is (2) attributable essentially to those who are "better circumstanced," and (3) in virtue of which they seek to preserve their superior position by rejecting "the claims of the less advantaged to greater equality." Finally, to complete this structure, he needs (4) another vice, perhaps the intensification of the first, whose essential mark is the willingness to accept a loss in order to preserve the inequality in question. These requirements are not met at all. For

the definitions agree, to be sure, in identifying grudgingness as unwillingness to give, but they do not say who is unwilling to give what to whom or how far short of equalization of holdings this reluctance begins. As to grudgingness or jealousy being necessarily regarded as vices in these definitions, the presumptions are certainly not favorable to Rawls. Of course, when these terms are treated as equivalent in meaning to envy, one can presume that they denote a vice; otherwise they could indicate a neutral trait, or even a virtue, as in the case of two of the definitions of jealousy. One might think, of course, that "illiberal" and "ungenerous" might be the names of a vice, and indeed they might. But then two further requirements would have to be satisfied if "generosity" were to do the work Rawls requires, i.e., motivate people to *accept* democratic equality: (1) generosity would have to be defined as necessarily indiscriminate with respect to desert, and (2) a man would have to be defined as ungenerous unless he supported the forcible seizure of goods held by others for redistribution to the "less advantaged." I do not think that the notion of generosity will bear this weight, and, if it doesn't, then its opposite is not the vice that Rawls needs. As for spite, quite clearly our definitions regard that trait as a vice, but they characterize it in a way that is of no value for Rawls's purpose. This whole argument, far from amounting to a successful counter-attack against the "conservatives" (by which Rawls seems to mean those less egalitarian than he), only shows how deceptive the process of redefinition can be. This is indeed only one example of the deeply embedded ideological rhetoric that pervades so many of Rawls's arguments.

I believe that I have now shown (1) that Rawls's defense against the envy objection is based upon a tendentious redefinition of envy, and (2) as a corollary, that his counter-attack against his anti-egalitarian opponents is based on equally tendentious redefinitions of grudgingness and spite. If I am right in my arguments so far it follows that, whereas Rawls's "conservative" opponents cannot be accused of pandering to a vice, he can, for the demands of envy in the ordinary sense are satisfied and promoted by Rawls's principles. I have thus met Rawls's challenge and shown that his principles do indeed "give voice to envy." I have shown this by demonstrating a one-to-one correlation between "the content of the principles and the characterization of envy." And of course doing this included, but goes beyond, rejecting as circular and "loaded" his own formula as to how alone he might be refuted: "one must first argue that the form of equality objected to is indeed unjust and bound in the end to make everyone including the less advantaged worse off" (p. 538). For his conception of justice cannot be accepted until it is *first* proven not to be based on envy.

What remains to be shown is the *precise way* in which the

interests of envy are covertly assumed to exist in the motives of the parties and covertly provided for in the other conditions of the original position. This I shall now proceed to do.

The basic motivations of those in the original position are set forth in Rawls's "thin theory of the good." This theory both describes the primary goods and specifies the method ("rationality") by which the parties order such goods and seek means to their acquisition. All this involves an implicit theory of human nature which sees the latter as a set of pre-given goals and which sees reason as merely an instrument of those goals. Reason operates by pruning these goals to meet the more implacable demands of nature, arbitrating among those which remain, and, finally, seeking the most effective means of implementing the resulting life-plan. There is no discussion of the obvious alternative procedure. Such a procedure would be to define man as a rational animal, specify his precise relation to a natural environment open to rational control but not to arbitrary demands, and then positively formulate his good in terms of that total picture. For Rawls, on the contrary, "an individual's good is the hypothetical composition of impulsive forces that results from deliberative reflection meeting certain conditions" (p. 417). Among these conditions may be the immediate and absolute veto of nature, and in this case, of course, a given goal must be omitted from the life-plan (e.g., an armless man must abandon the goal of being a violinist). But there are situations where nature's veto may be hidden and nature's penalty even shifted to other people, as in the case of the goal of occupying a position for which one is not the most qualified candidate. Normally nature's veto would be expressed through the free market, i.e., the refusal of employers to hire, and of consumers to patronize, those who are unqualified for a position. Not so in Rawls's society. For him "the realization of the self which comes from a skillful and devoted exercise of social duties" (p. 84) is a fixed goal. If nature vetoes that goal in certain cases, then we must find "a conception of justice which nullifies the accidents of natural endowment" (p. 15) lest those holding to such goals in the face of whatever failures or test results not "be deprived of one of the main forms of human good" (p. 84). To assist such people to attain such aims, the state must sometimes force employers to abandon their hope to "attract superior talent and encourage better performance" (p. 84). In this way we avoid "a callous meritocratic society" (p. 100).

Such a conception of the human good, not being objectively founded in the relation of man to nature, can only lead to a conception of self-respect which is subjective and arbitrary. That is to say, a person's self-respect will not be founded on a hard objective look at one's own performance but upon how one appears to other people,

and, indeed, upon the opinions of those others. And Rawls's theory of self-respect is precisely what one would expect in view of this demand. It is in large part subjective, or, more strictly, socially subjective, dependent on the evaluation of the group (see pp. 440-46) of what we sometimes call the "significant others":

While it is true that unless our endeavors are appreciated by our associates it is impossible to maintain that they are worthwhile, it is also true that others tend to value them only if what we do elicits their admiration or gives them pleasure. (p. 441)

It is not surprising that those basing their self-respect on such foundations would be in constant fear of being objectively evaluated. Any such wound to a self-respect so conceived can only threaten the onset of gnawing pangs of envy. They would be "downcast" (p. 533). This being so, is it any wonder that such people would grasp eagerly at principles of justice which would "underwrite their self-assurance" (p. 536)?

Granted that the parties in the original position hold Rawls's view of self-respect, we can readily read their motives. Rawls tells us that envy is not to be found among such motives because he has not listed it as being there. But we have seen that one reason he had for not listing it is because he has an arbitrary definition of envy. But we should recall that he gives another reason, namely that envy is an emotion that varies from one individual to another. Now, if my argument has been correct, envy to a moderate degree, or at least a tendency to the same, is what all the parties either have or expect to develop. Rawls in fact admits it. He tells us that envy of this kind is "a reaction to the loss of self-respect," and that, "since self-respect is the main primary good, the parties would not agree, I shall assume, to count this sort of subjective loss irrelevant" (p. 534).

It is true that this seems to come in the second part of the argument. But the fact is that the parties know this as part of their knowledge of the primary goods, and that they know it behind the veil of ignorance. Now, since the need to avoid envy plays its part in the choice of the principles, and since that need is based on a tendency to or fear of envy already present, it follows that, in a clear sense, the choice of the principles of justice is "based on envy."

Rawls tells us that the other stipulations of the original position are not based on envy. They are supposedly "a suitably general and public way of ordering claims" (p. 538). But these conditions are all based on Rawls's primary concept of "justice as fairness." "Justice as fairness" is the name of his *theory of justice*, which demands that the

conception of justice governing the basic structure of society be chosen under conditions that are "fair." But what is fairness? In Rawls's original explanation it was simply "one of the forms of conduct in which the recognition of others as persons is manifested,"³² the form of which is concerned with equal treatment and the prevention of anyone's being "taken advantage of."³³ Without receding from this position, he explains fairness in *A Theory of Justice* as representing "certain ends that cannot be given up" (p. 111), ends that have been identified as such by "our considered judgments in reflective equilibrium" (p. 111). Rawls explicates these demands as similar to the claims of children upon their parents for equal "attention and affection" (p. 540). The claim to be treated in this equal way is based on being a "moral person" (p. 12), which means a moral agent. This quality is, of course, a very abstract one, entirely separable from the notion of being anyone in particular, or of having any particular rights. Now, whatever one may think about this claim, it is important to see that Rawls makes it the basis of all other rights and claims. And it is equally important to see that it functions in conjunction with Rawls's concept of self-respect.

The application to society of the notion of fairness results in the "concept of justice," which is "defined . . . by the role of its principles in assigning rights and duties and defining the appropriate division of social advantages" (p. 10). Accepting this *concept* as setting the parameters of their choice, the parties in the original position are to choose a *conception* of justice which is one of its interpretations (p. 10). But although Rawls claims that his *concept* of justice is neutral between *conceptions* of justice (p. 6), the parameters of the concept rule out all antecedent rights based on who the parties are and how they have acquired what is theirs. For Rawls, justice is not the recognition of rights; rights are, rather, created by the principles of justice and then distributed in the "appropriate" way. The only discussion allowed is over which way in the most appropriate. But the answer is predetermined anyway by the one natural right which Rawls recognizes as antecedent to the contract. This is the right to be treated "equally." The search for the appropriate distribution of rights is therefore a search for the answer to the "problem" of inequality. This is for Rawls the central question of justice (p. 7). The real "end that cannot be given up" turns out to be *equality*, at least as an ideal. This is because inequality is seen as an affront to self-respect. The central interest of Rawls's *theory* of justice, as well as his chosen *conception*, is thus identical with the interest of envy.

Rawls's *concept* of justice, therefore, rules out every *conception* of justice that does not take the demands of envy as at least the premises of all negotiation. Above all, the Lockean theory of natural

rights is excluded, and with good reason. According to Locke, each person has a natural right to the fruits of his own labor. But as different people put in different amounts of labor, the result is economic inequality. There can be no objection to this, according to Locke, for the world has been given "to the use of the industrious and the rational . . . not to the fancy or covetousness of the quarrelsome and contentious."³⁴ Now, covetousness is the sister of envy. And envy, allied with shrewdness (rationality) would, given the chance, gladly give way to covetousness and accept the deal offered by the difference principle. For thereby one of the aims of envy itself - spoilation of the envied person - would always be a threat hanging over the latter's head unless the principle were observed to the letter. Locke's theory of natural rights is antithetical to the interests of both covetousness and envy, and Rawls's exclusion of that doctrine from his list of "conceptions of justice" is a tacit admission of the commitment of his own theory to those interests.

We could pursue our argument to show that the whole elaborate machinery of the original position is introduced so as to serve the interests of envy. It is not necessary to do that in detail since the principles of the argument are clear enough. But if the argument is correct, the implications range beyond Rawls's theory of justice. They would be equally valid for his whole projected theory of right (p. 17). And that is, I think, a sober prospect.

But what of the second part of the argument, Rawls's reassessment of the principles of justice in the light of stability? Suppose that the derivation of the principles has been shown to be envy-free. Could the second part of the argument be absolved of the charge of letting in envy again by the back door? The answer to this is to be found first by examining closely Rawls's concept of "excusable envy" and then by considering the logical relation of the second part of the argument to the first. Let us start by returning to the passage on "excusable envy" (p. 534). Rawls is here introducing into the discussion a new entity, "excusable envy." Is this, together with "inexcusable envy," a coordinate species of the genus envy as I have suggested above? If so, there would be an advantage for Rawls. For it would now be easier to conceive envy as one integrated phenomenon, a social problem whose incidence would be reduced by his principles of justice. But Rawls in fact shies away from treating the two as species of one genus. This is shown by the fact that he never uses the term "inexcusable envy." The reason for this reluctance is not far to seek. Rawls has already defined envy as a vice. Now, how can a vice have two manifestations, one inexcusable and one excusable? There is no such thing as an excusable vice. Even more, there is no such thing as a vice for which it is excusable not to take strong measures to abandon.

But Rawls regards "excusable envy": as something which is not only excusable to *have*, but also excusable to *nurse* and to *seek outlets for*. Therefore he avoids classifying it as a vice. Indeed it is likely that he would deny that it is a vice, for he introduces the section discussing "excusable envy" with the words, "So far I have considered envy and grudgingness as vices" (p. 534).

But if "excusable envy" is not a vice, on Rawls's assumptions, what is it? To answer this question we shall first have to ask what makes it excusable. One answer that Rawls gives is that it is a reaction to a disparity considerable enough to cause a "wound" to the "self-respect" of the envious man. It is needless to point out that the only way in which this could excuse envy would be if Rawls's theory of self-respect and the consequent moral imperatives which it would impose were true. What I want to emphasize now is that if all that were established, envy would then become indistinguishable from justified resentment, and, all things equal, to pursue the satisfaction of such resentment is to pursue justice, and to pursue justice is a virtue. But if Rawls takes this line, there is no need for separate treatment of excusable envy under the heading of stability. All this could have been taken care of in the first part of the argument.

But Rawls obviously does not do this. This is because he wants to treat envy as a vice whose incidence can be reduced by the adoption of his principles. Now, he cannot claim that a basic structure based on his principles would reduce envy as he has previously defined it, that is, envy in the sense I have called "inexcusable." Hence he must claim that it reduces "excusable envy." To make this alleged reduction even relevant to his case, he must treat "excusable" and "inexcusable" envy as if they were different manifestations of one social phenomenon which is in fact a vice. Rawls is thus trying to have it both ways: he must avoid calling "excusable envy" a vice while treating it as a vice when he needs to do so.

How does Rawls treat "excusable envy" as a vice? He does so in two ways. The first way is to stress that it is nasty, unpleasant, and a form of rancor. As such it seems to be quite different from resentment. It seems to be an unpleasant characteristic in a person and a canker on society. But the second way in which he treats excusable envy as a vice is by dropping the distinction between the two kinds of envy right after he has introduced it! He does this in the *same* paragraph in which he tells us he is going to discuss *only* "excusable envy":

We are now ready to examine the likelihood of excusable general envy in a well-ordered society. I shall only discuss this case, since our problem is whether the principles of

justice are a reasonable undertaking in view of the propensities of human beings, in particular their aversion to disparities in objective goods. Now I assume that the main psychological root of the liability to envy is a lack of self-confidence in our own worth combined with a sense of impotence. Our way of life is without zest and we feel powerless to alter it or to acquire the means of doing what we still want to do. *By contrast* someone sure of the worth of his plan of life and his ability to carry it out is not given to rancor, nor is he jealous of his good fortune. Even if he could, he has no desire to level down the advantages of others *at some expense to himself* (pp. 534-5, emphases mine).

Rawls thus falls back on what I have called "inexcusable envy." This is certainly a vice, and vices do call for reduction in terms of stability, but this is one vice which Rawls's principles are hardly designed to reduce. Rather, they are designed to reduce "excusable envy," whose satisfaction would make its subject "better off." But this is not on Rawls's assumptions a vice for the reasons we have given. We might add that it is not a vice under his own definition of vice, which is that of something which makes both its subject and its object worse off.

Rawls seems to me to be driven by yet another imperative in introducing all this ambiguity. He seems to be suggesting that envy is sometimes not only excusable in the envious person, but that it is "society's" fault, that it is the fault of people *other* than the envious person. And he seems to be further suggesting that it is inexcusable for these other people not to take measures to reduce the vice. But the measures in question amount to the adoption of Rawls's principles of justice. Thus an additional reason for adopting the principles of justice: the reduction of vice in the interest of stability.

Rawls's treatment of "excusable envy" as *a vice which is the fault of someone other than the vicious person himself* has superficial plausibility when we consider the fact that having a drug habit is classified as a vice. But a drug habit, after all, can be contracted quite innocently due to the incompetence of a physician. We have here what might be called in a Pickwickian sense an "excusable vice." But what we really mean is an excusable *habit* which would become a vice, and so inexcusable, if the user took no strong measures to abandon it. It would be inexcusable, for example, for him to remain bitterly and rancorously addicted to his drug if the medical board failed to compensate him by assessing the errant physician for damages. Rawls's treatment of "excusable envy" is quite different. Rancorous and nasty as it is, the habit

may without moral censure be retained, nursed, and even acted upon. Whereas "we are normally expected to forbear from actions" to which we are prompted by envy and "to take steps necessary to rid ourselves" of that vice, the case is different with excusable envy. What actions is Rawls thinking of, one wonders? In the case of excusable envy "no one can reasonably be expected to overcome his rancorous feelings." Now the superficial plausibility of the analogy to the innocently contracted drug habit vanishes. There is no obligation to overcome the propensity. As for the injustice in the case of "excusable envy" which might parallel the incompetence of the physician, the only demonstrable injustice which Rawls alleges is the "disparity" of primary goods. I cannot help thinking that, all in all, this is one of the most extraordinary passages in the history of ethics. Whatever the arguments expressed in it do, they do not tend to relieve the impression that Rawls is once again assigning to envy a major role while going through the motions of exorcising it. I think we can safely conclude that the concept of "excusable envy" does not serve the purpose for which it was intended.

There remains the question of Rawls's stratagem in separating the two parts of the argument. Would the resulting logical relation between the parts serve Rawls's purpose if the rest of his argument stood up? I do not believe that it would.

For the second part of the argument for the principles of justice is by Rawls's own definition *a part* of that argument (p. 530). If the principles of justice did not pass muster at this second stage, they would necessarily, he tells us, be "reconsidered" (p. 531). Choice of the principles is, therefore, to some extent based on their compatibility with the stability of society. Rawls might answer that the second stage of his argument is in no sense a deduction of principles of justice *as such*, that it is an argument from *stability*, and that the criteria of stability are different from those of justice. He might even point in his defense to his position that democratic equality is not necessarily the *most* stable conception of justice (p. 504). The fact is, however, that the certification of a conception of justice as reasonably stable is a necessary condition of its final certification as the most favored conception of justice. And the most favored conception of justice is the one that comes to determine the basic institutions which in turn determine what actions and persons are to be regarded as just and unjust throughout the society. What is just and unjust is, therefore, strictly determined by the argument from stability. But the argument from stability itself is an argument that a society based on democratic equality would *just happen* to be able to bank the fires of envy. Therefore, even if the argument from stability is external and accidental to the derivation of the principles of justice, it is internal and

necessary to the final appraisal as just or unjust of every institution, action, and person in the society.

In summary, my reply to Rawls's defense is as follows.

(1) The first part of his argument for the principles of justice is based on envy in an important sense of envy which is quite damaging to the moral status of those principles, and

(2) The seemingly accidental and innocuous role which considerations of envy play in the second part of the argument is illusory: these considerations finally determine what is to be accounted just and unjust.

(3) Therefore, Rawls's argument can in no way escape the reproach of being based on envy.

4.

Finally, I wish to make a few remarks on the special import of envy for Rawls's theory of justice. It is Rawls's contention that, even though other forms of egalitarianism may be based on envy, his own theory is not open to this reproach. I have argued that, in any comparison of Rawls's theory with strict egalitarianism, the latter would have to be said to be based on envy to a far greater degree. However, that is because strict egalitarianism would subordinate all other considerations to envy, thus making economic development, and with it industrial civilization, impossible. How does it stand, though, when Rawls's theory is compared with other egalitarian defenses of the welfare state, that is, with theories which regard the achievement of equality as a positive goal to be taken in conjunction with and weighed against others? Here the various forms of utilitarian and intuitionistic defenses of the welfare state may be taken into account. I think two questions should be raised in any such comparison: (1) Is the basis of the alleged desirability of equality the same as the complaint involved in the envious attitude, or, on the contrary, is it a moral argument that has nothing to do with envy? (2) How large a place does the goal of equality play in the theory? To answer these questions, let us consider a utilitarian defense of the welfare state which takes as one of its premises Sidgwick's principle that in the distribution of happiness "it must be reasonable to treat any one man in the same way as any other, if there is no reason for treating him differently."³⁵ Now the essential negative ground for equality expressed in this principle differs *prima facie* from Rawls's grounds which I have shown to be intrinsic to the envious attitude. Further, the weight given to equality in this principle is relatively weak. So far as the statement itself goes, almost any consideration of almost any weight could prevail over equality. The

same observations would apply to a greater or lesser degree to intuitionistic arguments for the welfare state: the value of equality is presented on grounds that are at least overtly different from those of envy, and equality is weighed against any number of other values. Now what is the result when we compare these forms of egalitarianism with Rawls's theory?

The result is, I think, that Rawls's theory is by far the most difficult to exonerate of involvement with the demands of envy. For, first, Rawls's argument for equality on grounds of self-respect, indeed his very concept of self-respect as tied to relative status and being "looked down on" by significant others, coincides exactly with the complaint of the envious man. And, secondly, when, in Rawls's theory, equality gives way before *another* value, the absolute improvement of the least advantaged representative man, this *second* value is not so far removed from envy as to be incapable of assuaging it with ease (pp. 536-7). It seems, indeed, to be covetousness. The answer to our two questions, then, indicates that when it comes to answering the charge of being based on envy, Rawls's theory compares unfavorably with both utilitarian and intuitionistic defenses of the welfare state. And the very arguments which Rawls uses against other interpretations of his second principle show that his differences from them depend upon his concept of self-respect and upon the fact that equality in his theory gives way to other values with far less readiness.

Of course it is important to realize that one who asserts the interests of envy or becomes their partisan is not necessarily motivated by envy. There may be any number of grounds for such advocacy, among them the belief that envy should be placated. I believe that all such grounds are wrong, but that is another matter.

I conclude, then, by stating that, apart from strict egalitarianism, there is no theory of justice that is, in the sense defined, more truly based on envy than that of Rawls, and that, consequently, of all moral defenses of the welfare state on grounds of equality there is none more deeply sympathetic to the interests of envy or more radically committed to promoting its claims.

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RICHARD EPSTEIN AND THE THEORY OF STRICT LIABILITY IN TORT LAW

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Professor Richard Epstein's theory of strict liability offers a distinctly different, and in my view, a much superior approach to tort law than negligence theory. While negligence theory employs such notions as "reasonableness," "due care," "foreseeability," etc., in its attempts to determine responsibility and compensation, Epstein's is a theory of corrective justice which attempts to determine responsibility on purely causal grounds. In this paper my procedure will be as follows. In the first section I will look at some of the salient features of Professor Epstein's theory of strict liability, such as the well known and much discussed causal paradigms, and then contrast his theory of strict liability with the established alternative, negligence theory. In the second part I will look briefly at some of the criticisms which Epstein's theory has received, particularly from Professors Borgo and Posner, as well as Epstein's response to these criticisms. In the third part I will consider what I take to be the advantages of Epstein's theory of strict liability over negligence theory, as well as some problems connected with it.

1. Differences between Epstein's Theory of Strict Liability and Negligence Theory

As we noted, Epstein's is a theory of corrective justice which attempts

to assign legal responsibility on purely causal grounds. In order to arrive at such a determination Epstein has established four causal paradigms. The four models of causation are: A hit B; A frightened B; A caused B to hit C; and A created a dangerous condition.¹ Using these four models for analysis of causation it is possible to establish *prima facie* responsibility. Thus in the simplest example of causation, A hits B,² if A, the driver, hits B, a pedestrian, there is a *prima facie* cause for action on B's part. B after all did not hit A. Thus Epstein notes in "Pleadings and Presumptions":

Under a theory of strict liability, for example, the *prima facie* case will take the form the defendant hit the plaintiff.³

The *ex ante* equities have been disturbed and at least *prima facie* B has an action against A, an action which, of course, may be defensible. Since cause is essential to negligence, it would be necessary for the plaintiff to show:

- a) that the defendant owed the plaintiff a duty.
- b) that the defendant is in breach of the duty owed.
- c) that the breach was:
 - 1) the actual cause of the new state,
 - 2) the proximate cause of the plaintiff's new state
- d) that the plaintiff's new state constitutes a damage.

The causal analysis of tort is a markedly different one from the negligence theory. Under the negligence approach much of the inquiry will center on the relative levels of prudence or care exercised by the two principals to the action.⁴ Negligence theory employs to a large extent economic theory as the primary means of establishing legal responsibility, where the comparative economics in the action can be either financial cost/benefit analysis, or moral.⁵ Thus Professor Epstein remarks in *A Theory of Strict Liability*

. . . the economic approach asks us in at least some cases to abandon our views on the initial assignment of property rights, on the ground that the aggregate costs of accidents (together with the costs of prevention) will be reduced by the substitution of new rights in their place.⁶

In terms of the differences between Epstein's theory of strict liability and negligence theory this means that the starting points, as well as the conclusions reached in many cases, though not all, are quite disparate. Professor Epstein's starting point is a concern with

individual liberty and property rights.⁷ Thus he remarks in his article, "Causation and Corrective Justice: A Reply to Two Critics":

In most cases I think these rights are deserving of absolute protection and vindication. In those cases in which such total protection is not feasible (usually for reasons of efficiency) I want to see compensation, be it in cash or kind, for the individual liberties or property rights that have been taken or destroyed. Individual rights remain a barrier to forced redistributions of wealth, even though they are not always barriers against forced changes in the form in which that wealth is held.⁸

Thus for Epstein ownership and property rights are closely related to tort concepts and a proper grasp of these notions logically entails a theory of strict liability in tort. As he notes again in his article "Causation and Corrective Justice: A Reply to Two Critics":

" . . . in my view the proper conception of ownership compels the adoption of strict liability."⁹

For Epstein, then, property rights, ownership, and tort are closely tied together. Further, property rights and ownership are the ground of individual autonomy and liberty. As Epstein remarks in his article "Nuisance Law: Corrective Justice and its Utilitarian Constraints": "Private property is an external manifestation of the principle of personal autonomy."¹⁰ From the basis of individual autonomy and inviolability, ownership rules organize rights prior to any violation and furnish the foundation for tort which is concerned with dealing with members of society who refuse to respect the rights of others. Thus Epstein notes in *Strict Liability*:

. . . the principles of strict liability say that the liberty of one person ends when he causes harm to another. Until that point he is free to act as he chooses, and need not take into account the welfare of others . . ."¹¹

Thus the defendant's invasion of the plaintiff's person or property establishes a *prima facie* tort.¹² The purpose of tort law then is the protection of individual liberty and private property.¹³ Thus Epstein's starting point for tort law in property rights and individual liberty is distinctly non-utilitarian.¹⁴

Generally, negligence theory, on the other hand, takes a utilitarian cost/benefit analysis as its starting point, e.g. nuisance cases,

though sometimes it does not, e.g. medical malpractice. This economic approach to establishing responsibility requires, at least in many cases, that we abandon the way in which property rights were initially assigned under the guise that in this way the aggregate costs of accidents, as well as the costs of prevention, will be reduced. This reduction in costs, the benefit it is argued, is bought for the price of loss of rights, or, euphemistically, the creation of new supposed rights, the cost in the cost/benefit equation. While the theory of strict liability holds that the plaintiff has a *prima facie* case whenever he can show that the defendant caused physical harm either to his person or property, regardless of whether he had exercised reasonable care, or intended the harm, negligence theory holds that the plaintiff should only be entitled to recover if it is shown that the defendant failed to take reasonable steps to avoid the harm, or if he intended it.¹⁵

2. Some Criticisms of Epstein's Theory of Strict Liability

To be sure the theory of strict liability has not been given a warm reception in all, or indeed many, legal quarters. For many the notion is anathema, a return to primitive legal barbarism, which it is thought the advances in late nineteenth and early twentieth century legal thinking had already transcended.¹⁶ The theory of strict liability which Epstein has proposed has received considerable attention, of which some, to be sure, has been adverse. Professor John Borgo¹⁷ in his article, "Causal Paradigms in Tort Law" attacks the linchpin of Epstein's theory of strict liability, his analysis of causation. The objections in Borgo's article basically come down to three. The first, that Epstein does not provide an *explication* of causation but only indicates how the term is *used* in certain contexts. His second point is that Epstein rests his theory too heavily upon his causal paradigms. And finally he argues that Epstein does not take "context" sufficiently into account.

It is this last point, which Epstein takes to be central,¹⁸ to which I will turn my attention. Concerning context Borgo argues that we only know what "cause" means legally from context. Thus in any action there are a myriad of antecedent conditions that are required before a given result can take place. We only know what the "cause" is in a legally tortious sense from certain policy statements that have antecedently defined it as a tortious cause.¹⁹ In other words Epstein's causation argument is circular. Epstein wants to use the causal para-

digms for the analysis of a tortious action and by the analysis of causation fix responsibility. He wants to keep responsibility closely tied to causation. Borgo argues that Epstein has gotten it backwards. Epstein argues that responsibility is ascribed on the basis of cause. Borgo, on the other hand, that cause is ascribed on the basis of legal responsibility. Thus, according to Borgo, Epstein's criterion for *prima facie* liability is circular. Through our common experience of responsibility, the way the word is used in ordinary language, we come to a notion of cause, e.g., because B is missing an eye we want to find out, of the many circumstances surrounding this loss, where the *responsibility* for this harm lies, and when we determine this we will think this agent *caused* the harm.

I think Borgo's analysis is simply incorrect. When first A suffers the loss of the eye we do not immediately move to responsibility and only afterwards get to cause. No, first we determine cause, and only afterward does responsibility become a consideration, because even after we have determined the cause there may be *no responsibility*. They are distinct notions, and distinct notions that are *separable*. To illustrate this point, consider the biblical case of the elder Tobias. After he had buried a murdered kinsman against the royal edict he lay by the wall of the house to rest, and while he was asleep the birds released their droppings into his eyes blinding him. When Tobias is found blinded what question is asked? "Who is *responsible*?" Or, rather "What *caused* this blindness?" because in this case even though there was indeed a *cause* there is no responsibility for responsibility can arise only where in addition to the tortious act, there is also *volition*. Without this we have no responsibility, only an act of nature, or God. Clearly we first seek the *cause*, and only then determine how to affix responsibility. Thus also in the famous case of *Talmage v. Smith*²⁰ when the owner of a property threw a stick to chase some boys off of his property, striking one of them in the eye causing him to be blinded, we do not start with the question of *responsibility*, but rather with the *cause* -- who threw the stick? We first determine the cause. It is only after this determination has been made that we can begin to talk about the question of *responsibility*, for unless we determine that it was a human agent who caused not only the harmful act but did so with volition we do not have a tort. Thus it seems Borgo is mistaken and Epstein correct, and his analysis is not impugned by Borgo's criticism.

Let us turn our attention now to the key elements of Richard A. Posner's criticism of Epstein.²¹ Briefly, Posner thinks that Epstein is wrong on the following five points:

- 1) Epstein treats tort and contract law inconsistently.
- 2) He doesn't explain why causal principles should provide

the exclusive basis for tort liability.

3) Once he shifts from causation to rights (as he does in his article "Nuisance Law: Corrective Justice and Its Utilitarian Constraints," *Journal of Legal Studies*, VIII (1979), 49-102, his argument becomes circular.

4) He doesn't explain why tort liability should be limited to cases in which a property right has been invaded.

5) Finally, Epstein's fourth article on Nuisance Law which allows economic principles to be used both to limit tort liability and to create tort obligations independently of causal principles makes it now necessary to reexamine all of the major conclusions of the previous articles.²²

A complete and detailed analysis of all five of these points would require more space than is available for the present article, but let me turn my attention to a couple of what I regard as the more important points he has raised. In his article Posner asserts:

The earlier articles based liability on the proposition (now placed in doubt by Borgo) that responsibility follows causation. The nuisance article says that before invoking causal principles one must find a right.²³

This position of basing liability on rights doesn't seem to make sense to Posner, and he adduces as evidence for his position what he takes to be Epstein's inability to handle cases such as the Santa Barbara oil spill.²⁴ Here fishermen sued the Union Oil Co. because the spill killed the fish, depriving the fishermen of their livelihood, so they argued. In order to determine a liability Epstein would seek a property right - did the fishermen *own* the fish? If not then their rights were not injured and there is no cause for an action. Posner thinks this is incorrect and would have, apparently, a judge create a right for the fishermen. Epstein disagrees with this and I believe he is correct. Posner remarks that Epstein objects to an economic/utilitarian approach because ". . . such an approach . . . was objectionable because it would give judges a roving commission to impose duties on people."²⁵ And here I think that Epstein's worry about giving judges "roving commissions to impose duties on people" is a point that could not be improved upon. This expansionary conception of the judiciary, with all of its baneful effects, is precisely what we have been witnessing for the last quarter of a century or so.

Posner would also like to create some other duties for us, this time of the good Samaritan sort.²⁶ He argues that Epstein's causal

approach cannot encompass all of our moral perceptions. He criticizes Epstein's position on good Samaritan cases because, Posner thinks, according to Epstein's causal arguments there is no liability in the good Samaritan case where I can, with little risk or inconvenience to myself, assist someone but do not, for example by throwing a rope lying at my feet to a drowning person. For Epstein there is no liability here because A, the potential rope thrower, has not harmed B, the drowning person, according to any of the four causal paradigms. After all, he does not have a legal duty to throw the rope. For Posner this failure to fasten a liability on A demonstrates the inadequacy of Epstein's causal approach. Clearly Epstein's strict liability approach with its causal analysis which cannot find a liability in such an inhuman action, or better inaction, as not even to throw a rope to a drowning man must be wrong. But Posner misses the point, a point which even Borgo had grasped, namely that the moral order of responsibility and the legal order of responsibility are not always isomorphic.²⁷ Clearly anyone, even someone whose moral sensitivities might in other respects be rather blunted, would see a moral obligation to throw the drowning man the rope. But because we might have a *moral obligation* to do something does not *ipso facto* create a legal duty to do it, the failure of which results in a tortious liability. Posner has confused an imperative of the moral order with one of the legal order.

3. Advantages of Epstein's Theory of Strict Liability.

Let us now turn our attention to some of the advantages that Epstein's theory might have to commend it. The first of these I would call a certain intuitive moral persuasiveness, that is, that he who causes the harm should, at least *prima facie*, compensate the victim, provided, of course, that the plaintiff had a duty toward the defendant. Individual autonomy cannot be used as a justification for using someone else as a mere resource without compensation. Second, Epstein's theory, exploiting as it does the four causal paradigms in affixing responsibility, and eliminating such loose, ill-defined, and perhaps undefinable, notions as "reasonable man," "due care," etc., which play such an important role in negligence theory, has the merit of *elegance*. It has efficiency that is based on *principle*. This in its turn leads to much greater predictability of legal outcome,²⁸ a notion so important that Oliver Wendell Holmes placed it in the essence of law. The strict liability approach, it seems to me, also has the merit of eliminating a lot of the fuzziness and vagueness which presently surround negligence language. There is no need to try to determine *ex*

post what risks, in those circumstances, were “undue,” or “unreasonable,” and which ones were not. This type of vague, ill-defined language is simply eliminated. The issue is simply: if the defendant harms the plaintiff, then *prima facie* he should pay even if the risk was reasonable, provided, of course, that the defendant owed a duty toward the plaintiff, just as he should pay in cases where the decision to injure was unreasonable, or without “due foresight.” If the defendant in conducting his own business injured not someone else but himself he would, of course, have to sustain the loss. It may be that he deems the risk of loss, weighed against the possible gain, worth the gamble but whether it is or is not, the loss is his, should it occur. If this is true in his own case, as it obviously is, then it is equally clear that if in the course of conducting his affairs he accepts for a possible gain, the possibility of inflicting harm on someone else he should not be preferred to the one he has harmed even if his action is reasonable. The reasonableness of the act, or the lack thereof, is immaterial.²⁹ The principle in strict liability is straightforward - one man should not be allowed to solve his problems at the expense of another.³⁰

These are some of the advantages of Epstein’s theory of strict liability. Are there also some problems connected with it? Yes, several come to mind, particularly in the area of product liability. If, for example, corporations are held to a standard of strict liability, under the fourth causal paradigm of creating dangerous conditions, is this not a temptation, impossible to resist, to abuses by avaricious lawyers and activist judges to rush to litigation? Part of the problems which presently are creating a crisis in tort law have been caused by judges who have abandoned the negligence theory with respect to corporations. In the early 1960s, liberal judges began scuttling the rule that only defendants who acted negligently could be liable. Judges decided that “deep pockets”, i.e., corporations, should pay wherever anyone suffered. This leads to such bizarre decisions as that of the New Jersey Supreme Court in *Beshada v Johns-Manville*, 1982, wherein the Court mysteriously concluded that even if the manufacturer could not have known about possible dangers of its product, still it somehow should have warned consumers.

If manufacturers are held to a standard of strict liability, rather than a standard of negligence, isn’t this the inevitable result? Further, isn’t it also true, in the area of pharmaceuticals for example, that to hold the manufacturers to a standard of strict liability so that they are responsible for any injuries to consumers, even where there is no evidence that they or anyone else knew of any risks, is a disincentive so powerful that it will greatly impede the research, development, and

marketing of new products, with the subsequent loss to the general public that these new products would bring? And doesn't holding corporations to standards of strict liability produce results which are exactly the opposite to the ones desired by Epstein - that is, judges acting on their vision of "fairness," and a "deep pockets" theory of justice, attempting to redistribute the wealth of wealthy corporations? And isn't this in its turn an attack on the property rights of the shareholders? This result of holding corporations to a standard of strict liability can hardly be one which would please Professor Epstein. And yet isn't it true that when we put these elements together we must inevitably get this result: strict liability + "deep pockets" = redistribution of wealth?

Epstein, to be sure, in his later writing, for example, "Products Liability as an Insurance Market," 1985, has attempted to address this problem and notes:

A return to more limited rules of product liability seems clearly required. The demand that the legal system take into account the ability to insure does not translate into automatic justification for continued expansion of liability.³¹

But is this position entirely consistent with the theory of strict liability as he had presented it in his earlier writings?

In conclusion we might say that there are considerable advantages to Epstein's theory of strict liability, as I have attempted to point out. But as it stands there are some very serious problems with it and these need to be addressed.

1. Richard A. Epstein, *A Theory of Strict Liability: Toward a Reformulation of Tort Law* (San Francisco: Cato Institute, 1980), p. 75. Cited hereafter as SL. This book reprints two of Epstein's articles which appeared in the *Journal of Legal Studies* Part One of the book appeared as "A Theory of Strict Liability," vol. 2 (1973). Part Two appeared as "Defenses and Subsequent Pleas in a System of Strict Liability," vol. 3 (1974).
2. Richard Epstein, "Pleadings and Presumptions," *University of Chicago Law Review*, 40 (1972-73), 574. Hereafter cited as PP.
3. PP., p. 57
4. "Judges in some jurisdictions do not like the doctrine of contributory negligence because they believe that it is harsh to excuse a negligent defendant merely because the plaintiff has been negligent as well." PP, p. 578.
5. Epstein, SL, p. 51.
6. Epstein, SL, p. 135.
7. Richard A. Epstein, "Causation and Corrective Justice: A Reply to two Critics," *Journal of Legal Studies* 8 (1979), p. 488. Hereafter cited as CC.

8. CC, p. 488.
9. CC, p. 499.
10. Richard A. Epstein, "Nuisance Law: Corrective Justice and its Utilitarian Constraints," *Journal of Legal Studies* 8 (1979), p. 63. Hereafter cited as N.
11. SL, p. 68.
12. N, p. 90.
13. Richard A. Epstein, "Intentional Harms," *Journal of Legal Studies* 4 (1975), p. 441. Hereafter cited as IH.
14. IH, p. 442. Though see also his later work (1985) *Takings: Private Property and the Power of Eminent Domain* (Cambridge: Harvard University Press, 1985), p. 5, where he seems to have shifted somewhat on this point. Thus he remarks: "Thus the political tradition in which I operate, and to which the takings clause itself is bound, rests upon a theory of 'natural rights.' That theory does not presuppose the divine origin of personal rights and is consistent, I believe, with both libertarian and utilitarian justifications of individual rights . . ."
15. "Plaintiff will not, of course, be barred by contributory negligence unless his negligence was a proximate cause of the damage sued for" PP, p. 574, n35.
16. SL, p. 71. See also for example, Jerome Hall, *General Principles of Criminal Law* (Indianapolis: Bobbs-Merrill, 1947), pp. 304-305, and James Barr Ames, "Law and Morals," 22 *Harvard Law Review*, 99 (1908).
17. John Borgo, "Causal Paradigms in Tort Law," *Journal of Legal Studies* 8 (1979): pp. 419-455.
18. CC, p. 478.
19. Borgo, pp. 421-423.

20. IH, pp. 395-397.
21. Richard A. Posner, "Epstein's Tort theory: A Critique," *Journal of Legal Studies*, 8 (1979): pp. 457-475.
22. *Ibid.*, p. 458.
23. *Ibid.*, p. 467.
24. *Union Oil v. Oppen*, 501 F. 2d 588 (9th Cir. 1974).
25. Posner, p. 459.
26. *Ibid.*, p. 465.
27. Borgo, p. 419.
28. IH, p. 401.
29. IH, p. 398.
30. SL, p. 77.
31. Richard A. Epstein, "Product Liability as an Insurance Market," *Journal of Legal Studies* 11 (1985), p. 669.

LIBERTARIAN THEORY, CUSTOMARY COMMUNAL OWNERSHIP AND ENVIRONMENTAL PROTECTION

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1. Introduction.

In this paper I intend to offer a comparison of two attitudes towards property rights. The first is the liberal/Western individualistic attitude which in its strongest form, I believe, is represented by the libertarianism of Robert Nozick as it is set forth in *Anarchy, State and Utopia*.¹ The other perspective is the collective rights tradition which I find to be exemplified in the traditional Melanesian societies of Papua New Guinea, though, of course, the central features of this position can be located in other traditional societies.

I defend my choice of Nozick as exemplar of the liberal philosophy on property rights on the grounds that his strong position on individual rights presents this individualistic tradition in its purest form which contrasts interestingly with the orientation of non-Western communal societies. I could have chosen John Rawls whose work *A Theory of Justice* is an equally seminal and important contribution to the liberal tradition.² However, Rawls, as Nozick himself has pointed out, is less thoroughgoing in his commitment to individual liberties especially those relating to private ownership in that he construes these liberties as conditioned by the social end product of an egalitarian based distribution.³

I begin with Nozick's view as to the moral principles embodied in private property rights as expressed in *Anarchy, State and Utopia*. I will then present the collectivist perspective as it is to be found in traditional Melanesian communities indicating the contrasts between the two positions. Subsequently, I compare the ideological background which founds both positions. Ultimately, I conclude that the exigencies of environmental protection require that we balance the liberal attitudes with a traditional orientation which is based on collective rather than individual property rights.

2. Entitlement and Voluntary Transfers.

Ideals of individual liberty as they are said to apply to property rights find their strongest expression in the libertarian theory of Robert Nozick. Libertarians distinguish themselves from other liberals in their thoroughgoing determination to explore the social, political, and legal implications of a commitment to the pre-eminent values of individual freedom. In a sense their theories represent the refinement of certain leading liberal ideas which have shaped Western institutions during the last several hundred years.

The libertarian individualistic approach to ownership can be best elicited through attention to Nozick's conclusions concerning a legitimate entitlement. These are set forth in the "entitlement theory" as it is described in *Anarchy, State and Utopia*. It is alleged that the principles of this theory indicate how one would acquire "holdings" or "entitlements" in accordance with just processes.

In a wholly just world, Nozick tells us, the following inductive definition would exhaustively cover the subject of justice in holdings:⁴

- i) A person who acquires a holding in accordance with the principles of justice in acquisition, is entitled to that holding.
- ii) A person who acquires a holding in accordance with the principle of justice in transfer from someone else, also entitled to that holding, is entitled to that holding.
- iii) No one is entitled to a holding except by repeated applications of one and two.

The first principle Nozick terms "justice in acquisition," and it refers, *inter alia*, to ". . .the process or processes by which unheld things come to be held, the things which may come to be held by these processes, the extent of what comes to be held by a particular process . . .".⁵ The second principle which refers to justice in transfer,

is said to encompass "The legitimate means of moving from one distribution to another . . ." and makes reference to the means by which an individual may acquire a holding through transfer and divest himself of a holding.⁶

Nozick recognizes that this is not a wholly just world and thus he adds a further principle, that of "rectification." In this instance one may legitimately acquire holdings through the attempted rectification of past injustices.⁷ In such a case authorities try to estimate what might have occurred if the past injustice had not happened. The principle of rectification, however, plays a very minor role in Nozick's text and is not really germane to the significant conclusions which are reached. For this reason it can be safely disregarded.

In this paper I intend to concentrate upon the second principle, "justice in transfer", as a way of underlining the most significant differences between the liberal/libertarian and the customary Melanesian philosophy of ownership. This route, of course, avoids discussion of the separate issue of original entitlement including the original sources of entitlement of the transferor. This is intended for two reasons: first, matters of economy which dictate that in effective discussion one must focus on a distinct issue; second, the real difficulty in saying anything relevant and appropriate concerning the historical events surrounding original acquisition where in most cases the evidence is entirely and irretrievably unavailable.

Justice in transfer refers to the "legitimate means of moving from one distribution to another." As we have mentioned, this must encompass the legitimate means of acquiring through transfer and divesting oneself of a holding. As in many cases, Nozick is often content merely to indicate the significant issues involved, but he does state categorically that one essential component of just distribution is the quality of voluntariness. This can be interpreted to mean that one cannot legitimately or justly acquire a holding - regardless of other necessary conditions - unless there has been a voluntary transfer or conveyance; conversely, it is generally the case that one cannot successfully divest oneself of a holding unless one has acted voluntarily.⁸

This philosophical account of legal entitlement entails broader implications by casting a moral blueprint which excludes certain social and political arrangements and sanctions others. For example, welfarism and Keynesian policies could not even be contemplated if one were already convinced that the funds (taxation payments) to be used for such purposes, had been illegitimately acquired by the government and thereby contrary to justice in transfer. On the issue of laissez faire economics and the asserted independence of business activities with respect to government regulation, the entitlement theory offers an analogical defence of the autonomous choices and non-interference with

the holders of property and capital. On this reading, the voluntary transfers of property and capital, supposedly characteristic of free market activities, cannot be subject to government regulation or controlled to effect "socially responsible" decisions because this would act to limit voluntary aspects and thereby produce an illegitimate distribution, contrary to justice in transfer.

The entitlement theory can thereby be seen to found a strong attack on what are perceived, *inter alia*, as the dystopias of socialist and welfarist states. But what is of interest to us is the strong individualist ideology implicit in the entitlement theory. This is to say the fact that the ideas of distribution, entitlement and property itself are seen from the individual rather than social perspective as ownership and entitlement are defined in terms of exclusive individual control. In developing the theory Nozick finds the concept of ownership and legitimate entitlement morally buttressed and supported by the constraints imposed by certain natural rights principles. The traditional natural rights position holds that natural rights are moral rights which invariably apply regardless of the conventional rule system and are ascribable to individual human beings solely on the basis of some alleged essential natural quality associated with their humanity. On Nozick's view "natural rights" are to be associated with certain moral intuitions which we connect with the values of individual autonomy.⁹ The assumption is that the natural characteristic of all human beings is their capacity for individual autonomy.

Within the theoretical context the function of these natural rights is the protection of the freedoms which are perceived to constitute the autonomy of the individual. These natural rights stipulate the so called "moral side constraints," boundaries which other agents should not cross without the consent of the right holder.¹⁰ The key to the connection between these natural rights and the notion of legitimate entitlement is the notion of individual freedom.¹¹ According to the entitlement theory, transfers which lack voluntariness lack legitimate entitlement. At the same time, Nozick argues that there is a natural right to property, and actions which are contrary to this natural right, entrench upon our individual freedom. The latter will necessarily occur when some agent, whether organizational or individual, interferes with the voluntary transfer or alienation of property. On this reading, therefore, interference with a voluntary transfer results in an illegitimate transfer which is synonymous with a violation of one of the "moral side constraints" (associated with private ownership) and, *ipso facto*, violation of the natural right to property.

Thus, Nozick links the notions of justice in transfer, legitimate entitlement and natural rights to property. Accordingly, actions or policies which ignore or deny individual voluntary transfers are contrary to

the notion of "private ownership" and result in something called an illegitimate entitlement which is synonymous with the violation of a natural moral right. Nozick labels such actions or policies as being contrary to morality or immoral.

One may conclude from this adumbration that institutional arrangements are both assessed and justified in terms of individual liberty. Property rights are held to exist independently of institutional structures as with other natural rights like the right to personal security. The emphasis upon individual rights as forming the moral background to the entitlement theory means, of course, that much rests upon the attribution of absolute value to the individual. But this leads to an apparent paradox as property rights are necessarily embedded within organizational structures in civil society and so become associated with constraints on individual liberty as organizational structures will ineluctably restrict one's natural individual freedom. However, Nozick justifies these minimal societal restrictions on individual liberty on the grounds that a certain minimal organizational regulation is necessary to safeguard a non-organizational right to the liberty of personal ownership. Ultimately the freedoms associated with property rights and personal security entail the implementation of the minimal state or "territory wide protection agency."

3. Communal Land Ownership.

By way of effecting comparison with this articulated ideology of a modern liberal individualistic utopia let us now consider a different ideology associated with what have been labelled holistic societies - societies in which the ultimate value is the society itself.¹² To illustrate certain important differences we will turn our attention to the traditional Melanesian societies of Papua New Guinea. Within this context, we encounter a dominant ideology of communal rather than individual values. Associated with these ideas we encounter conventions of ownership whose basis is communal rather than individual. In this instance an entirely different perspective on ownership rights unfolds. A.P. Power asserts that as land through generations was held by force of arms through social groupings, the fundamental ownership of land is by groups of some sort or other. Though customary administration of land within these groups is varied and group specific, the important constant, he remarked, was that the group owned, and individuals used, the land. "Individual land usage rights did not remove the reality that the group was the basis for ownership and the basis for the defense of these rights."¹³ Similarly Heider in his study of another group of Melanesians, the Dani of Irian Jaya, also observes that individual hold-

ings correspond to usage rights rather than the western idea of ownership.¹⁴

The cultural entrenchment of communal rather than individual land holdings is reflected in the fact that the community derives its very identity through the communal land holding. Power asserts that the linchpin of Melanesian group or community life and history was the land holding and the communal land holding provided the locus for the community's cultural activities: political, military and social.¹⁵ This difference of perspective leads to quite different attitudes towards matters of transfer and ownership. With respect to the issue of transfer, Power believes the Melanesian cannot fully disassociate himself from his land. Drawing from his experiences in the East Sepic Province, Power concludes that the Melanesian concept of a sale of land is really something like the western concept of a lease. After the Melanesian sells his land he maintains a proprietary interest in the land by some form of interest in the subsequent use of the land by the new owner.¹⁶ In fact the idea of conveying land is a modern Western concept unknown in traditional Melanesian societies. It is only since the arrival of the cash economy and the colonial administration that legal structures have been deployed which allow for the conveyance of land either by individuals or communities, though land sale in Papua New Guinea continues to be constrained by the fact that 97% of the land is communally held.

Turning now to the relations between land tenure, individual rights, and matters of transfer we can summarize and interpolate through certain more familiar Western legal notions. Within the traditional Melanesian system, the individual has the right to use the land (always conditional on communal consent) but not to alienate, sell or unilaterally transfer his holding because title remains with the group or clan rather than the individual. In this instance we can see that the right which the individual holds as a member of the community or clan does not approximate a full ownership right, it is more properly a usufructuary right, the right to make use of holding which properly belongs to another so far as compatible with the substance of the thing not being destroyed or injured. I suggest that this right can be understood by analogy with the occupation right which an individual licensee gains through the purchase of a ticket on a public transportation vehicle like a bus. With the purchase of the ticket the individual has the general right to public transportation which particularizes a right to occupy and use a seat on the bus. Similarly the general rights associated with membership in the community or clan particularize a right to use communal land holdings. However, in both cases this is a bare usufruct; the holder of a right to public transportation does not also gain a right to transfer or convey the bus or parts of

the bus to other individuals or organizations, and neither does the individual clan member gain a right to sell or convey community holdings. However, as a member of the clan, the individual does gain certain rights and interests greater than those of a usufruct; the Melanesian clan member can, for example, participate in important decisions involving the development, disposition, devolution, and even sale of holdings. But unlike the liberal system which Nozick advances, communal consent is always necessary for individual dealing in land and the individual is never at liberty to alienate, sell or unilaterally transfer his interest.

Another Western concept which is useful in understanding the individual's right within the Melanesian system of communal land holding is that of trusteeship. We have already seen that liberal thinking (represented by Nozick), sees the rights of the group derivative from individual rights and thus confines the task of the organization (most often viewed as a minimal state) to providing protection and security for the rights and property of individuals. In contrast, the Melanesian position embraces a view which can be associated with Hegel's interpretation of the classical Greek political life, this is to say one which regards the organization or community as having its own proper interests and even rights, which condition the freedoms and interests of the individual. In this scheme the roles are reversed and it is the individuals who must promote the interests of the community rather than the community promote the interests of the individual.¹⁷ In Melanesia these ideas necessarily apply to individual rights to land and land usage. This entails that the individual land usage is not exclusively personal but must also conform to communal purposes. Thus, in part, his right is that of trustee, one who holds property conditional upon the performance of certain positive duties towards another, i.e., the holder of the greater interest. This means that the individual right holder is not at liberty to impair the holding and indeed must strive to use the holding for the benefit of the superior interest of the full title holder, in this case the community.

However, the idea that a community or society might possess its own proper ends distinct from the purposes of distinct individuals - which at times take preference over individual purposes - has been strongly criticized by the liberal tradition. Nozick himself seems to view such a notion as an abstraction without content. On the subject of an overall social good he states:

Why not . . . hold that some persons have to bear the costs that benefit other persons more, for the sake of the overall social good. But there is no social entity with a good that undergoes some sacrifice for its own good. There

are only individual people with their individual lives.¹⁸

Thus, the libertarian sees a reality of individual interests and individual ends rather than social interests and social ends. The corollary is that individual ends in turn are created by individuals and not by social bodies, unless, of course, ends are forced upon individuals by other individuals who control organizational structures. This view was already given proscriptive expression a century earlier in the liberal manifestos of J.S. Mill in his demand that governments and social bodies leave the individual free of interference to choose his own life style or form of life.

However, failure to discern any ends and purposes other than individual ones may simply be indicative of a certain liberal ideological blindness. Others have readily affirmed the reality of social and communal ends. For example, Hegel believed that the community became its own end, i.e., the nurture and maintenance of its own way of life and culture (*Sitten*). The individual would realize himself not by exercising his liberty with minimal involvement in the restrictions of communal life nor by creating his own ends distinct from societal ends, but by adopting the cultural and institutional ends as his own ends. Hegel drew inspiration from ancient Greece where the life of the *polis* was thought to give ultimate meaning and individual existence apart from the *polis* was regarded as meaningless.¹⁹ A parallel circumstance is observed in traditional Melanesia where the clan is the meaningful unit and individual existence independent of the clan is felt to be void of meaning. Within these older systems, values associated with the community condition and determine moral principles with the corollary that actions which are morally acceptable maintain, sustain and support communal existence; those which are morally unacceptable undermine, threaten, or destroy communal life.²⁰ The latter may include a spectrum of activities from passive non-involvement in community life to those actions which directly jeopardize the existence of society.

Libertarians like Nozick regard their notions of individual liberty as intuitive moral certainties whose validity is independent of cultural or temporal conditioning. The application of this conviction may be more ideational than real. Hegel and others have doubted these claims to independent validity and have remarked upon a culturally bound ideology of individualism which has gained ascendancy at the expense of an older so-called holistic ideology.²¹ The liberal stress upon the subjective freedom of the individual has been defended as necessary in order to combat totalitarianism, fascism, and other evils. Hegel, however, interpreted this emphasis upon the value of the individual as a natural movement of thought which began with the rejection of older ideas associated with the value of the community and logically led to

the embrace of the opposing modern ideology of individualism. Hegel has not been alone in discerning this trend as certain modern anthropologists have come to similar conclusions. For example, Daniel de Coppet finds our modern way of understanding society exceptional in disregarding society as an ultimate value to the benefit of a quite opposite and non-social value, the individual. Like Hegel, De Coppet sees this trend as a historical process involving the progressive negation of the community as a whole. De Coppet locates the initial expansion of individualism in Medieval ideology. During this period, he alleges, there was a growing difficulty to assign a place to society in the context of (in and beside) God, Christ and the King. He believes that with the inability to effect an appropriate definition of society there began a very slow and gradual drift of ultimate value from society to the indivisible individual.²²

Both Hegel and De Coppet argue that this modern individualistic ideology impedes an appropriate understanding and assessment of the community and its structures. Hegel discerned that assessments of behaviour and organizational norms based solely on liberal theory would offer no more than a deracinated analysis which abstracts individual choice from the inherited structures and their communal function.²³ Hegel's goal was a synthetic resolution which reintegrated the modern liberal attitudes and ancient view which attributed pre-eminent value to the community. Hegel sought to resolve the conflict through a movement of *aufgehoben* in which both perspectives were renewed and preserved in new synthesis, *System der Sittlichkeit*.²⁴

Similarly, De Coppet, writing from a contemporary anthropological perspective, notes that as the liberal ideology values nothing beyond the individual, the continuous move towards its expanding freedom discredits society as a value and makes understanding society even more difficult.²⁵ De Coppet argues that understanding and proper assessment will be achieved, not through the isolation of individuals and their actions, but rather, in considering these phenomena in the context of a much greater whole, that is the society itself.

My argument in this paper is that this overemphasis on the value of the individual and his freedom (especially in the area of property rights) and the concomitant devaluation of society and the community's general interests have contributed to the environmental problems which we now face. This has been generated by an attitude which considers societal structures primarily in terms of individual freedom and interests, denying, of course, that society itself can be regarded as an entity with interests, a future, and a destiny. This devaluation of society, when coupled with a failure to acknowledge that interests of communities are intimately joined with particular localities and defined areas of land, may militate against appropriate social action in

these times of ecological crisis. This is to say that Western ideology of individual property rights and private enterprise has thereby elided the point that the community's interests are intimately connected with appropriate land use.

4. Property Rights and Communal Survival.

As behaviour in holistic societies is judged in relation to communal sustenance and maintenance, organizational relationships and communal structures may be seen to reflect the goals. Indeed, reflection would indicate that this truth applies not only to holistic but to any successful society once we recognize that the idealism associated with individual autonomy may well have led us to misunderstand this social function. H.L.A. Hart holds that the central and enduring aspects of all moral and legal systems can be derived from a contemplation of the invariables of the human condition and the universal goal of communal survival. The aim of survival seems to be an empirical yet contingent truth about individuals and human communities and, according to Hart, it colors the structures of language, thought, and the rules of conduct which any social organization must contain if it is to be viable.²⁶

A recognizable humanity will always include certain laws of association and within these rules or laws we will recognize a certain minimal content which these diverse systems share. Hart points to a recognizable core in all moral and legal systems determined by the exigencies of survival and certain natural facts about human beings - for example, facts relating to human vulnerability, approximate equality, limited altruism, limited resources, etc. With respect to the core content which is to be found in the viable system, Hart lists rules prescribing mutual forbearance and compromise, the necessity of sanctions, and some minimal form of the institution of property based on the limitedness of natural resources.²⁷

Notwithstanding this common core, we can conclude that if the communal and institutional arrangements of all viable societies focus upon the goal of survival, there is a need for a continuing evaluative study of our legal and moral principles by reference to this consideration. This entails, I believe, that we supplement a commitment to the liberal ideal of individual freedom with a further commitment to goals of social continuity and viability. Choices, therefore, will always be unavoidable when conflicts develop in which issues of personal freedom threaten the viability of the society itself. Individual property rights, their scope and range now present such an issue - an issue in which powers embodied in such rights may ultimately have deleterious

effects on future communities and generations.

The right of the individual to transfer a holding, unilaterally, may be identified, in part, with what A.M. Honore describes as the right to capital - the power to alienate a holding or to consume, waste, modify or destroy it.²⁸ Part of the problem with Nozick's promotion of the individualist attitude to personal ownership and transfer is the failure to recognize that what an individual does with his holding cannot be entirely his own concern given that the holding forms part of the natural environment in which others and the community must exist. When I transfer a holding I transfer it to an individual or organization which usually has a particular use in mind. It may be true to say that I myself have not used the holding in a destructive, wasteful manner with harmful consequences for others, however, what mechanisms will protect us from the subsequent inimical environmental consequences derivative from ill-considered transfers? I argue that given the exigencies of our environmental concerns, it may no longer be feasible to give individuals a *carte blanche* to proceed as they wish when they intend to transfer a holding.

Let us look at a specific issue involving the transfer of individually held property, the phenomenon of development by sub-division. The latter is a familiar device of land developers in Western societies. Unless a specific municipality has passed regulations either to proscribe or control this practice, an owner or developer will always have this option at common law. Nozick's libertarian principles offer strong support for maintaining this general common law right and rendering it immune to supervening legislation. The entitlement theory states that one has the inviolable right to transfer one's property. This means, as we have seen, that any interference with this right to transfer, which necessarily includes the right to convey land by subdivision, involves violation of the natural right to property and *ipso facto* the individual moral side constraints. In effect, the application of Nozickian principles prohibit the municipality or any other community organization controlling the development of land by subdivision.

The seriousness of this issue should not be underestimated. Studies have shown that many of the ecological problems in Australia and in the rest of the world are generated by the overcrowding of human beings on areas of land which cannot accommodate the intense resource usage or the sewage and human waste resulting from population density. This problem has arisen in Perth Australia where the underground water supply lies close to the surface and is thereby at continual risk from leakage from septic tanks. In other parts of the world, for example, the Aral Sea and *environs* in Central Asia, population density has created a demographic disaster such that over use of water resources may irrevocably undermine an entire water system.

Together with overuse of water resources, pollution from human sewage and detritus poses a major threat to the hydrological system and related ecological systems. Within the libertarian universe with its overvalued individual liberty and private property rights, there is nothing a community could do to control a subdivision development which threatens a population density which would effect these types of problem.

It is true that libertarian theory tempers the demand for individual autonomy with an entailed prohibition that one not use one's property to injure another or his holdings as this in itself would constitute violation of the moral side constraints. Tibor Machan, for example, has recently argued that libertarianism promises the most effective approach to environmental damage in that its principles require that pollution be punishable as a legal offense that violates individual rights to life, liberty, and property.²⁹ But this is not adequate to bring environmental concerns sufficiently under the aegis of libertarian theory. One can utilize libertarian principles to prohibit an industrial developer from dumping toxic heavy metal effluent into a river system, but according to the entitlement theory it is clear that an individual must be free to convey his property as he desires. Thus, in the instance where a large tract of land is subdivided and sold off as individual lots, nothing in libertarian theory can operate to prevent the possible unfolding of a destructive process where the lots are subsequently used for human habitation. The theory must remain mute concerning the subsequent use of the land where none of the individual holders use their holdings in a way which is directly harmful or deleterious to other individuals or the greater community, for example, if they use their property in the acceptable and customary home owner ways. Let us imagine that, as has occurred elsewhere, it is simply the case that over time the soil cannot properly absorb the cumulative human pollution, nor can the water system withstand the increased usage. Consequently, in several generations the original community is destroyed as the water system is depleted and the earth becomes too salinated and toxic to support the original population base.

In contrast, customary collective land tenure as evidenced in Melanesia would offer greater environmental protection. First, individual land rights are essentially usufructuary rights while the primary ownership right remains with the community. Thus, the community and not the individual exercises exclusive control such that an individual could not proceed to convey or develop real property without the consent of the community. In the above case of development by subdivision within the libertarian context, the individual could proceed to subdivide and develop his holding even if all other members of the community objected.

Furthermore, in the liberal system the only constraints on use are those associated with direct injury to other individuals. Tibor Machan, as we mentioned earlier, has described a program for environmental protection based on liberatarian principles in which he argues that any pollution which would most likely lead to harm being done to other persons who have not consented to being put at risk would have to be legally prohibited.³⁰ From my perspective this manner of procedure is still inferior to a communally based orientation on several grounds. First, because of the nature of libertarian theory there is always a presumption in favor of the property holder in the use of his property such that the individual right to do what one wishes with one's holding remains inviolate until it is shown that his action will bring about a result which is, or is likely to be, injurious to others. Thus the burden of proof seems to devolve upon those who are at risk to prove that they are at risk (by which stage matters may have already gone too far). For example, a community may wish to say no to the construction of a nuclear power plant in its vicinity. In this instance the community's intentions are to preempt the possibility of a monumental disaster even though, at law, they may be unable to adduce conclusive evidence proving that injury will be likely to occur. Clearly, the communitarian approach gives the community greater control and autonomy in its efforts to address environmental issues and plan appropriate safeguards. In addition, there are further advantages to the communal approach which might be loosely based on Melanesian structures. In Melanesia there are aspects of trusteeship associated with individual usufructuary rights, such that even the degree of control which the individual exercises must, in part, be directed towards communal benefit - the principle being the long term survival of the community. The implementation of these principles would necessarily abrogate any course of action, for example ill-considered transfers, which might harm future generations of the community even if the present membership is left virtually unaffected. In addition, this notion of ownership operates to promote the future of the community, as the community, the ultimate owner of the land, is thought to consist not only of present membership but also past and future members.

A further problem within libertarian theory, which militates against an axiology in support of environmental and general communal protection, is the tendency of libertarians to supplement principles based on individual liberty and autonomy with cruder utilitarian notions associated with people like Jeremy Bentham. These instances are most conspicuous where libertarians seem to confuse their allegiance to individual autonomy and embrace utilitarian calculations in support of those freedoms of private ownership intrinsic to the free market system. Initially in *Anarchy, State and Utopia* Nozick inveighs against utili-

tarianism as constituting an "end state principle" which, more or less, sacrifices individual liberty on the altar or Procrustean bed of forced resource distribution. Ultimately, utilitarianism is rejected because it entails this forced intervention in individual affairs.³¹

But the fact is that an allegiance to individual liberty, *simpliciter*, does not always provide unambiguous answers. For example, it is necessarily the case that championing certain forms of individual liberty can mean restrictions on other forms. Private property rights certainly represent one such dilemma for the libertarian. The legal notion of private property, as it is understood in English common law and in Nozick's entitlement theory, gives the private individual the right to acquire property and legally exclude others from its use and control. This right certainly enhances the liberty and autonomy of the property holder but doubtless places restrictions and limits on the non title holders, those who must respect these rights and, for example, stay off the other's land. (This alone indicates that the right of exclusive control and unilateral transfer is not at all separable from questions of land use, in that the individual property holder would have nothing to transfer if he could not limit the right of access and use by other community members and impose his own uses.) Furthermore, this issue becomes more controversial when one considers that in certain cases this property right may be colliding with traditional aboriginal rights like usage rights of hunting and fishing. In such a case, where traditional rights of usage conflict with acquired rights of private ownership, whose rights and freedoms should prevail? It is not at all obvious or intuitively clear that liberties of the private owner should have a stronger moral claim than traditional aboriginal usage. Nozick suggests that the dilemma can be resolved by compensating for the loss of certain liberties, e.g., to gather, pasture, engage in chase, etc. in those cases where the process of civilization has resulted in a net loss.³² In other words, after initially questioning the moral validity of utilitarian principles, Nozick reintroduces the utilitarian calculus to settle an issue which has no clear cut resolution through the unaided application of the basic libertarian notion of individual liberty.

But consistency may well be the hobgoblin of little minds as Emerson once pronounced, and so perhaps one should not dwell on this point of inconsistency. But let us consider that, in effect, Nozick is admitting that obvious injury and loss of liberty are suffered by those who have had their rights of usage extinguished by the rights of private ownership which he upholds. His response to this diminution of freedom is to suggest that this can be redressed through the benefits of civilization, i.e., through industrial development and the ensuing material benefits that these injured individuals will receive.

But again this thinking elides communal and environmental con-

cerns by considering communities and their problems as reducible, without remainder, to individuals and individual benefit or disadvantage. It thereby misses the point that aboriginal hunting and fishing rights are not simply individual rights but also communal rights intrinsic to a communal form of life (i.e., rights whose control and enforcement invests in the community rather than the individual). Thus, in effect, by dividing land into individual freehold estates, one removes the traditional communal land base from communal control placing the control in individual hands. Furthermore, one undermines the future of a traditional holistic community by sabotaging customs and practices associated with traditional land use. The latter point is intimately connected with the fact that individual control and conveyance of land facilitates industrial development and industrial uses inconsistent with traditional forms of land use. Thus, the overall effect of the implementation of individual forms of land tenure has been disruption to certain traditional activities and the vitiation of the community's control of its own destiny. In some cases there has been violent resistance to these developments gaining prominence in recent years as environmental groups have begun to draw attention to the struggles of various indigenous peoples to maintain a traditional form of life in the face of encroaching development.³³

Finally, buttressing libertarian arguments for certain preferred "liberties" with references to utilitarian advantages will not strengthen the case in non-Western eyes, as holistic thinking does not view the interests of the whole as equal to the interests of the parts. The fact that individual members of the community are enjoying a standard of living previously unachievable will not be entertained as an argument, if this is achieved through social relationships and land use which threaten the cohesion and continuity of the community.

These observations may be dismissed as a mere academic points about the differences between holistic and liberal thinking and, necessarily, the ideological differences between the developed and the developing world. Indeed it will, no doubt, be argued that liberal/libertarian principles are merely the agents of change which help modify outdated forms of community life so that these communities can adapt to modern development. But the uncritical acceptance of this thinking may be mistaken on two counts: first, traditional forms of land use have tended to be aligned with natural cycles and surrounding ecosystems thus tending to preserve and renew the environmental habitat; second, as our understanding of ecological processes deepen, Western societies may come to realize that we must also balance the preoccupation with the immediate material products of development with a concern for the manner in which we are using the environment. This may well mean devaluation of utilitarian advantages and certain liberties associa-

ted with private ownership in favor of communal control with the aim of preserving the habitat or niche structure in which our future human societies must survive.

Ultimately, enshrining the private rights of conveyance and transfer has entailed protecting individual rights to control and determine land use, with little restriction beyond provisos against direct harm to other proximate individuals. In these days of ecological crisis, however, one is increasingly in need of policies which tie land use to communal benefit and the renewal of depleted resources. It is the suggestion of this paper that this can only be effected through the modalities of ownership which re-establish the prominence of the community and the ability of the community, rather than the individual, to plan and coordinate appropriate land use.

Some of my last remarks may lead the reader to think that the focus of my criticism has shifted from libertarianism to industrialization and therefore that I have indulged in a straw man form of argumentation. However, what I emphasize is that the practical and environmental realities indicate that individual forms of ownership, especially in the case of land tenure, tend to facilitate environmental damage: first by instituting forms of ownership which are conducive to rapid industrialization; but even at the pre-industrial stage through the underlying triadic relationship between individual holdings, the cash economy, and non-traditional land use. With respect to the latter phenomena and the incidence of environmental deterioration, one need only refer to the fundamental and irreversible changes which have been effected in the Melanesian way of life with the transformation of Papua New Guinea from a subsistence to a cash economy. The motor of change has been the demand for cash which unlike subsistence farming requires the use of land on a more or less permanent basis for cash cropping. The demands of cash cropping in turn exert pressure on the community to alienate communal land into forms of tenure other than communal in order to facilitate permanent use. When this occurs control of the means of production no longer resides with the community. Subsistence farming of commons does not have such an effect as these lands, after one or two generations of family use, revert back to commons. Aside from the obvious social significance, which we have already diagnosed, this development has profound environmental importance as the cyclical use of land for subsistence farming is replaced by the cash cropping of plantation crops on a permanent basis. This departure from the traditional forms of land use which harmonize with natural cycles and the substitution of permanent cash cropping generate an environmental strain on the land and the depletion of this resource whether or not industrial methods of production are employed.³⁴ With respect to the environment one witnesses the emergence of extensive plantations for

producing rubber, oil palm, sugar, cocoa, tea, coffee etc. Furthermore, this desire for cash has also led to the foreign backed and controlled developments in the areas of gold and copper mining. Power, who has observed this phenomenon in the East Sepik alleges, that this has led to winners and losers and the breakdown of the communal nature of social organization.³⁵ Those who are not sufficiently enterprising have been alienated from the social organization and the results are now encountered in terms of urban drift, crime and urban unemployment. However, the point is that the alienation of communal land to individual holdings is seen to be part of a process which effects environmental damage (and social disruption) without necessarily involving implementation of industrial methods of production.

In a paper of this length there is certainly insufficient space to provide an exhaustive survey of the environmental and social damage effected by the transfer and alienation of land from communal holdings. Among other things, these events have resulted in the release of toxins into the alluvial systems. Add to all this the emergence of the logging industry and one encounters the host of familiar environmental problems which are beginning to plague all third world countries and the world in general.

Aside from issues of cultural continuity and environmental protection, there are other strong economic reasons for preserving the communal land tenure within Papua New Guinea. This traditional institution functions as a source of economic and social security for most Papua New Guineans. Collective ownership, which has been an integral part of the Melanesian subsistence culture, ensures against demographic displacement and nutritional deprivation which have occurred elsewhere in the third world. As 97% of the land in P.N.G. is communally owned, clan holdings continue to offer alternatives to those alienated by the cash economy and urban life. This has served as a mitigating factor which has obviated some of the worst aspects of third world development which occur when landless displaced peasants are forced into overcrowded urban centres. Studies also indicate that subsistence farming through the communal land system is demonstrably efficient.³⁶ Accordingly, hunger and nutritional deprivation have not been significant problems in Papua New Guinea. Development, therefore, has not been retarded by the necessity for additional investment in agriculture thus allowing the economy to mobilize domestic resources for public capital formation.

However this does not mean that abandoning certain liberal principles associated with the notion of private ownership necessitates the embrace of socialism. In other words, the traditional collectivist perspective, as it is found in Melanesia and certain parts of Africa, does not imply a socialist system. Western individualism and Western forms

of socialism are both seen as anathemas to the communitarian ideal embodied in the traditional notion of local communal rights. R.W. James has explained that the traditional communal form of land tenure enshrines the values of participatory democracy.³⁷ Thus, while the individualistic liberal position with its emphasis on individual decision making and control does not accommodate traditional modes of collective control, it is also the case that the socialist orientation which promotes centralized governmental management rather than local management is equally antithetical to the traditional collective mode of local control through participatory democratic structures. This, according to James, does definite work in explaining resistance, both within Melanesia and parts of Africa, to the imposition of forms of land tenure based either on the individualistic liberal model or the socialistic central management model.³⁸ In practical terms what we are calling for is management on the local community level through the democratic participation of the recognized members of the community.

5. Conclusion.

The necessity for some control over the use of the natural environment cannot be overstated as the exercise of the so-called individual right to capital in the interests of intensive development and capitalist endeavour has resulted in the destruction of many features of the natural environment and a gradual process of pollution. This has precipitated a crisis in various ecosystems which may eventually disrupt the biosphere itself such that the colossal effects our species is having on its own habitat may eventually render it unsuitable for future generations. These can be looked upon as the effects of ecological succession, the process by which the structure of the biological community, with respect to both niche structure and species structure, alters as a result of the species modification of its habitat. As happens most often in the case of dominance of one species within an ecosystem, this process ultimately renders the habitat unfit for the dominant species. However, this knowledge in itself should alert us to the necessity for controlling this process and adopting a rational and strategic policy to eschew these developments.³⁹

Western development which has proceeded with the idea of exclusive individual ownership and the right to capital at its centre may no longer be suitable for the sustainable development of the natural environment. Different attitudes towards individual ownership and different modalities of ownership may now be more suitable. I suggest that this may require a return to or at least balancing of individualistic liberal ideals with values embodied in customary communal owner-

ship as found in Melanesia and elsewhere.

According to this thinking, the values embodied in communal ownership entail individual rights which are derivative from communal ownership rights. This departure from the liberal formula, which regards the community's rights as derivative from the individual's pre-eminent right, implies limitations on the individual's right to transfer and the right of capital. In the former case, in which the communal right is pre-eminent, this means that the individual will have to obtain communal approval or consent before exercising the right to capital, which, *inter alia*, includes the exclusive power to transfer the holding and control development. In Melanesia ownership of the means of production - land - has been communal rather than individual. The advantage of regarding ownership as communal based rather than individual based can be measured in the degree to which this will operate to retard the continuing damage to the natural environment. (One admits, of course, that the fact of communal ownership is no absolute guarantee that environmental damage will not occur, however, communal ownership implies that it will be less easy for the individual title holder(s) to avoid liability for the effects of mismanagement.) This will be especially the case if one regards the community as consisting not only of the present membership but also future membership (which is the case in Melanesia).⁴⁰

1. Nozick, Robert, *Anarchy, State and Utopia*, (New York: Basic Books, 1974).
2. Rawls, John, *A Theory of Justice* (Cambridge: Harvard University Press, 1971).
3. Nozick, 1974 p. 198.
4. *Ibid.*, p. 151.
5. *Ibid.*, p. 150.
6. *Ibid.*, p. 151.
7. *Ibid.*, pp. 152-153.
8. *Ibid.*, pp. 153-154.
9. *Ibid.*, p. 50.
10. *Ibid.*, pp. 30-33, 171-173.
11. *Ibid.*
12. For a provocative discussion of this concept see Daniel De Coppet, "The Society as the Ultimate Value and the Socio-Cosmic Configuration," *Ethnos* 55 (1990): pp. 140-151.
13. A.P. Power, "Resources Development in East Sepic Province", in *Ethics of Development: Choices in Development Planning*, (C. Thirwell and P Hughes, eds. Port Moresby: U.P.N.G. Press, 1988), pp. 269-281, p. 269.

14. Heider, K., *Grand Valley Dani, Peaceful Warriors*, (New York: Holt Rinehart & Winston, 1979), p. 32.
15. Power, p. 269.
16. *Ibid.*, p. 270.
17. See E. Mantovani, "Traditional Values and Ethics," in *Ethics of Development: The Pacific in the Twentieth Century*, S. Stratigos and P. Hughes, eds. (Port Moresby: U.P.N.G. Press, 1987), pp. 188-202.
18. Nozick, pp. 32-33.
19. G.W.F. Hegel, *Grundlinien der Philosophie des Rechts*, J. Hoffmeister ed. (Hamburg: University Press, 1955) pp. 208-210, 256.
20. See: Mantovani, in which the author, a Catholic cleric, offers an insightful and colourful discussion of the difference between the moral values which animate traditional societies and the Western values which are a part of the Western forms of life.
21. See: Hegel, De Coppet.
22. De Coppet, p. 141.
23. For a good discussion of this point see K.H. Ilting, "The Structure of Hegel's Philosophy of Right", *Hegel's Political Philosophy: Problems and Perspectives*. Z.A. Pelczynski ed. (Cambridge: Cambridge University Press, 1971), pp. 90-1-10.
24. Hegel, pp. 208-210, 256.
25. De Coppet, p. 144.
26. H.L.A. Hart, *The Concept of Law* (Oxford: Clarendon Press, 1964) p. 188.
27. *Ibid.*, p. 192.
28. This and other aspects of the modern legal concept of ownership is thoroughly explored in A.M. Honore, "Ownership" in *Oxford Essays in Jurisprudence*, A.G. Guest ed. (London: Oxford University Press, 1961) pp. 107-147.
29. Machan, Tibor, "Pollution, Collectivism, and Capitalism", *Journal Des Economistes et Des Etudes Humaines* 2 (1991), pp. 82-102.
30. *Ibid.*, p. 92.
31. Nozick, p.154.
32. *Ibid.*, p. 178.
33. In substance, introduction of utilitarian theory to fill the lacunae in libertarian theory further militates against an axiology which promotes communal control of environmental habitat, appropriate land use, and future development. Indeed utilitarian theory merely increments the conflict in values. Let us consider for a moment a factual example, that of Bougainville Island in the North Solomons province of P.N.G. Until two years ago the Panguna Copper Mine on Bougainville Island generated a third of the taxation revenue of P.N.G. The mine made the North Solomons the richest province in P.N.G. and gave the residents of the province the highest per capita income in the nation. At the same time, however, the mining development and its ancillary services had become a disruption to the traditional life on Bourgainville Island. Traditional forms of usage like hunting and fishing had been directly disrupted and also, in other more derivative ways, the general activities and customs associated with traditional community life. However, if one is wedded to the utilitarian calculus formulated by liberal thinkers like Bentham and Mill a century ago, these people should have been entirely accepting of these changes which had wrought so much individual material benefit. Libertarians like Nozick would join ranks with traditional utilitarians arguing that social and material changes were morally justified by virtue of increments in individual utility through individual material benefit (compensation payments for the loss of traditional rights) and increased liberties through superior individual freehold rights which, in many cases, were replacing customary forms of communal land tenure. Again these attitudes are necessarily reflective of the fact that both libertarians and liberal utilitarians, despite internal dogmatic disputes, are captives of a common liberal ideology which judges social situations in terms of individual loss and benefit. The Bourgainvilleans, however, did not frame the

issue in the latter terms. They did not ask whether, as individuals, they were materially better off, they asked whether their society or community was better off and they came to the conclusion that it was not. Ultimately, Bougainville island plunged into a state of revolt as the Bougainville revolutionary army closed the Panguna mine and subsequently drove the P.N.G. Defence Force and all foreigners from its shores. Bougainville declared itself independent of P.N.G., and the P.N.G. government embargoed the island effecting ever deteriorating levels of health and general welfare. These conditions continue at the time of writing.

Stepping back from these historical events we again underline a conflict of underlying principles, the liberal and the holistic. The Bougainvilleans judged according to the latter and looked at social change as it was seen to affect their society as a whole. In doing so, they attended to the traditional Melanesian consideration which regards the identity and interests of the community as intimately connected with the communal land base. It was obvious that the presence of the mine had disrupted the traditional relationship between community and its communal form of land use which was not consonant with the customary form of community life.

34. A.P. Power, "The Future of Clans in Papua New Guinea in the 21st Century", in *Ethics of Development: Choices in Development Planning*, C. Thirwall and P. Hughes, eds. (Port Moresby: U.P.N.G. Press, 1988) pp. 156-175.

35. *Ibid.*

36. See Ghillean Prance, "Fruits of the Rainforest", *New Scientist* 13 (1990), pp. 35-45.

37. R.W. James, *Land Law and Policy in Papua New Guinea*, Monograph 85. (Port Moresby: Papua New Guinea Law Reform Commission, 1985), p. 38.

38. *Ibid.*

39. For an interesting discussion of this concept and its relevance to the capitalist development of the environment see P. Catton, "Marxist Critical Theory, Contradictions, and Ecological Succession," *Dialogue* 28 (1989): pp. 637-655.

40. See: Mantovani, "Traditional Values".

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ESTOPPEL: A NEW JUSTIFICATION FOR INDIVIDUAL RIGHTS

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1. Introduction.

Add an “e” to the word “stop,” and dress it up a little, and you get “estoppel,” an interesting common-law concept. Estoppel is a principle of equity or justice which is invoked by a judge to prevent, or *estop*, a party from making a certain claim, if the party’s prior actions are in some sense inconsistent with making such a claim, and if another relied on such prior actions to his detriment. For example, suppose your neighbor hires a painter to paint his house, but the painter mistakenly comes to your house and starts painting it. You see him doing this, and realize the mistake the painter has made. But instead of stopping him and telling him of his mistake, you wave at the painter and allow him to finish, hoping to get a free paint job. Later the painter asks you to pay him. You refuse; he sues you for the price of the paint job. As a defense, you claim that you did not have a contract with the painter, which is true. At this point, however, the judge might say that you are estopped from making such a claim (that you did not have a contract), because it is inconsistent with your prior action (of letting the painter continue painting your house), and because the painter in good faith relied on your actions, to his detriment. You “will not be heard” to claim there was no contract. Since you are prevented, estopped, from urging that defense, you will lose

the lawsuit and have to pay the painter. Since you acted as if you did have a contract, you cannot be heard to deny this later on; you are estopped from denying it. As Lord Coke stated, the word "estoppel" is used "because a man's own act or acceptance stoppeth or closeth up his mouth to allege or plead the truth."¹

This legal concept of estoppel has many other applications,² but the specifics are not relevant here. Although it has historically been used in a legal setting, it harbors some very important political and philosophical ideas, ideas which can be used to delimit and justify a libertarian theory of government.

The heart of the idea behind estoppel is the idea of *consistency*. In the case of legal estoppel, a man in court is told that he will not be heard to make a statement which is flatly inconsistent with his earlier behavior (and which another relied upon). This idea of insisting upon consistency has even more potency in a debate, discussion or argument where a person's claims, to be coherent, must be consistent. By using a philosophical, generalized version of the concept of estoppel, one can make a case for the free society. In general, I want to show how one can "estop" the state from justifying laws against non-aggressive behavior, and how one can estop individual aggressors from arguing against their imprisonment or punishment.

This is effectively equivalent to validating the *nonaggression principle*, which states that no person has the right to aggress against another, that any action whatsoever is permissible as long as it does not involve aggression against others. "Aggression" is defined as the *initiation* of the use or threat of physical violence against the person or property of anyone else."³

Applying estoppel proves:

1. If the state proportionally punishes an aggressor, *his* rights are not violated, and
2. If the state punishes a nonaggressor, his rights are violated; thus,
3. The nonaggression principle is a necessary (but not sufficient)⁴ condition for the validity of any law.

Let us see how.

2. Estoppel and Its Validity.

The estoppel principle is merely a convenient way to apply the requirement of consistency to arguers. Under this principle, a person is *estopped* from making certain claims, statements or arguments if the

claims urged are clearly inconsistent and contradictory. To say a person is estopped from making certain claims means that the claims cannot even possibly be right, because they are contradictory, and thus they should be disregarded; they should not be heard.

The core of the estoppel principle is consistency. Consistency is insisted upon in any argumentative claim, because an argument is an attempt to find the truth; if an arguer need not be consistent, the very activity of argumentation - of truth-finding - cannot even occur. For example, if Mark states that A is true and that not-A is also, *simultaneously*, true, we know immediately that Mark is wrong - that A and not-A cannot both be true. In short, it is impossible for a person to coherently, intelligibly assert, in a discussion or argument, that two contradictory statements are true; it is impossible for his claims to be true. Thus he is estopped from asserting them, he is not heard to utter them, because they cannot tend to establish the truth, which is the goal of all argumentation.

(Rarely will an arguer state that both A and not-A are true. However, whenever an arguer states that A is true, and also *necessarily holds* that not-A is true, the inconsistency is still there, and he is still estopped from [explicitly] claiming that A is true and [implicitly] claiming that not-A is true. He might be able to remove the inconsistency by dropping one of the claims; but this is not always possible. For example, Andrew might argue that argumentation is impossible; but since he is currently arguing, he must, necessarily, implicitly hold that he is arguing, and that therefore argumentation is possible. He would be estopped from urging these two contradictory claims, one explicit and one implicit, and he could not drop the second claim - that argumentation is possible - for he cannot help but hold this view while engaged in argumentation itself.)

By engaging in argument, one is necessarily trying to arrive at the truth. Since consistency is a necessary condition of discovering truth, any arguer is implicitly accepting the consistency requirement, i.e., the estoppel principle, and would contradict himself if he denied its validity. If my opponent says that inconsistency in claims is not fatal to truth, then he could never claim that my opposing view (that consistency is necessary) is incorrect, because it is "merely" inconsistent with his; thus, he could not deny the truth of my view. But such a position is nonsensical, for my opponent would be claiming that his view (that consistency is unnecessary) and my view (that consistency is necessary) are both true, a blatant contradiction.⁵

Thus any arguer must also accept the validity of the estoppel principle, for it, as explained above, is merely a convenient way to apply the requirement of consistency, which any arguer does and must accept. In effect, any arguer is estopped from denying the validity of

estoppel, because to deny its validity is to deny the necessity of consistency to argumentation, which is itself an inconsistent position.

Estoppel is used in this paper against various types of arguers. It is used against an aggressor objecting to his punishment, and against the state objecting to a nonaggressive prisoner's assertion of his rights. It is also used, implicitly, against anyone who would argue against the validity of estoppel and the results of its application. The result of applying estoppel, as shown below, is the well-known libertarian non-aggression principle. The justification of this rule is significant, for it can be used to justify a libertarian form of government.

3. Applying Estoppel.

The conduct of individuals can be divided into two types: coercive or aggressive (i.e., involving the *initiation* of force) and non-coercive or nonaggressive. This division is purely descriptive. It is unobjectionable, because it does not assume that aggression is invalid, immoral or unjustifiable; it only assumes that (at least some) action can be objectively classified as either aggressive or nonaggressive.⁶

The government acts through the enforcement of laws. Laws are aimed at conduct, and thus can similarly be divided into two types of laws: those that proscribe aggressive behavior, and those that proscribe nonaggressive behavior. Both types of laws will be examined through the estoppel eyepiece.

A. Laws Restricting Aggressive Behavior.

Let us examine the effect of the estoppel principle on laws against aggression. The clearest and most severe instance of aggression is murder; how would an anti-murder law fare? Under such a law, the state uses force of some sort - execution, punishment, imprisonment, monetary fine, etc. against - an individual who has (been determined to have) murdered another. Suppose that John murders Ralph, and the state convicts and imprisons John. Now, if John objects to his punishment, he is claiming that the government should not, ought not, indeed, must not, treat him this way.⁷ By such normative talk John claims he has a *right*⁸ to not be treated this way; he claims that such aggression is *wrong*.⁹ However, this claim is blatantly inconsistent with what *must be* the defendant's other position: since he murdered Ralph, which is clearly an aggression, his actions have indicated that he (also) holds the view that "aggression is *not* wrong." (See section 3.B below for John's objections to imputing this view to him.)

John, by his earlier action and its necessary implications, is estop-

ped from claiming that aggression is wrong. (And if he cannot even claim that aggression - the *initiation* of force - is wrong, then he cannot make the subsidiary claim that retaliatory force is wrong.) He cannot assert contradictory claims; he is estopped from doing so. The only way to maintain consistency is to drop one of his claims. If he retains (only) the claim "aggression is proper," then he is failing to object to his imprisonment. If he drops his claim that "aggression is proper" and retains (only) the claim "aggression is wrong," he indeed could object to his imprisonment; but, as we shall see (in section 3B.1, below), it is *impossible* for him to drop his claim that "aggression is proper."

To restate: If John does not claim that murder is wrong (he *cannot* claim this, for it contradicts his view that murder is *not* wrong, evidenced by his previous murder; he is estopped from asserting such inconsistent claims), then if the state attempts to kill him, he cannot complain about it, because he cannot now (be heard to) say that such a killing by the state is "wrong," "immoral" or "improper." And if he cannot complain if the state proposes to kill him, *a fortiori* he cannot complain if the state merely imprisons him.¹⁰

B. Necessary Claims and Their Proper Form.

1. Changes of Mind and Denunciation of Prior Action.

John could attempt to rebut this application of estoppel, however, by claiming that he, in fact, *does* currently maintain that aggression is improper; that he has changed his mind since the time when he murdered Ralph. He is attempting to use the simultaneity requirement, whereby an arguer is estopped from asserting that A is simultaneously true and not true. John is urging that he does not hold both contradictory ideas - aggression is proper; aggression is improper - now, that he is only asserting the latter, and thus is not estopped from objecting to his imprisonment.

But John traps himself by this argument. If John now maintains that the initiation of force is improper, then, by his own current view, his earlier murder was improper, and John necessarily denounces his earlier actions, and is admitting the propriety of punishing him for these actions, which is enough to justify punishing him. (And of course it would also be inconsistent of him to deny what he admits, and he is thus estopped from doing so.) Furthermore, if John denounces his murder of Ralph, he is estopped from objecting to the punishment of that murderer, for to maintain that a murderer *should* not, must not, be punished is inconsistent with a claim that murder should not, must not, occur.¹¹

(Also, finally, John could argue that he never did hold the view that "murder is not wrong," that he murdered despite the fact that he held it to be wrong, and thus he does not have to change his mind. But even in this case, John admits that murder is wrong, and that he murdered Ralph, and still ends up denouncing his earlier action. Thus he is again estopped from objecting to his punishment, as in the situation where he claims to have changed his mind.)¹²

Thus, whether John currently holds both views, or only one of them, he is still estopped from objecting to his imprisonment. This is why the requirement of simultaneity, which is part of the consistency rule, is satisfied even when a criminal is being punished for his *prior* actions (indeed, it is only for *prior* - or, at least, currently occurring - actions that a criminal *can* be punished). Either he still maintains his previous view (that aggression is not wrong), which is inconsistent with his objection to being punished; or he has changed his mind, in which case he is denouncing his prior actions which is again inconsistent with an objection to being punished and which is also an admission that punishment is proper. Thus, he can be deemed to hold both his current view (that aggression is improper) and his prior view (that aggression is proper) simultaneously, for the result is the same: his objection to being punished will not be heard.

2. The Requirement of Universalizability.

It could also be objected that the estoppel principle is being improperly applied, that John does not, in fact, hold inconsistent views, is not asserting inconsistent claims. Instead of having the contradictory views that "aggression is proper" and "aggression is improper," John could claim to instead hold the different, but not inconsistent, positions that "aggression *by me* is proper" and "aggression by the state, against me, is improper." However, we must recall that John, in objecting to the state's imprisonment of him, is engaging in argument. He is arguing that the state *should not* - for some reason - imprison him; the "should" there shows that he is speaking of a norm. As Hans-Hermann Hoppe states,

Quite commonly it has been observed that argumentation implies that a proposition claims *universal* acceptability, or, should it be a norm proposal, that it is 'universalizable.' Applied to norm proposals, this is the idea, as formulated in the Golden Rule of ethics or in the Kantian Categorical Imperative, that only those norms can be justified that can be formulated as general principles which are valid for everyone without exception.¹³

Thus the proper way to select the norm which the arguer is asserting is to ensure that it is universalizable. The views that "aggression by me is proper" and "aggression by the state, against me, is improper" clearly do not pass this test. The view that "aggression is (or is not) proper" is, by contrast, universalizable, and is thus the proper form for a norm.

When applying estoppel, then, the arguer's claims to be examined must be in a universalizable form. He cannot escape the application of estoppel by arbitrarily specializing his otherwise-inconsistent views with liberally-sprinkled "for me only's."¹⁴ Since he is engaged in arguing about norms, the norms asserted must be universalizable.

Thus we can see that applying the principle of estoppel would not hinder the prevention of violent crimes. For the above murder analysis can be applied to any sort of coercive, violent crime. All the classical violent crimes would still be as preventable under the new scheme as they are today. All forms of aggression - rape, theft, murder, assault, trespass and even fraud - would still be proper crimes. A rapist, e.g., could only complain about being imprisoned by saying that his rights are being violated by the aggressive imprisonment of him; but he would be estopped from saying that aggression is wrong. In general, any aggressive act - one involving the initiation of violence - would cause an inconsistency with the actor later claiming that he should not be imprisoned or punished in some manner. But should the punishment in some sense be proportional to the crime? This question is addressed in section 3D, after first considering limits on state action against nonaggressors.

C. Laws Restricting Nonaggressive Behavior.

Beside laws that restrict aggressive, coercive behavior, there are laws aimed at ostensibly peaceful behavior: minimum wage laws, anti-pornography laws, anti-drug laws, etc. How would estoppel affect (the validity of) these laws? It can be shown that the government is estopped from enforcing certain laws (more precisely, it is estopped from claiming that it has the right to use force against a given person). But note that, even if we can say that the government is estopped from imprisoning a certain person, say Susan, this of course does not mean that the state is prevented from doing so. The principle of estoppel could, at most, be used to show that the government's justification for imprisoning Susan is inadequate.

Let us take an example. Suppose Susan publishes a patently pornographic magazine in a jurisdiction with anti-pornography laws; the state convicts and imprisons her. Unless Susan wants to go to prison,

she will not consent; she will object. She will assert that the government is violating her rights, by its use of force against her; that the government should not do this.

Now the government may attempt to be clever and use the estoppel argument against her, to estop her from objecting to her imprisonment. However, Susan is not estopped from complaining about her confinement. She is complaining about the aggression against her. Her prior action in question was the publishing of a pornographic magazine. This action is in no way aggressive; thus, Susan has not engaged in any activity, nor necessarily made any claim, which would be inconsistent with her claiming that aggression is wrong. (Perhaps she could be estopped from complaining about other pornographers, but she is here complaining about her being kidnapped by the state.) Thus the state cannot use estoppel to prevent Susan from objecting to her imprisonment, as it may in the murder example above (in section 3A).

If the state imprisons or punishes Susan, it is an aggressor, an initiator of force. By application of the estoppel principle, it can be shown that the state has no right to engage in this activity. For suppose Susan asserts the right to use defensive force against the state, in order to escape her confinement, even though she lacks the ability to mount such an attack. The state could not assert that Susan has no right to use force against it, for it is currently, by its action of imprisoning Susan, "admitting" the validity of aggression.

So Susan may assert that she has a right to attack the government, and the government is estopped from denying her claim. Furthermore, any third party, say, a conservative who supports such anti-pornography legislation, is also estopped from denying her claim. For, by claiming that the government's aggression is valid, he, too, is estopped from denying Susan's assertion of her rights. It would be non-universalizable of him to assert that Susan has no right to attack the government and that the government has a right to attack Susan; it would be inconsistent for him to assert that aggression is wrong (Susan attacking the government) and that aggression is right (the government attacking Susan).

But once it is accepted (for it cannot be denied, by anyone) that Susan has such a *right* to defend herself, it is clear that the state's actions she has a right to defend herself against are thus necessarily rights-invasive. To establish that an action is rights-invasive necessarily implies that it is improper, wrong, immoral, that it *should* not, must not, occur - that the state has no *right* to engage in such activity.

To sum up: if the state imprisons Susan for a non-coercive act, Susan is not estopped from objecting. The state is estopped from denying Susan's (assertion of her) *right* (regardless of her might) to

retaliate, which implies that the state has no right to imprison her.

Thus it can be seen that any law restricting non-coercive behavior is invalid, null and void, and every person, and the state, is estopped from arguing for its legitimacy.¹⁵

D. Proportional Punishment.

The above analysis in section 3A, justifying the punishment of aggressors, does not mean that all concerns about proportionality may be dropped. Someone who commits a relatively minor coercive act is estopped from complaining about - what? Suppose the state attempts to execute a person whose only crime was the theft of a candy bar. He will complain that his right to life is about to be violated; is he estopped from making such a claim? No, because he has done nothing inconsistent with such a claim to justify so estopping him; he does not necessarily claim that aggressive killing is proper. The universalization requirement does not prevent him from reasonably narrowing his implicit claim to "minor aggression, namely candy bar theft, is not wrong" rather than the more severe "aggression is not wrong."

In general, while the universalization principle prevents arbitrary particularization of claims - e.g., adding "for me only's" - it does not rule out an objective, reasonable statement of the implicit claims of the aggressor, tailored to the actual nature of the aggression and its necessary consequences and implications. E.g., while it is true that the thief has stolen a bar of chocolate, he has not attempted to take a person's life; thus he has never necessarily claimed that "murder is not wrong," so that he is not estopped from asserting that murder is wrong. Since a candy bar thief is not estopped from complaining about his imminent execution, he can also assert his right to retaliate against the government (which is estopped from denying it), which implies that the government has no right to execute him.

If the nature of the punishment exceeds the nature of the aggression, the aggressor is no longer estopped from complaining (about the excess punishment), and is able to argue that he has a right to attack the state. The state is estopped from denying this because, to the extent of the excess punishment, it is itself an aggressor, which implies that the criminal has a right to not be disproportionately punished (following the analysis used in section 3C, above).¹⁶

4. Conclusion.

Principled application of the estoppel principle would result in a free society. For all coercive crimes could be punished (if not by the state,

then at least by victims or their agents or defenders); and all non-coercive "crimes" could not be enforced.

The estoppel principle has been used above both to justify certain types of government laws, and to invalidate others. First, a person who has initiated force is estopped from arguing against his (proportional) punishment, because this is inconsistent with other positions he necessarily holds or can be deemed to hold. Second, a person who has not initiated force may not validly be imprisoned by the state, because he will assert that this is a violation of his rights, which the state is estopped from denying because of its coercive imprisonment of him.

Since an arguer is estopped from denying the validity of estoppel in general, he must accept its validity - and he must also accept the validity of the results of its application. The above framework establishes the validity of the libertarian nonaggression principle, which has been shown by many others to justify a libertarian or at least a minimalist or night-watchman state.¹⁷ Thus, everyone "must" accept the validity of the free society; to urge otherwise is to argue for inconsistency, and to be inconsistent, and to necessarily be wrong.

1. 2 Coke, Littleton 352a, quoted in 28 Am Jur 2d Estoppel and Waiver, §1.

2. E.g., estoppel by deed, equitable estoppel, the "clean hands" rule, promissory estoppel, judicial estoppel, waiver, technical estoppel, estoppel by laches, and estoppel by misrepresentation. See 28 Am Jur 2d Estoppel and Waiver, §1 *et seq.* and 31 C.J.S. Estoppel §1 *et seq.*

In the remainder of this article, "estoppel" refers to the more general, philosophical version of estoppel, as opposed to the traditional theory of *legal* estoppel.

3. Murray N. Rothbard, *For a New Liberty* (New York: Libertarian Review Foundation, 1978), 23.

4. The nonaggression principle, with respect to the imprisoned aggressor, provides an incomplete justification for such laws because they are shown only to not violate the rights of the individual aggressor. But the legitimacy of the state might still be questioned, on other, unrelated grounds, concerning the effect of such laws on innocent third parties. Of course, if it could be shown that no such third parties were aggressed against by the state because of its actions against aggressors, the state, and its anti-aggression laws, *would* be justified. See n10.

5. On the impossibility of denying the law of contradiction, see IV Aristotle, *Metaphysics*, ch. 4 (where, for example, Aristotle states that "it is not possible at the same time to truly say of a thing that it is a man and that it is not a man."); Hoppe, *A Theory of Socialism and Capitalism: Economics, Politics, and Ethics* (Boston: Kluwer Academic Publishers, 1989), p.232 n23.

6. Aggression here is used neutrally and purely descriptively, with no moral connotations. I divide conduct into aggressive and nonaggressive in order to justify the nonaggression principle; but the purpose of my categorization is irrelevant to the validity of my argument. It cannot be a valid criticism of the argument that aggression was chosen to be a classifier of conduct, rather than some other criterion; all that need be

examined is the legitimacy of the argument itself, especially since the division used is morally neutral.

Other divisions could of course be proposed as well, but they do not result in interesting or useful results. For example, one could divide human conduct into jogging and not jogging, and attempt to apply estoppel to it, but to what end? In an attempt to justify some type of utilitarian-oriented welfare state, rather than the libertarian state justified by the nonaggression principle, one could instead divide human conduct into, say, "socially beneficial" and "not socially beneficial" behavior. And such a division in, admittedly, perfectly legitimate, in abstract. However, it is pointless, for estoppel cannot be applied to it, as it can to an aggression/nonaggression division, to result in any sort of useful rule.

For, in the estoppel theory argued below, an action is categorized, purely descriptively, as being either aggressive or not. Claims *about* action are then subjected to the universalization requirement (because claims occur during argumentation where universalization must be applied, as discussed in section 3.B.2, below), which forces such claims to be in a form such that the nonaggression principle results. However, categorizing action as "socially beneficial" or not is not merely descriptive, as is the aggressive/nonaggressive division. Action is aggressive if it is the initiation of force against another, e.g., murder, rape, and battery. But what is "socially beneficial"? A lengthy analysis must occur just to show that the conduct in question has been appropriately classified as "socially beneficial" or not. Indeed, such an analysis would amount to a full blown theory justifying a welfare state, obviating the need for use of the estoppel principle in the first place. But since the nonaggression principle, which rules out a welfare state, is justified by application of estoppel, it is impossible to justify such a welfare state theory. For if the nonaggression principle is justified, its contradiction cannot be true.

7. If John does not hold this view, then he is failing to deny the propriety of his imprisonment; he is effectively consenting to his incarceration, and we do not then need to justify the state's action of imprisoning him. I assume in this paper that an individual's consent justifies action against him.

8. On this subject, Alan Gewirth has noted, "Now these strict 'oughts' involve normative necessity; they state what, as of right, other persons *must* do. Such necessity is also involved in the frequently noted use of 'due' and 'entitlement' as synonyms or at least as components of the substantive use of 'right.' A person's rights are what belong to him as his due, what he is entitled to, hence what he can rightly demand of others." Gewirth, "The Basis and Content of Human Rights", 13 Ga.L.Rev. 1143, 1150 (1979).

9. The fact that John here necessarily claims a right, in that the aggression against him is wrong and ought not occur, is a key difference between the estoppel-based justification of rights and Alan Gewirth's action-based attempt, set out most fully in his book *Reason and Morality* (Chicago: University of Chicago Press, 1978). Gewirth argues that all action is purposive and free, and that an agent (i.e., actor) thus necessarily values freedom and well-being, the prerequisites of successful action. The next step - upon which his entire theory depends - does not follow, however: that because an agent must hold that freedom and well-being are necessary goods to him, he "logically must also hold that he has rights to these . . . features and he implicitly makes a corresponding rights-claim." (*Reason and Morality*, p. 63.)

An agent does not necessarily claim a right to have goods just because he values them; and, furthermore, the requirement of universalizability does not apply to goods valued by an agent. However, when an agent is engaged in the special activity of argumentation, in making norms-claims, he is claiming rights, and the requirement of universalizability does apply. (See section 3B.2) (For criticism of this crucial step in Gewirth's argument, see A. MacIntyre, *After Virtue: A Study in Moral Theory* (Notre Dame: University of Notre Dame Press, 1981), pp.64-5; H. Veatch, *Human Rights: Fact or Fancy?* (Baton Rouge and London: Louisiana State University Press, 1985), pp.159-60;

H. Veatch's review of *Reason and Morality* in *Ethics* LXXXIX 401-14; and especially H. Hoppe, *A Theory of Socialism and Capitalism: Economics, Politics, and Ethics* (Boston: Kluwer Academic Publishers, 1989), pp.130-4, 234, n6. Professor Hoppe's "argumentation ethic" (see n15 below) similarly is not subject to the criticisms of Gewirth's theory, because it focuses on argumentation, not just action in general.

Moreover, even if Gewirth were correct that actors do implicitly claim a right to certain necessary goods, Roger Pilon's interpretation of the Gewirthian theory, which results in a libertarian theory of government, makes more sense than Gewirth's working of it to yield a justification of the welfare state. See Pilon, "Ordering Rights Consistently: Or What We Do and Do Not Have Rights To", 13 Ga.L.Rev. 1171 (1979). For a concise statement of Gewirth's theory, see Gewirth, "The Basis and Content of Human Rights", 13 Ga.L.Rev. 1143 (1979).

Now although an agent does not necessarily claim a right to have goods the he necessarily values, he *does* make a certain sort of claim when he engages in action. For example, if an actor argues, he is implicitly claiming, among other things, that argumentation is possible. Similarly, but more importantly, when an agent engages in an activity, he cannot also, simultaneously, claim such an action is *wrong* - that he should not and must not take such action - for, otherwise, he would not engage in action that he maintained he must not engage in. During the act of murder, a murderer must implicitly hold that (at least this) "murder is not wrong." (A murderer, objecting to his imprisonment, might claim that he has changed his mind, that he murdered even though he thought it was wrong at the time; but in either case he denounces the murder and thus can be deemed to have held and to still hold the view that "muder is not wrong," for the result is the same. See section 3B.1, below.)

It is when this claim is later brought into an argument, concerning the propriety of punishing the aggressor, that it can be subjected to the criterion of universalizability, *because* the special action of argumentation is now being engaged in. It is the event of an actor later arguing *about* his earlier action that provided the link between the *action*, on the one hand, and rights-claims concerning the action and the necessity of those claims being universalizable, on the other, that is missing in Gewirth's theory, which focuses solely on human action and not on the actor's subsequent arguments concerning it.

10. Although John may not complain that his imminent execution by the state would violate his rights, this does not necessarily mean that the government may execute people. It only means that John's complaint may not be heard. A third party, say, Rhonda, however, may have another legitimate complaint about John's execution, one which does not assert John's rights, one which rather takes other factors, such as the special nature of the state, into account. For example, Rhonda may argue that the state, as an inherently dangerous and powerful entity, should not be allowed to kill even murderers, because giving such power to the state is so inherently dangerous and threatening to innocent, non-estopped people, like Rhonda, that it amounts to an aggression and a violation of *Rhonda's* rights.

Similarly, after applying estoppel solely to the relationship between the state and a defendant, the exclusionary rule - whereby a court may not use evidence if it is illegally obtained - would fall. ("Evidence" includes illegally seized evidence, but not a torture-induced confession, which is not evidence at all because of its lack of probative value.) For if the defendant actually committed the crime, it cannot violate his rights for the court to discover this fact, even if the evidence was illegally obtained; the defendant would still be estopped from complaining about his punishment. However, a third party can claim that it is too dangerous for government to have a system which gives it incentives to illegally search people, and that the exclusionary rule is required in order to protect innocent people; because lack of an exclusionary rule could amount to an aggression against innocent third parties, the state might be estopped from claiming it has

the right to use illegally seized evidence in a conviction of a defendant.

Whether such arguments of third parties could be fully developed is a separate question, beyond the scope of this article; I merely wish to point out that other complaints about certain government actions are not automatically barred just because the specific criminal cannot complain. Just because the government's imprisonment of John does not aggress against him does not show that such action does not aggress against others.

11. In an argument where norms - rules of conduct - are being searched for, an arguer cannot hope to convince others of a norm (something that must not occur) which carries absolutely no consequences for its violation. The search for norms would be purposeless otherwise. Visiting sanctions upon those who break such rules is what it means to say that the rule "must" not be broken. Such strict norms by their nature also contemplate sanctions for their violation. Thus if John admits that "murder must not occur" he implicitly admits that it is proper to apply appropriate sanctions to someone - even himself - who breaks that rule. See also the comments of Professor Gewirth in n8, above.

12. See n9, esp. paragraph. 4.

13. Hoppe, p. 131

14. "The rule cannot specify different rights or obligations for different categories of people . . . as such a 'particularistic' rule, naturally, could never, not even in principle, be accepted as a fair rule by everyone" (Hoppe, p. 5). Checked against the universalization principle, "all proposals for valid norms which would specify different rules for different classes of people could be shown to have no legitimate claim of being universally acceptable as fair norms, unless the distinction between different classes of people were such that it implied no discrimination, but could instead be accepted as founded in the nature of things again by everyone" (*Ibid*, 131-132). Particularistic rules, "which specify different rights or obligations for different classes of people, have no chance of being accepted as fair by every potential participant in argumentation for simply formal reasons. Unless the distinction made between different classes of people happens to be such that it is acceptable to both sides as grounded in the nature of things, such rules would not be acceptable because they would imply that one group is awarded legal privileges at the expense of complementary discriminations against another group. Some people, either those who are allowed to do something or those who are not, therefore could not agree that these were fair rules." (*Ibid*, 138)

15. I would like to mention here Hans-Hermann Hoppe's "argumentation ethics," which is similar in some respects to the estoppel theory, as developed most fully in his *A Theory of Socialism and Capitalism: Economics, Politics, and Ethics*, ch. 7 and *passim*. (For further elaboration on Hoppe's thesis, see also his, "The Ultimate Justification of the Private Property Ethic," *Liberty*, September 1988, p. 20; symposium, "Hans-Hermann Hoppe's Argumentation Ethics: Breakthrough or Buncombe?" *Liberty*, November 1988, 44, especially Murray Rothbard's contribution, "Beyond Is And Ought," and Hoppe's response, "Utilitarians and Randians vs. Reason"; D. Osterfeld, "Comment on Hoppe," and Hoppe's response, "Demonstrated Preference and Private Property: A Reply to Professor Osterfeld," *Austrian Economics Newsletter*, no.3 (1988); D. Conway's book review of *A Theory of Socialism and Capitalism*, and Hoppe's response, "On the Indefensibility of Welfare Rights: A Comment on Conway," *Austrian Economics Newsletter*, no. 1 (1990).

Hoppe's main argument is that any person who argues must accept certain principles which must be implicitly acknowledged by any person engaged in the activity of arguing. Hoppe shows that any arguer presupposes that both the arguer and the listeners, indeed all people, have a right to self-ownership, and the right to homestead property. He goes on to show that the necessary implication of the principle of homesteading is *laissez faire*.

I am arguing that the application of the estoppel principle results in the nonaggression

principle, and justifies it. Further, I am arguing that anyone engaging in argumentation must accept the principle of estoppel, and thus must accept this result. Hoppe's theory derives the same nonaggression principle, though in a different manner: he combines the requirement of universalizability with the fact of argumentation, to directly arrive at the nonaggression principle (Hoppe, pp. 131-3). I, on the other hand, use the phenomenon of argumentation to show the validity of estoppel; estoppel and the universalizability requirement are then used to demonstrate the validity of the nonaggression principle. The estoppel theory developed here in no way contradicts the validity of Hoppe's analysis; they are merely different ways of arriving at a similar result.

16. See Murray Rothbard's theory of proportional punishment, in his *The Ethics of Liberty* (Atlantic Highlands, New Jersey: Humanities Press, 1982), ch. 13.

17. For further development of the nonaggression principle and the corresponding individual right to noninterference into a full-blown political theory, see, e.g., Robert Nozick, *Anarchy, State and Utopia* (New York: Basic Books, 1974); Murray N. Rothbard, *For a New Liberty* (New York: Libertarian Review Foundation, 1978) and *The Ethics of Liberty* (Atlantic Highlands, New Jersey: Humanities Press, 1982).

MACHAN'S MORAL FOUNDATIONS

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Individuals and Their Rights, by Tibor Machan, attempts to provide a moral justification for the libertarian outlook. By 'libertarianism', Machan refers to that "distinctive American political tradition" - the tradition which embraces "a conception of political and legal justice that upholds each individual's basic right to life, liberty, and property."¹ These basic rights are conceived in *negative* terms; the right to life, in other words, demands not that anyone (including the government) provide the goods necessary for life (that would be a *positive* conception of the right), but rather that no one interfere with the moral sphere appropriate to it (in other words, no one threatens my life). My rights demand nothing from you; they demand of you their proper respect.

We can summarize the basic structure of Machan's argument: political justice is explained in terms of these negative rights (it is not justice which explains rights, but rather rights which explains justice). These rights, Machan claims, are grounded in the ethics of classical egoism. Because of what I am, and what I ought to do, there are certain spheres of moral authority that deserve full respect, both from other individuals, and even from the government.

This book evidences a sincere desire to defend its position on all fronts. It is Machan's contention that, although others have argued for libertarianism's political desirability or economic superiority, few, if any, have done justice to the moral foundation of the outlook. This is the specific intention of the book.² I will attempt to articulate a couple of

questions about the justification provided. I am specifically concerned with the structure and claim of classical egoism as a moral theory; secondly, I will briefly consider how this moral theory is connected to the political conclusion it intends to support.

A necessary, though not sufficient, condition of libertarian politics would seem to be the individualistic moral theory that Professor Machan calls "classical egoism." Classical egoism is presented against the foil of Hobbesian egoism. Whereas Hobbesian egoism rests upon a reductionistic and atomistic conception of the human person, ultimately giving rise to a subjective structure of value, classical egoism, by contrast, is grounded in the natural end or perfection of the living being. This gives rise to what Professor Machan calls the "core concept of the good":

Being in a position to complete the nature of what something is makes that something a good one of its kind. (*IR*, p. 46)

We are not simply bundles of desire; we are certain kinds of bundles, and this specificity implies certain practical norms. For this reason, Machan can assert (as the Hobbesian cannot) that practical life or human agency is not simply a matter of desire. Desire is, of course, a factor in all human agency, but since the classical egoist believes that 'human' refers to some determinate nature, it makes sense to speak of correct or appropriate desires. Furthermore, this determinate nature (which the Hobbesian does not recognize) allows the classical egoist to speak of universal standards and norms applicable to all members of the classification.³

In other words, classical egoism, unlike Hobbesian egoism, has an objective claim to make: the morally good is essentially related to the nature of the agent. Since this nature is conceived in teleological terms, classical egoism can be understood, in this regard at least, as Aristotelian.⁴ This is the classical element in classical egoism: the structure of value, which provides the context of moral activity, is in some sense set by nature. In addition to a structure of natural value, moral value involves the free choice of a rational agent. Free choice effects what Professor Machan calls an "ontological shift" from goodness to moral goodness. We will focus on the crucial role of free choice shortly.

Professor Machan anticipates our next question:

Why call this 'egoism' in the first place? Because in the end the ultimate beneficiary of moral life is the agent, in that he or she will be the best person he or she can be.

The point of morality is to provide human beings with a guide to doing well in life, to living properly, to conducting themselves rightly. (*IR*, p. 37)

This is a brief outline of classical egoism, as I understand it. My first concern, before we get to the political implications, is about the structure and claim of this ethical position. (Machan indicates that this position is defended on its own merits.⁵) What is it precisely that I ought to do, according to the classical egoist? And, most importantly, having decided what the egoist program is, what is the character of the egoistic 'ought'?

It is clear that one ought to live his/her life well, i.e., one should be happy. Since human happiness, or well-being, consists in living according to our fullest perfection, which is the rational capacity, one ought to live rationally, which is to say morally. The classical egoist argues that one ought to do that which is consistent with the patterns and the demands of eudaimonistic realization, patterns and demands which at times require non-calculating loyalty, compassion, and generosity (*IR*, p. 35). The relationship between moral activity and happiness, therefore, is not that between a means and an end: happiness is not a feeling; it is a certain kind of activity. As Machan puts it:

The relationship between the value each person has chosen by choosing to live his or her human life and the principles adherence to which will result in the realization of that value, is not to be conceived as a mechanistic means/ends model, whereby the means can be separated from the ends . . . This is the truth in the ancient idea that virtue is its own reward, at least for the individual with moral integrity, who sustains his rational plan of living in all his conduct. (*IR*, p. 43)

Since moral activity *constitutes* my fulfillment, in other words, it would not be fair to characterize the egoistic ought as a hypothetical imperative, if by 'hypothetical' we mean to suggest that moral activity has only an instrumental value.

A new question can now be asked of the egoist: Why *should* I be happy? Why should I be concerned with self-perfection, especially if I am satisfied with less? Here my concern is not so much with excellence in other-regarding virtues (such as those mentioned above - generosity, compassion, loyalty) because these commit us to some *interpersonal* obligations. While it is undoubted that Machan envisions his excellent moral agent in a full array of social relationships, it is a

basic thesis of classical egoism (as I understand it) that, whatever we may owe to one another, our interpersonal obligations are neither primary among nor exhaustive of our moral obligations.⁶ The question is this: if we focus, for the moment, on those self-regarding *oughts* that classical egoism defends as primary, are we able to reconstruct the intelligibility of or strength behind these claims? Can we, on egoistic terms, declare in some meaningful sense that a person is *morally* wrong if, through his/her own laziness or cowardice, he/she is unable to take any initiative, and is for that reason not fully happy? It is evident that Machan's eudaimonism is not urging moral activity as a means to pleasure; since happiness is understood to be moral activity, moral activity is not a means at all. One need not be moral because it will produce something beyond itself, such as pleasure.⁷ But all of this begs the question about the moral status of the end itself: no matter how we describe it - as happiness, or as moral activity, or as human fulfillment - what do we mean when we say that a person ought to strive for and achieve these ends?

This is a harder question. For the classical egoist, the answer seems to be that it simply doesn't make sense not to pursue successful living *if one has chosen to live*. As Machan puts it, "the choice to be happy . . . is implicit in the choice to live" (*IR*, p. 57) in the same way that the choice to get there efficiently is implicit in the choice to travel to New York City. My fundamental moral obligation (the obligation to be happy), therefore, results *from* a tacit choice that I have made (the choice to live). Although I don't *set* the terms of my moral life (they are still objective) I *agree* to them. According to Machan, suicide is morally objectionable only if it can be understood as breaking a commitment, either to myself or to others.

Moral claims, therefore, are intelligible only in terms of one's success within a chosen endeavor - as Machan puts it, "moral shortcomings are debilitating" (*IR*, p. 39) - but the endeavor itself (which provides for the possibility of morally relevant choices) is accepted through a choice which itself is not of moral concern. "Not making [the choice to live] poses no moral problems unless one has already made the choice and then changes one's mind" (*IR*, p. 57).

Since moral obligation is contingent upon choice, it follows that, according to the classical egoist, no natural value makes an outright moral claim on the agent. The classical egoist has a teleological structure of value, but it is *efficient causality*, not *final causality*, which provides the "cause of causes." In other words, it is the logical implications of our choice-making that create or define our moral obligations.

Machan speaks of the "ontological shift from goodness to moral goodness" that is effected by free choice. Moral goodness, a distinc-

tively human achievement, cannot be established simply by identifying a structure of value.

There are factors that can contribute to, while others detract from, good human life. But because people are self-determining beings, they constitute an essential element for purposes of establishing whether they will promote a good or a bad life. Here is where the ontological shift from goodness to moral goodness or virtues occurs. A claim that factors suitable or good for life exist applies to nonhuman living beings . . ." (*IR*, p. 40)

The morally good is an appropriate good that is chosen by a free agent; it is not simply what is suitable for a human. This much is clear, but what exactly does choice accomplish? I would suggest that a good which is chosen constitutes a morally significant choice in this sense: it is a choice for which the agent is now *responsible*. Choice is not able, however, to *establish* what our moral responsibilities are. So when we speak of a moral choice in this sense we are referring to the fact that the agent has freely chosen, but we don't know whether or not the agent is *morally obligated or responsible* to make that choice in the first place. We still have not made the connection between what is good and what one ought to do.

In looking to see what strength we can give to the egoistic ought, we discovered that it cannot be considered a hypothetical imperative; now we must conclude that it is not similar to a categorical imperative. It would be very difficult for the egoist to claim that one absolutely ought to achieve his/her perfection when the initial agreement to the endeavor is a morally neutral choice. Now, of course, we probably should not make too much of the suicide example, since Machan is offering his position here simply to lay out the structure of his moral position. One can say, hopefully, that suicide is not, for most, an urgent moral dilemma; nor is the choice to live that Machan has in mind here nearly as dramatic and explicit as a detailed study might suggest.⁸ But if it is theoretically possible to opt out of the endeavor through a morally insignificant choice,⁹ it would seem to raise real questions about the status of one's choices within the endeavor. Machan hints that we could also speak of wasting one's life away as a kind of suicide, and this is definitely of ethical concern (*IR*, p. 56). Let me phrase my question according to our earlier metaphor: if I don't have to go to New York City in the first place, why am I blameworthy if I take the long way, or if I stop short and stay put?

It would not appear that this attempt to think of the egoistic ought as either a hypothetical or a categorical imperative is promising;

at most, the ought is something along the lines of an analytical truth. That is, in the practical realm (which is intelligible in terms of the Good), to do or to choose necessarily commits one to do or to choose well.

Lets approach this problem from another angle. Machan summarizes his position: "We as human individuals are responsible for doing well at living our lives" (*IR*, p. 27). What is the meaning of this assertion in an individualistic morality? Is saying that a person is responsible for doing well at living his/her life tantamount to asserting that one ought to live one's life well? Let me suggest two ways in which one might understand the assertion "Its your responsibility to live your life well." One could: (1) understand the phrase not so much as an outright assertion, but rather as the denial of an implied assertion (or suggestion). Here the emphasis is on the word 'your': it is not the responsibility of anyone else (including the state) that you are cared for, or that you become happy - its *your* responsibility. If this is all the assertion means (I am not implying that this is Machan's meaning), two points follow: (a) although it would still be good in some sense for you to achieve happiness, it is not necessarily morally significant. What is morally significant is the fact that you understand that no one *owes* you assistance in this pursuit (probably because nobody *can* assist you). (b) The other point that follows if the statement emphasizes the word 'your' is that "Its your responsibility to make yourself happy" can hardly be the premise of a *moral* argument for libertarianism; it is nothing more or less than the *assertion* of a (politically undeveloped) individualism.

(2) Alternatively, we could understand the statement as a straightforward moral assertion. Here the emphasis is on the word 'responsibility'. Now, if we stay in the individualistic context, what is the significance of this responsibility? Why does this have to be understood as a *moral* charge; why is it more than a statement regarding my best interests? In other words, what is lost if I replace the word 'responsibility' with 'ontological possibility' or even 'practical opportunity'? Since, according to the egoistic premise, I cannot make sense of my responsibility by reference to God, or to the state, or even to my immediate family and friends, what kind of moral weight does the word 'responsibility' have here? One could, of course, say that I have a responsibility to myself, or that I owe it to myself, to live my life well. But isn't this language - talk of what I owe to myself - out of its proper context? It seems almost metaphorical to speak of what I owe myself: I cannot be a true other to myself, someone to whom I have certain responsibilities.

The logical implication of my discussion suggests that all morality is a form of justice: paying one's debts. On this view, it would seem

necessary to posit some other term to give moral significance to those possibilities that practical activity involves. If my understanding is correct, it is a tenet of classical egoism to deny this requirement: there is no second term for the agent that creates moral significance. There is, in other words, no reference to God to whom, as the author of my nature, I owe full realization of my being; there is, of course, no reference to the state or the community; finally, there is no *necessary* reference to others (even loved ones).¹⁰ If the classical egoist were willing to try to explain his meaning in these terms (which is doubtful), he/she might suggest that the other term is the perfected self, with whom one is dialectically related in one's practical life. But this line has its own difficulties. It would seem to be rather difficult to identify this term, especially since Machan prefers to speak of human nature (with its better recognition of individual circumstances and temperaments) as opposed to human essence. We feel somehow that it is justified, but how can the classical egoist *morally* challenge the person whose individuality is lazy and cowardly?

What is most plausible is that this whole line of thinking is somewhat misdirected because it tries to make sense of a teleological notion of the good in deontological terms. In other words, classical egoism presents an aspirational morality, not a morality of duty.¹¹ The former, which is characteristic of Greek ethics, is concerned with one's maximal possibilities, not with the minimum that one must do. As L. Fuller has put it:

Those thinkers [Plato and Aristotle] recognized, of course, that a man might fail to realize his fullest possibilities. As a citizen or an official he might be found wanting. But in such cases he was condemned for failure, not for being recreant to duty; for shortcoming, not wrongdoing. Generally with the Greeks instead of ideas of right and wrong, of moral claim and moral duty, we have rather the conception of proper and fitting conduct, conduct such as befits a human being functioning at his best.¹²

What my line of questioning represents, therefore, is something akin to a category mistake: I am trying to force a morality that articulates an aspirational ideal into a series of deontological propositions. So to the question "*Must* I be happy?" both Aristotle and Machan might well be flabbergasted.

But Fuller's discussion hints at a point that I would like to develop. The Greeks' aspirational morality was articulated in a political context; there were certain requirements of citizenry that were well understood. For this reason, Fuller's remark that the Greeks would

find the unfulfilled man "wanting" as a citizen or as an official may be somewhat understated. For example, although Aristotle has no answer to the question "Why should I be happy?" (since happiness is by definition non-referential and self-sufficient), it is at least questionable whether or not Aristotelian happiness is identifiable with moral virtue, since the former includes external goods, friends, and good fortune. In other words, while it does not make sense to ask Aristotle about the value of happiness, it may still make sense to ask him why one should be virtuous or self-perfected. Undoubtedly, his answer would make reference to happiness, but it is the happiness of the Athenian citizen, with some fairly well accepted civic duties, that Aristotle has in mind. Courage, for example, is necessary and valuable because, the human condition being what it is, it takes courage to do one ought to do. Much of Aristotle's discussion with regard to courage refers to the battlefield; it would appear that the *polis* could compel the citizen to fight, and perhaps die, for the common good. We might say this about Aristotelian virtue: dispositional excellence is a requirement of the good life - indeed, it is the main constituent - but there is explanation for this requirement which necessarily points beyond the egoistic context. For this reason, it is not at all clear that Aristotle's aspirational morality is translatable into egoistic terms. The case with Plato, at least in the early Socratic dialogues, is even less clear: Socrates defies the Athenian court, his loved ones' pleas, and his own instinct for survival because he has a greater allegiance to the god.

In short, aspirational moralities typically have been found in either a specific theological or political context. We are now in a very different context. This raises questions about whether or not the classical and the egoistic elements in Machan's morality are fully compatible, assuming the latter commits Machan to trying to make sense of one's primary moral obligation without reference to God, to the state, or to others. The suggestion here is not that we must accept Aristotle's civic assumptions or Plato's religious devotion to have a meaningful morality. But when the aspirational morality is removed from its classical context, that is, when it becomes egoistic, its moral claim and value may be fundamentally altered. Perhaps classical egoism presents with nothing more than a structure of human flourishing, which in a egoistic or libertarian context assumes a very different moral meaning.

Lets look at that. How is classical egoism related to the libertarian stance? How is "I ought to be happy" related to "I ought to give you, by respecting your natural negative rights, the opportunity to make yourself happy"? What makes this transition interesting is the fact that the libertarian stance could very much be described in deontological terms: since all rights imply corresponding duties,¹³ it is my duty to respect your negative right. And by definition, according to the

libertarian, doing my duty in respecting your negative rights is the entirety of what justice requires.¹⁴ How are we to understand the connection between Machan's moral foundation and his political conclusions? Is this the construction: "I ought to respect your negative rights because it is an aspect or an instance of my eudaimonistic pursuit, which is my primary moral responsibility"? Or is this the construction: "I ought to respect your negative rights because their exercise is necessary for your eudaimonistic pursuit, which is your primary moral obligation"? In either construction, it appears that classical egoism is not the true moral foundation for the libertarian stance (i.e., the respect of negative natural rights). For these duties, corresponding to the rights they respect, are fundamental: I have a moral obligation to respect them regardless of whether or not they contribute to my happiness or yours (since my duty to you exists even if you waste the opportunity it safeguards¹⁵). It seems that, as a moral foundation for libertarianism, classical egoism has argued for either too much or too little. It has argued for too little if it does not insist that the negative natural rights are basic, absolute, and universal - and therefore constitute a *primary*, even a categorical, moral obligation. It has argued for too much if the moral foundation for negative natural rights is the *moral obligation* of self-perfection. Libertarianism, it would seem, is primarily concerned to outline the bare minimum that must be respected so that complex social relationships can flourish. It must acknowledge that it has no argument with the lazy coward who, in his complacency, never expects anything from others, nor ever threatens the moral spheres of others.

This is not to say that there is no moral foundation for libertarianism, nor that the foundation that does exist is unrelated to Machan's moral theory. He claims that my ethical responsibility is primarily egoistic (natural end flourishing); this responsibility, since it refers to a determinate nature, is universalizable to all members of the classification; therefore, my primary moral responsibility implies a further responsibility: to give you room to fulfill your moral responsibility. My argument is that the notion of self-perfection is involved in the recognition of moral responsibility, but in a different way. I would contend that I have a direct moral responsibility to respect your moral space simply because I recognize you as the type of being who holds negative natural rights. In other words, my duties presuppose a notion of the flourishing individual or of human potential; to recognize you as a being possessing these rights is implicitly to assign you this ontological possibility. And, therefore, *I ought to respect this, I owe it to you*. I cannot make sense of my moral oughts, which extend universally to all members of the classification, without the doctrine of human flourishing.

But can I now say that either I or you *ought* to realize this possibility? Self-perfection is certainly a good thing, but the moral significance of this aspirational theory is changed when it is placed in an egoistic context. Perhaps we can put it this way: in some sense of the word I *ought* to live an excellent life, happy, fulfilled life. If nothing else, it is in my best interests. At the same time I say that I ought to respect your negative natural rights. These 'oughts' would not appear to be similar. To the extent that the moral context is egoistic, I would suggest that only the second 'ought' carries real moral weight. The first 'ought' announces what would be good to do; the second declares what would be immoral to transgress. Machan says that these interpersonal duties are direct implications of his moral program; my suggestion is that, if egoism is taken seriously, these interpersonal duties constitute his moral program.

One final remark. Because I have attempted to understand the egoistic 'ought' without reference to God, or to the state, or to others, it may appear that I have confused egoism with isolationism. This I hope I have not done. It is perfectly evident to anyone who reads *Individuals and Their Rights* that Machan's self-perfected agent is a social being, whose decisions and concerns very much reflect the fact that he or she is intimately involved at nearly at all times with family members, friends, associates, and fellow citizens (and beyond).¹⁶ While I do not claim that morality is exclusively concerned with others, it is my view that it does not make sense to speak of moral *obligations* separate from all such social, political, or religious considerations. In other words, Machan is certainly right to connect moral theory with a doctrine of personal development, but personal development by itself is not structurally sufficient to explain a moral theory. I do not think that the ethical question really is prior, either chronologically or conceptually, to some version of the political question "How should we act in one another's company?" All human agency has immediately both a personal and a social dimension - even if one dimension at times is the predominant concern. If this point is valid, an egoistic morality cannot provide the foundation to any political theory.

1. Tibor R. Machan, *Individuals and Their Rights* (LaSalle: Open Court, 1989), p. xiii, (Hereafter *IR*).

2. Along the way, however, there are defenses of a number of supporting theories, such as metaphysical and epistemological realism, the existence of free will, and naturalistic meta-ethics. In general, I agree with Machan's positions on these issues.

3. *IR*, p. 35: "Thus when by Hobbesian egoistic ethics something is judged to be right, it must be viewed entirely independently of any firm, objective, and independent universal standard, and depends wholly on individual (or collectively agreed-to) wants, desires, or

preferences.”

4. *IR*, pp. 26, 46-47. Machan makes it clear that his moral position draws from Aristotle, but is not an attempt to recover the precise intentions of Aristotle. There is, therefore, no attempt by Machan to show that his development is in full accord with every line of Aristotle's text. A specific example: “The distinction between this view and Aristotle's may be noted here: we are resting human goodness on human nature, not merely human essence. Aristotle's Platonic intellectualism came from his essentialist rather than naturalist conception of the human good. Human nature is richer, less specialized than human essence. When we consider human nature, then, a person's individuality is of as much significance as his or her common humanity.”

5. *IR*, p. 29: “It is my view that classical egoism is a sound system of morality, regardless of whether or not it supports negative natural rights . . . Ethics, in short, is prior to politics because the question ‘How should I conduct myself?’ is prior to the question ‘How should we conduct ourselves in one another's company?’”

6. *IR*, p. 33. Machan is criticizing those contemporary moralists who “hold that the dominant concern or morality lies in determining how one should treat other persons.” Egoistic obligations are not exhaustive of Machan's morality, but that they are primary would seem clear from this passage from the same page: “[T]he idea that *every one ought to strive to benefit himself or herself first and foremost in life* will not imply that a person's egoistic conduct will result in substantial anti-social, avaricious, allous, or deceptive behavior . . .” (my emphasis).

7. See passage cited above, pp. 4-5.

8. *IR*, p. 56: “Let us grant that to live is a matter of (implicit) first choice . . . This choice gives reason, therefore, for the rest of one's actions and requires no reason for itself. It is the primary reason, the *first* one, which then creates the need for morality. My point here is conceptual rather than chronological. First one tacitly, implicitly, chooses to live . . . Later [the choice] becomes more explicit . . .”

9. *IR*, p. 57: “[I]f initially the choice is to bow out of life, then, to the best of our knowledge, one needs no moral guidelines.”

10. Because my primary responsibility is to myself, even if many of the virtues involve others. The one exception that Machan has allowed is the fact that I may have made some commitments to others, and therefore my life has social significance.

11. I first encountered this distinction in L. Fuller, *The Morality of Law* (New Haven: Yale University Press, 1964). Fuller claims no originality for the distinction itself, although he does say that his nomenclature is new.

12. Fuller, p. 5.

13. *IR*, p. 2: “A right binds us to refrain from preventing others from others acting in certain ways (they have a right to act) - using the pool, speaking their minds, voting for their political candidates, even wasting their lives. In this sense a right is always relational - it pertains to the moral responsibilities that arise among humans (and perhaps other moral agents).” On the same page, Machan cites Raz' definition of a right: “‘X has a right’ if and only if X can have rights, and other things being equal, an aspect of X's well-being (his interest) is a sufficient reason to holding some other person(s) to a be under a duty.” See Joseph Raz, “On the Nature of Rights”, *Mind*, XCIII (1984), p. 195.

14. *IR*, p. 101: “One cannot then explain rights in terms of justice but one must explain justice in terms of rights.”

15. See the citation from *IR* (p. 2) in the preceding footnote.

16. There is nothing here, as far as I can tell, which is incompatible with a religious morality either.

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DERIVING RIGHTS FROM EGOISM: MACHAN vs. RAND

Eyal Mozes

In his book *Individuals and Their Rights*, Tibor Machan presents an argument deriving individual rights from an ethics of rational egoism (or, to use his term, classical egoism). Machan cites Ayn Rand throughout his book, and regards his own arguments as a more detailed and systematic presentation of the argument sketched by Rand. However, I submit that Machan's argument is significantly different from Rand's.

Rand's arguments are often misinterpreted in a form similar to Machan's. To a large extent, this is the result of the lack of a systematic presentation of Rand's philosophy, and of the brief, sketchy form in which she presented her views. However, a close reading of her statements on this subject, and a look at other, less easily available sources (such as taped lectures by Leonard Peikoff, who has had the advantage of long personal discussions with Rand), reveal a line of argument very different from - and, I submit, much sounder than - Machan's.

There are two aspects in which Machan's argument differs from Rand's:

- (1) Machan justifies his interpersonal ethics through a "substitution principle", the idea that rationality requires you to grant to other human beings the same rights that your

own nature requires. Rand, on the other hand, justifies her interpersonal ethics by demonstrating the effect that acting on the proper principles will have directly on your own life. (2) Machan uses the concept of rights in interpersonal ethics, i.e., in morally guiding an individual's actions towards others. For Rand, on the other hand, rights are not relevant to guiding an individual's actions; they are principles guiding the organization of a social structure.

1. From Egoism to Interpersonal Ethics.

Machan's argument of why a person should not initiate force or fraud towards others, is:

Rational persons - ones who choose to use their minds - treat doors as doors need to be treated and learn what doors are; eat food that is digestible, and acknowledge that the moon is not made of green cheese. Similarly, when rational persons voluntarily, intentionally interact with other rational persons, their nature as moral agents - free and equally morally responsible agents who require 'moral space' for living their lives in line with their natures (as the human individuals they are) - will be a condition of that interaction . . .

This moral obligation to succeed in one's particular life as a rational agent through the voluntary choice to interact with essentially similar others who also ought to (and may be expected to) want to refrain from undermining their moral nature, will bind each person to rationally respect everyone's moral space.¹

The argument, basically, is: in order to live as a human being, you need to be free from force and fraud. Rationality requires you to identify other human being's nature, and identify that they are similar to you and therefore require the same freedom. It would therefore be wrong to ignore this and use force or fraud against them.

Central to this argument is the "substitution principle," the idea that an identification of the requirements of your life should lead you to grant to others the same requirements.² There is no trace of the substitution principle anywhere in Rand's writings, and she would not have regarded it as valid. If you accept an ethics of egoism (as both Rand and Machan do); if you hold "*his own life* as the ethical *purpose*

of every individual man”;³ then an individual man may identify that other men’s lives require that he leave them free from force and fraud, but that is not by itself a sufficient reason for him to do so. This is an obvious and, I submit, unanswerable objection that an egoist ethics would pose to any use of the substitution principle.

Let us now look at Rand’s arguments on the same subject:

The men who attempt to survive, not by means of reason, but by means of force, are attempting to survive by the method of animals. But just as animals would not be able to survive by attempting the method of plants, by rejecting locomotion and waiting for the soil to feed them - so men cannot survive by attempting the method of animals, by rejecting reason and counting on productive *men* to serve as their prey. Such looters may achieve their goals for the range of a moment, at the price of destruction: the destruction of their victims and their own.⁴

Honesty is the recognition of the fact that the unreal is unreal and can have no value, that neither love nor fame nor cash is a value if obtained by fraud - that an attempt to gain a value by deceiving the mind of others is an act of raising your victims to a position higher than reality, where you become a pawn of their blindness, a slave of their non-thinking and their evasions, while their intelligence, their rationality, their perceptiveness become the enemies you have to dread and flee - that you do not care to live as a dependent, least of all a dependent on the stupidity of others, or as a fool whose source of values is the fools he succeeds in fooling - that honesty is not a social duty, not a sacrifice for the sake of others, but the most profoundly selfish virtue man can practice: his refusal to sacrifice the reality of his own existence to the deluded consciousness of others.⁵

These statements support honesty and non-initiation of force by demonstrating how a man acting against these principles prevents his *own* successful life as a man. Like Machan, Rand bases her argument on a neo-Aristotelian view of man, identifying that man has a specific nature and, in order to live successfully, must act in a specific way. But her argument, proceeding from this premise, is different from Machan’s; her argument is that a person should be honest and avoid initiating force, *not* because acting on these principles is a requirement for other people’s lives, but because it is a direct requirement of his

own life.

Central to Rand's argument is the identification of man's need to act on principles. Man's mind does not work by considering, in every decision, all aspects of the present situation from scratch; in the same way and for the same reason that man must form concepts to allow him to gain knowledge about concretes, he must form principles of action to allow him to make decisions in concrete situations. Thus, for example, for a man to act dishonestly in any situation, he would have to reject the *principle* of honesty (adopting in its place, perhaps, a rule of conduct such as "you may act dishonestly as long as you can't see a reasonable possibility of getting caught"). Rand argues that a man who does so, adopting a policy of regularly acting dishonestly, can't achieve a successful life proper to a human being (the same applies, equivalently, to initiation of force).

The clearest and most detailed illustration, available in print, of the nature of Rand's argument, is Leonard Peikoff's description of his first discussion with Rand on the subject of honesty:

She started her answer by asking me to invent the most plausible lie I could think of. I don't remember the details any longer, but I know that I did proceed to concoct a pretty good con-man scheme for bilking investors out of large sums of money. Ayn Rand then analyzed the example patiently, for thirty or forty minutes, showing me on my own material how one lie would lead necessarily to another, how I would be forced into contradictory lies, how I would gradually become trapped in my own escalating deceptions, and why, therefore, sooner or later, in one form or another, my con-man scheme would have to backfire and lead to the loss of the very things I was seeking to gain by it . . .

My immediate reaction to her reply was to amend my initial scheme in order to remove the particular weaknesses she had found in it. So I made up a second con-man scheme, and again she analyzed it patiently, showing that it would lead to the same disastrous results even though most of the details were now different . . .

The essence of a con-man's lie," [Rand explained], "of any such lie, no matter what the details, is the attempt to gain a value by faking certain facts of reality . . .

Since all facts of reality are interrelated, faking one of them leads a person to fake others; ultimately, he is committed

to an all-out war against reality as such. But this is the kind of war no one can win. If life in reality is a man's purpose, how can he expect to achieve it while struggling at the same time to escape and defeat reality?"

And she concluded: "The con-man's lies are wrong on *principle*. To state the principle positively: honesty is a long-range requirement of human self-preservation and is, therefore, a moral obligation.⁶

The above clearly shows how, in Rand's view, you should be honest because of the damage that dishonesty will directly cause to *your own* life. There is no trace of the substitution principle, or of Machan's line of argument.

2. Interpersonal Ethics and Rights.

Machan derives rights as principles both of interpersonal ethics - guiding an individual's actions towards others - and of social organization. In fact, he does not even distinguish between the two. For example, in the opening of ch. 4 of *Individuals and Their Rights*, he identifies the subject matter of politics (and therefore of rights, as the central principle of politics) as "interactions with strangers, people who are members of our larger communities, but not family or friends"; he clearly regards the question of how an *individual* should act towards strangers, and the question of how the social system under which individuals live should be organized, as the same question.

For Rand, on the other hand, rights are involved only in the latter. Her discussions of interpersonal ethics (e.g., the sections of Galt's speech, and of "The Objectivist Ethics," devoted to the principles of moral behaviour towards others) do not mention rights.

Rand's interpersonal ethics consists, in essence, of three principles: honesty, in its interpersonal aspects; the virtue of justice (being rational in your personal judgment of other people and acting on your judgment); and non-initiation of force. Rights enter the picture at a later stage, the stage of politics; they specify, not how an individual should act towards others, but how a social system should be organized, and what individual acts should be legally forbidden; and rights are justified by arguing that a social system recognizing rights is the only one that makes successful human life possible for people living under it.

Every action that violates someone's rights will also violate some principle of Rand's interpersonal ethics (either non-initiation of force

or honesty). However, the reverse is not true; on Rand's view, there are many immoral actions, violating interpersonal ethics - including immoral actions towards strangers - that do not violate anyone's rights. This is most clearly true of the virtue of justice; many actions are unjust, and therefore immoral on Rand's view, without violating anyone's rights (one obvious example is private racial discrimination).

Let us compare two different examples of actions towards strangers, violating Rand's interpersonal ethics: (a) armed robbery, and (b) private racial discrimination (e.g., refusing to rent apartments, in a building you own, to blacks). Only (a) involves violation of rights. What difference does that make in guiding a rational individual's actions? None whatever. A rational individual would never perform either action; he would despise anyone who performs either action; there's no way in which the fact that (a) is a violation of rights makes it, for a rational individual, in any sense worse than (b). Rights do not have any significance in guiding an individual's actions. It is only in the context of an organized social system that rights become significant (since they imply that only (a), and not (b), should be legally punished).

A further illustration of why rights don't apply to guiding individual interpersonal behaviour can be seen in the following scenario: Suppose A and B are two persons living alone on a desert island. A beats up B and takes the food that B has gathered. In evaluating A's actions, if you say "A initiated force, and what he did was immoral," you have, in effect, exhausted everything there is to say about it. If you then add "and on top of that, he violated B's rights!" what would that addition mean? It is, again, only in the context of an organized social system that bringing up B's rights has any meaning (since it would then imply that A should not only be morally condemned for his actions, but also legally punished).⁷

This point, therefore, again represents a significant difference in Machan's and Rand's understanding of, and arguments for, individual rights.

1. *Individuals and Their Rights*, pp. 58-59.

2. The term "substitution principle" does not appear in Machan's book, but he has used it in his discussion of his book at the meeting of the American Association for the Philosophic Study of Society, December 1990; and the principle is clearly implicit in his argument in the book.

3. "The Objectivist Ethics," in *The Virtue of Selfishness* (New York: Signet, 1964) p. 25. From several statements Machan makes throughout ch. 2 of his book, it is clear that he also accepts this principle.
4. "The Objectivist Ethics," pp. 23-24.
5. Galt's speech, *Atlas Shrugged* (New York: Signet, 1957) p. 945.
6. "My Thirty Years with Ayn Rand", in *The Voice of Reason*, (New York: Meridian, 1988), p. 340. The same example is discussed in somewhat more detail in Peikoff's *Objectivism: the Philosophy of Ayn Rand*, (New York: Dutton, 1991), pp.270--271. Some more detailed analysis of Rand's arguments on honesty and non-initiation of force is available in Peikoff's taped lectures, especially "Understanding Objectivism" and "Objectivism: State of the Art."
7. This illustration was given by Leonard Peikoff in his course *The Philosophy of Objectivism*. Note that this course was given during Rand's life, and she has heard and endorsed it as accurately representing her philosophy.

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REPLY TO CRITICS OF INDIVIDUALS AND THEIR RIGHTS

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My plan is to discuss my two critics' comments in turn, beginning with Professor Gaffney's and then moving on to Mr. Mozes's. I will conclude with some general remarks about concerns expressed by other reviewers and critics of *Individuals and Their Rights*.¹

I begin with Gaffney's most basic criticism, related to one of the most troublesome aspects of my (neo-Objectivist) approach to ethics or morality. Let me stress that the choice to live is a fundamental or first choice.² It may be envisioned as being made, in the initial stages of one's life, haltingly, implicitly, gradually, over and over again, expressing, as one might put it, the will to be the human being one can become. The choice we are considering is a first step in action and thus cannot be motivated by some desire or knowledge. It is not a selection process going into force with prior information at hand; rather it is the initial step taken by a rational agent, lacking any other prompters to action. It is the seat of free will.

Bearing in mind the above, we may now address the issue whether in the last analysis the conception of human morality sketched in *Individuals and Their Rights* provides us with a firm enough basis for *bona fide* moral judgment and evaluation. Accordingly Gaffney asks, "If I don't have to go to New York City in the first place, why am I blameworthy if I take the long way, or if I stop short and stay put?"³

This pertains to the claim that morality hinges on the choice to live. As Gaffney puts the point, more directly, "Is saying that a person is responsible for doing well at living his/her life tantamount to asserting that one ought to live one's life well?" Or as Gaffney restates the worry, "Why does this have to be understood as a *moral* charge; why is it more than a statement regarding my best interests?"

One would need to know what analysis of "have to" we are to rely upon here before one can fully understand Gaffney's question quoted above. What Gaffney has in mind, judging by his critique, is that unless there is some deeper or higher obligation - imposed by God or arising out of some natural duty to others - than a mere personal commitment that binds me to the pursuit of human excellence - with only my own decision to set me on course toward it - then my failure to achieve such excellence is no failure at all, merely a change of preference. (Consider the issue raised by Wittgenstein that if one chooses not to be very good at tennis, even though one has decided to play, there is nothing morally blameworthy about that. It is merely a personal preference that has been more or less well fulfilled.)⁴ Here a good deal needs to be considered. Let me touch on some of it - but let me also note that this is a concern of many who take the Objectivist ethics seriously.⁵

The best way I can assess this matter is to propose that ontologically, the prior category of value exists, to which we often refer as "goodness," a domain that emerges in existence with life as such. This relates to *the fact* that life is the fundamental process that is capable of being extinguished for the living. Thus vis-a-vis life we are justified to (begin to) think in terms of the categories of value vs. disvalue. Next, once a life is introduced wherein the agent is capable of initiating conduct, a new, distinctive type of goodness comes into being, namely, one pertaining to the freely chosen or initiated living of human beings. This is what properly differentiates ethical or moral goodness. So life introduces value, *per se*, into existence, whereas freely chosen life introduces the special domain of moral value.

Now, when a human being initiates his or her life process, this is (naturally but not yet morally) good because it brings about what is the best that can be, namely the life of a potentially *morally* good human being. That initiative could not yet be morally good. There is at that point no alternative (no live option, to coin a pun); not living is not a *bona fide* alternative course of conduct, some possibly worse *action or set of actions*. (It should be borne in mind that ethics or morality arises in response to the problem of how to live, not whether to live.) The fundamental choice or initiative to live is not equivalent to taking part in the endeavor of making informed selections that could be right or wrong. What obligates further rational processes is

this initial fundamental choice - this initial oath, as it were - to get on the road with human (i.e., rational animal-like) living, something that is indeed the highest good for each of us.

I believe that this way of looking at morality is necessitated by our understanding that moral standards imply choices between different courses of (any type of) conduct. But if no such subsidiary, non-primary choices are possible, there is no right versus wrong course of conduct. Failing to live - not coming to life, so to speak - is not some action to be judged by moral standards which apply to or serve to guide living. It is, in fact, at this point that it is resolved whether one will part-take in the morally relevant endeavor of living a human life in the first place.⁶

In opposition to what seems to me to be Gaffney's Platonized version of Aristotelian ethics, it seems to me that "true human flourishing" can only be sought for its own sake, a purpose (*telos*), however, that is glorious enough. This is because each actual effort to realize such flourishing must amount to the effort at flourishing of *an individual human being*, the only ones there are. Yet, that being is of a very high order, given its nature as a rational animal.

We need, of course, to note that human beings do not seek happiness as some people seem to seek victory in a contest, never mind the game itself, never mind the process that amounts to becoming happy. Flourishing is always going to be carried out via the innumerable avenues of individual tasks of self-development, self-realization as a human being. I am suggesting, in other words, that Gaffney is stressing an analysis of goodness and morality that does not come to terms with the rejection of dualism and with Emerson Buchanan's conception of being in Aristotle's metaphysics evident in *Individuals and Their Rights*, namely, that all actual being is individual.

It is also very much worth noting that when Gaffney finds fault in the approach I take to morality because I do not offer him something as forceful as the categorical imperative or God's commandments or, again, the obligations some think human beings have toward other persons, society or humanity, the criticism could very easily be turned around. Perhaps Gaffney's conception of what is required of a moral theory is akin to the Cartesian conception of what is required of a theory of knowledge, namely, some absolutist or idealist doctrine. But is it not possible that Gaffney does not possess the best conception of what morality has to be, namely, some doctrine of saintliness, some set of obligations to act with such compelling imperative that the moral dimension of our lives takes us out of this world? I suspect that this is what lends plausibility to his claim that there must be a "second term for the agent that creates moral significance." Morality is only conceived of by *some* people, who entertain certain philosophical pre-

suppositions that are highly contestable, as “a form of justice: paying one’s debts.” Others, such as I, would argue that morality is a guide to successful living of a human kind of life, applied in our individual instance.

I do wish to consider Gaffney’s point about how the foundation of classical egoism is itself not a final but an efficient cause, not the moral obligatoriness of initiating one’s life process but the initiative alone. This is an interesting point and I am not certain I can deal with it fully. Suffice it to suggest that the final cause seems to be there in the natural value of living, which is discovered by the initiative to live. So at the ontological level a final cause does enter the framework I am developing; yet it is also true that in principle we launch our lives with an initiated motion. By this means we enlist into our human kind of living, which is necessarily a moral realm. I believe this much teleology or final causation is sufficient to render moral principles firm rather than merely optional or hypothetical imperatives.⁷

Now I turn briefly to the question Gaffney asks about how “to understand the connection between Machan’s moral foundation and his political conclusion?” I thought I made a decent effort at answering this in chapter 7 of *Individuals and Their Rights*. But let me reframe my position briefly.

Gaffney gets it nearly right when he provides a possible answer: “I ought to respect your negative rights because it is an aspect or an instance of my eudaimonistic pursuit, which is my primary moral responsibility.” I would rephrase “I ought to acknowledge and, as that implies, respect your negative rights.” It is ultimately because I want to be the best I can be as a human (rational) being that, in societies, I ought to acknowledge and implement the general conditions or principles for interacting with other persons. I should, in other words, work to establish a constitution of natural negative individual rights within my communities. The reason is just what Gaffney claims it could not be, namely, that the morality of classical egoism (as applied to social living) makes it morally imperative that I do this (for my own, overall, long range or political good).⁸

I now turn to Mr. Mozes’s criticism. His is less of a criticism of my book than an attempt to show that my own argument differs significantly from Ayn Rand’s by whose outline of a case for the rights of human beings⁹ I have clearly been inspired. Mozes maintains that whereas Rand defends rights as deriving directly from egoism, my case differs from that significantly since I employ something she omits, namely, what I have called the principle of substitution.

This by itself may not warrant much of a discussion except where we are concerned with pedigree. But Mozes also claims that whereas Rand’s is a very good argument, mine is not valid at all. Not surpris-

ingly, this for me is a provocative point and I want to respond to it.

Of course, what is crucial about the issue of human individual rights to life, liberty, and property is whether the claim that we do have these rights is true or false, not whether someone's argument is like someone else's. I do not claim to have reproduced Ayn Rand's argument verbatim and indeed have tried to develop that argument so that more of its detail would emerge for scrutiny and so that members of the philosophical community could appreciate its merits.

Nevertheless, I am intrigued by Mozes's view on the alleged difference between my and Rand's argument for respecting the rights of others. I am not convinced by what he says, namely, that (a) mine is an inferior argument to Rand's; (b) Rand "would not have regarded [my argument] as valid";¹⁰ (c) Mozes's objection to my argument is "unanswerable"; and (d) "there is no trace of the substitution principle anywhere in Rand's writings."

As to (a), since mine is an elaboration of Rand's argument, if it is authentic, it could not be inferior to hers. Is it an elaboration? Rand states, in one of the quoted passages in Mozes's comment, that "The essence of a con-man's lie, of any such lie, no matter what the details, is the attempt to gain a value by faking certain facts of reality . . ." It is my view that here Rand is saying, in slightly different and more compressed terms, what I say when I state that "Rational persons . . . treat doors as doors need to be treated . . . [etc.]," which is to say to refuse to "fake . . . facts of reality." It is clear that human rights ought to be respected because people in societies have them. But why should people refuse to fake facts of reality? That, of course, is because they will be best off - serve their self-interest - by being rational in their lives. As a species of such rationality, they should be honest because, as Rand puts it, "honesty is a long-range requirement of human self-preservation and is, therefore, a moral obligation."

But the crucial point, one that unites Rand's and my arguments, is just that honesty is a species of rationality. (This is made clear in "The Objectivist Ethics.")¹¹ So if rationality is the prime moral obligation - because it is what will ensure the fulfillment of one's "long-range requirement for human self-preservation" - then the exercise of this rationality in being honest, and the exercise of honesty in acknowledging that other people have rights just as one does, surely comes to the same thing, essentially.

As to (b), would Rand have regarded my argument as valid? I believe so, and here is why. The substitution principle is a principle of rationality: Suppose that "A is B, and B is C, therefore A is C"; now, suppose that "X is A"; then, given the above proposition, "X (also) is C."¹²

The substitution principle is one mental tool - i.e., a principle of logic - for identifying facts of reality. For example, another human being may be identified by comparing him or her to oneself or others. If in the relevant or crucial respects another person is the same as oneself - e.g., being a rational animal with a moral nature in need for "moral space," thus, having rights to life, liberty and property - then to regard that being as if he or she did not have a moral nature, etc., would be a case of, to use Rand's phrase, "faking certain facts of reality."

As to (c), I have answered Mozes's objections, so it isn't true that they are unanswerable.

What about (d)? Is there a trace of the substitution principle in Rand? If we are to trust Peikoff's report as authentic Rand, there is, precisely in the passage quoted from Peikoff by Mozes. Consider this point, presumably quoted from Rand: "Since all facts of reality are interrelated, faking one of them leads a person to fake others; ultimately, he is committed to an all-out war against reality as such." That is an instance of the substitution principle - since all facts of reality are facts of reality as such, faking one will, if one is consistent, lead to faking others.

It seems to me, then, that Mozes's criticism of my argument is misguided.

There have been other criticisms of *Individuals and Their Rights*, e.g., by Greg Johnson in his review published in *Liberty*¹³ and by Tom Palmer in a review published in *Reason*.¹⁴ Another review was published in the same issue of *Liberty* but I confess to being unable to follow most of its points so I'll touch on just a couple of them.

Johnson asks, after explaining many features of my book which he liked, "But what in the world does 'implicit' consent mean?" Perhaps this question pertains only to what implicit consent might mean for purposes of understanding political authority, but that is not how it is phrased when one considers the context. It simply expresses bafflement at the very idea of implicit consent, whether in the context of politics or outside it. I do address the issue in my book - in chapter 7 - but it may help to reiterate some of the main points I make with the aid of different examples.

Consider that when you sit down at a table in a restaurant you might wonder whether you may smoke - i.e., whether the proprietor has consented to your smoking in his or her establishment. You see an ashtray on the table. You now conclude that indeed you may smoke - i.e., consent has been given. But was it given explicitly? Well, the proprietor did not state to you, "Yes, you may smoke here." But the proprietor did place an ashtray on the table, something that would make no sense if consent were withheld. Thus you infer the consent -

it is *implicit* in the proprietor's act of having placed the ashtray on the table at which you sit.

Or consider that you are invited to spend an evening at a friend's home. You arrive, ring the bell, and are let in. The invitation was explicit - "Please come over this evening." Although this is a request, not a statement of consent, the consent to spend the evening at the person's home is implicit in the request. Moreover, suppose later in the evening you ask where the bathroom is so you may use it and your host says, "Well, I did invite you to spend the evening here but I never consented to your use of my bathroom."

Clearly this would be a very silly remark. The permission - consent - to use the host's bathroom is implied by the invitation to spend the evening in his or her home. As analytic philosophers would probably put it, the logic of the concept of "invitation" (or its grammar) has the consent to make reasonable use of the facilities embedded within it.

The way this would relate to understanding political authority is that such authority may be gained analogously to gaining the consent of the proprietor or the host, namely, implicitly. One may choose to take part in the affairs of a community. One thereby implicitly agrees to those of its rules that such participation presupposes (which does not mean any or all rules, only those that are "necessary" for the just functioning of the community and make clear sense, as well - i.e., do not involve confusions, inconsistencies, ambiguities, etc.). By interacting with the institutions of the realm, one consents to the conditions of such interaction. By interacting with others, one consents to what is rationally required for such interaction. If I undertake to make use of the police, if I sign contracts, or if I sue someone in a court of law, I implicitly acknowledge or consent to the proper or suitably limited authority of those who administer these institutions in my realm.

Why does this not apply to my use of roads, public schools, public parks, even when I use them? Because I cannot consent to something that involves intrusions upon - i.e., the violation of the basic rights of - another (third) nonconsenting person. Public parks, roads or schools are maintained out of funds others are coerced to pay, not out of my own funds and the voluntary work of the public authorities. In short, implicit consent cannot breach the rights of individuals. One can consent, either explicitly or implicitly, only to that over which one has initial legitimate authority - such as one's own conduct, property, etc. I implicitly consent to act in compliance with police authority when I recognize their authority over me, but I don't implicitly consent for someone else to act in such compliance. That is not in my rightful power to consent to.

One might wish to argue that others have implicitly consented to

paying for such “public” endeavors. But there is no evidence of this at all, nor would they be able to do that without first obtaining my implicit or explicit consent. Of course, in small communities - even, perhaps, in the Greek *polis* to which Aristotle’s political analysis applied - it may be possible to detect the consent of several persons to some common project or endeavor. Thus when you join the Rotary Club or Elks Club, the close associations involved between members will often establish certain policies that involve implicit consent as well as what may appear on first inspection rights violations - e.g., at meetings “fines” are levied against members for actions they didn’t know they could be fined for. But here one can always opt out and continue one’s normal social life apart from the club and one may also be understood to have anticipated such policies as one comes to join, by means of the constant communication between members and between non-members likely to join and members familiar with the practices. It is possible, in fact, that one reason there is so much difficulty in the scholarship on Aristotle’s political thought concerning what Aristotle would say about contemporary nation states is that the *polis* is no such nation state at all and Aristotle’s understanding of its role in the lives of the citizenry cannot be directly applied to the problem of the relationship between the governments and citizens of contemporary nation states.

I hope I have cleared up a bit “what in the world ‘implicit’ consent means [or is].” It may now be asked how could this apply vis-a-vis the issue of punishment, the place where my application of it seems to be a violation of common sense? I believe, however, that my approach to making sense of punishment (given that individuals have some basic rights that are unalienable - i.e., ones they have as human beings in human societies, so that without losing their humanity they cannot lose them - and given that criminals remain human beings after they are apprehended and even convicted and sentenced) is superior to alternative approaches that require the invocation of the notion of forfeiting or alienating one’s rights once one acts criminally.

For example, a rapist acts in a way that the membership of a rational society would want to repel. That is implicit in the nature of rape, even if at the moment the rape occurs no one is making this evident to the rapist. Such acts imply that rational persons will want to and are correct to repel them or retaliate against them. So undertaking such an act implies the consent of the actor to the repellent or retaliatory response *even if the actor fails to make the inference*.

This is no different from how an insulting remark will insult even if the person who utters it “didn’t mean it.” As Stanley Cavell points out so masterfully, we must mean what we say - and I would add, we must mean what we freely choose to do, whether at the

moment we think it through or not.

Some readers have wondered how come one may implicitly consent to being incarcerated but not explicitly consent to becoming a slave (e.g., to "selling" oneself into slavery). To be incarcerated does not involve the abdication of one's will, only banishment from one's society. One can, for example, appeal a verdict of incarceration, since one has not "sold one's will to act." Voluntary slavery is morally impossible. It is the same kind of thing as good murder or voluntary rape. To volunteer for slavery is nonsense because one cannot consistently choose not to be what one is - a willing, choosing (human) being - while remaining a living *human* being engaging in normal commercial transactions.

This raises the issue of suicide, one that has been mentioned as a problem for those who rest the morality of actions on the value of human life *qua* human life. I hold that there is nothing in the claim that if life is the standard of value in morality, that precludes suicide, although I do not discuss this point in *Individuals and Their Rights*. I do treat the issue in my essay "Aiding Suicide Attempts."¹⁵

To begin with, some people simply fail to respect standards of value, so they commit suicide when they should not; second, under certain extreme conditions the *kind* of life appropriate for a human being is impossible and thus not living *per se* might be better than putting up with such an aberration - e.g., living as a total slave, with no chance of escape, could warrant suicide because one's human life has already been destroyed, so what one is doing in committing suicide is ending a mere biological existence.

Some still insist in the view that the concept of self-ownership achieves much more for purposes of securing an understanding of politics and delegation of authority than a theory of natural rights. There is an essay in an early issue of *Reason* by George Mavrodes concerning owning oneself. While I had always had trouble with the idea of self-ownership, the merits of this essay lead me to my current view on this topic. There is no clear sense of self-ownership without some kind of dualism, whereby one self is the owner, the other what is owned. If such dualism is false, then the doctrine of self-ownership is either false or very muddled. If the dualism is true, we have all kinds of other problems to contend with before we need to worry about politics - e.g., why bother with a measly 70 years of earthly life, anyway, when we have eternal bliss to look forward to elsewhere!

Finally, in a brief review in *The Review of Metaphysics* Stuart Warner makes the interesting point that my book's virtue is also its vice - I correctly acknowledge the need to travel a great deal of ground but simply cannot bring off the task in one book. I realize that this is a problem, although I have written a great deal on

numerous topics in *Individuals and Their Rights* in journals and other forums and I can only hope that my various incomplete arguments show a clear enough direction so that they may be evaluated with adequate sympathy and understanding to see how well the overall position is founded. I do not believe that too many others in the classical liberal tradition I represent - namely, natural rights theory grounded on classical individualist ethics - have, by the time *Individuals and Their Rights* had been completed, traveled the needed philosophical paths as thoroughly as I have. I am sure others will do so better in the future but what I have done gives us something to go on that is quite powerful in the overall philosophical debate on the merits of various political economic systems.

Although not directly critical of *Individuals and Their Rights*, in his collection of essays on political theory, *Liberalisms* ¹⁶ John Gray chides those who wish to enlist Aristotle in support of their version of classical liberalism or libertarian natural rights theory. He tells us, among other things, that "Writing in an age of mass democracy and wage-labour, Aristotle's latter-day liberal followers prescribe a life of bourgeois virtue - of thrift, industry, prudence, and creative work. However one assesses these ideals, the salient point is that in each of them the content given to human flourishing is taken wholly from the conventional norms of the theorist's local culture. It is far from clear what is the claim on reason attributed to these ideals." ¹⁷ He goes on to claim that "The attribution to Aristotle of a belief in the moral centrality of choice-making (made by Machan and others) is all the more incongruous in that the belief plainly presupposes an affirmation of the freedom of the will which Aristotle does not make."

Both of these points can be answered. First, Aristotle is the first to admit that what is morally right and wrong is not universalizable, even though fundamental virtues may be. And in my own case, as well as those of Ayn Rand and others, rationality is the central virtue - just as in Aristotle, right reason occupies that position. Other virtues are more contextual - which is entirely consistent with Aristotle and with an Aristotelian approach to moral theory. Moreover, all the virtues spelled out by "latter day liberal followers" can be conceptually related to the original virtues spelled out by Aristotle. (Whatever is added, can be defended, as well, and this may simply show some learning in the field, no relativism at all.)

Second, Aristotle does address the issue of choice-making in his distinction between the intellectual and the moral virtues. The latter require choice - which makes sense, since morality involves self-responsible conduct or neglect, something that could not be without the capacity for choice. Aristotle did have a doctrine of free will - only it was not a major aspect of his moral theory. He located freedom of

the will in the process of deliberation. As Jaeger notes, "Aristotle's notion of free will is the exact complement of the notion of most perfect deliberation in the *Epinomis*."¹⁸ And David Ross notes that "On the whole we must say that [Aristotle] shared the plain man's belief in free will but that he did not examine the problem very thoroughly, and did not express himself with perfect consistency."¹⁹ No doubt, there is dispute about all this, since Aristotle didn't discuss the matter in a straightforward fashion.²⁰

In the main, Gray does not much investigate what he is commenting on and thus it is not possible to argue with him.²¹ Suffice it to say that his claims are unsupported and evidently false.

I suspect some find my approach to defending the free society objectionable for the philosophically totally irrelevant reason that the position owes a lot to someone who is not a credentialed professional philosopher and who has annoyed many people who are in positions of intellectual influence and power. I have in mind Ayn Rand, of course. But this should be of no consequence whatsoever, should it?

1. La Salle, IL: Open Court, 1989.

2. I call upon Roger W. Sperry's naturalistic explanation of the possibility of such a choice for human beings, given their kind of conscious mentality. It was brought to my attention by David Kelley that Sperry was not always a clear cut defender of free will. I believe, however, that in those works to which I refer in my book, Sperry does advance, if not a clear cut case for free will, he at least lays the groundwork, in the area of identifying various types of causality, for such a case. My own argument relies on several premises - most of them established dialectically - of which the premise from Sperry is just one.

3. Paul Gaffney, "Machan's Moral Foundations," in this issue of *Reason Papers*. All subsequent references to Gaffney are to this essay. Some of the issues raised by Gaffney in his review are also covered in Michael Zuckert's review of my book in *Constitutional Commentary* Vol. 7 (1990): 482-492.

4. Ludwig Wittgenstein, "A Lecture on Ethics," *Philosophical Review* Vol. 74 (1965): 11-12.

5. See, for example, Douglas J. Den Uyl and Douglas Rasmussen, *Liberty and Nature* (LaSalle: Open Court, 1991) for a very detailed exploration of this kind of naturalistic foundation for human morality and politics.

6. It seems that here we are touching upon another area of controversy among those concerned with the philosophy of Objectivism. See, in this connection, the discussion between Allan Gotthelf and Douglas Rasmussen at the December 1990 meeting of the Ayn Rand Society, Boston, Mass. Gotthelf seems to defend the view that Rand's ethics is fundamentally hypothetical, Rasmussen that it is categorical - a kind of natural end ethics. My own view is that while Rand's is a natural end ethics, given that the nature of human life is such that choice is essential to it, this particular natural end ethics - presupposing choice as a defining feature of human beings - must amount to something hypothetical as well. In short, I would argue that both Gotthelf and Rasmussen are right

but each touches on just half of the truth.

7. Once again, the degree of firmness may not satisfy the Platonistic spirit which wants moral principles, just as principles of knowledge, to be finally true, unchanging. Such a de-mand, however, ushers in cynicism. Here Gaffney's lack of detailed concern with the epistemological and metaphysical portions of *Individuals and Their Rights* may have served him badly.

8. In *Liberty and Nature* (e.g., p. 113) Douglas B. Rasmussen and Douglas J. Den Uyl signal the normative or political status of such rights by the term "meta-normative." I am not sure of the soundness of such designation but the idea seems to be right enough, namely, that natural (negative) individual rights aim to be guidelines for legal and administrative conduct. Yet, it seems to me, they could also directly guide much of social life, as when by acknowledging another for being a human being, one abstains from treating that person as if dealing with a fly or a dog - e.g., one will not kill any such being if he or she is merely annoying, or take from him or her something just because one desires to.

9. Ayn Rand, "Man's Rights," in *Capitalism: The Unknown Ideal* (New York: New American Library, 1967).

10. All quoted remarks come from the essay by Mozes in this issue of *Reason Papers*.

11. See, *The Virtue of Selfishness* (New York: New American Library, 1964).

12. In my argument this comes off as follows: "I, *qua* human being, am a rational animal with a moral nature; all rational animals with a moral nature are possessors of the rights to life, liberty, and property, thus I am a possessor of the rights to life liberty and property." "You, *qua* human being, are a rational animal with a moral nature." So it must be true that "You are a possessor of the rights to life, liberty, and property."

13. Gregory R. Johnson, "On the Rights Track," *Liberty*, September 1990.

14. Tom Palmer, "The Choice of Life," *Reason*, March 1990.

15. Tibor R. Machan, *Liberty and Culture, Essays on the Idea of a Free Society* (Buffalo, NY: Prometheus Books, 1989), pp. 230-32. Originally published in *Criminal Justice Ethics*, (Summer/Fall, 1985).

16. John N. Gray, *Liberalisms* (New York: Routledge, 1989).

17. *Ibid.*, p. 258.

18. *Ibid.*, p. 265n.

19. Werner Jaeger, *Aristotle* (Oxford: Oxford University Press, 1934), p. 152.

20. David Ross, *Aristotle* (London: Methuen & Co Ltd., 1964), p. 201.

21. Thus he simply lists a work that attacks free will to dispute the doctrine, never bothering to even sketch the arguments advanced. In his book *Liberalism* (Minneapolis: University of Minnesota Press, 1988), Gray claims that natural rights theories are defunct because empiricism and science have disproved teleology. Yet teleology is alive and well in science and empiricism has fallen on rather bad times in epistemology. It is difficult to argue with those such as Gray who advance objections by means of innuendo rather than scrutiny. But perhaps this is the result of finding rationalism in politics a tiresome approach and treating those who are rationalists with disdain rather than argument. It seems to me that Gray would be helped in his efforts to fully appreciate contemporary liberalism by reading, Rasmussen and Den Uyl, *Liberty and Nature*, and Douglas J. Den Uyl, *The Virtue of Prudence* (New York: Peter Lang Co., 1991).

ANOTHER CARICATURE OF LIBERTARIANISM

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In a recent two-part article in *The Responsive Community* (Winter and Spring 1992), Thomas A. Spragens, Jr. offers a harsh critique of libertarianism. The purpose of this essay is to show how his critique fails.

Spragens' article, "The Limitations of Libertarianism," has its share of rhetorical flourishes and *ad hominem* attacks, but his main points are properly theoretical ones, and it is to these that I shall direct my discussion. His chief criticisms will be shown to depend on fairly typical straw-man characterizations of libertarianism, and on moral points that beg the question.

His arguments, in his words, are that libertarianism 1) "narrows and distorts liberal theory," 2) is "inadequate as a basis for a good democratic society," and 3) can be "destructive of democratic institutions." Unlike some critics of libertarianism, Spragens recognizes that individual freedom is a good thing. But he sees freedom as the sort of good thing that, like chocolate cake, one can have too much of. As we shall see, this is partly because he misconstrues the libertarian case for freedom.

Spragens begins by charging that libertarians "decontextualize freedom," that is to say, they isolate and elevate freedom above other values. This seems like an uncontroversial way to characterize liber-

tarianism, but it is inaccurate. It would be more correct to say something like libertarians elevate freedom over other *political* values. This is not nit-picking. Omissions such as this are what enable Spragens to develop the straw-man libertarian that he wants to knock down. This straw libertarian is licentious, greedy, and egocentric.

Part of Spragens' criticism regarding this decontextualizing of freedom is that it neglects other political values. For example, he says, it is moral to "mitigate the unfairness of nature." It is not clear what this means, but it is clear that this begs the question. On what grounds is it moral to mitigate the unfairness of nature? What mechanisms are morally appropriate ways to do this? In what sense is nature unfair? Spragens stays far away from such questions, and instead simply stipulates that the state has this function.

More importantly, Spragens charges that libertarians neglect the value of community. This is an important feature of the straw man, a typical criticism with no basis in libertarian theory. Libertarians do not neglect the value of community, but they do stress the disvalue of coercion. Libertarians know it is important to work together to achieve many goals, and that fellow-feeling makes social life more pleasant. But they question the value of forcing people to serve others' ends. This is another example of how just a slight misrepresentation of the libertarian view provides fodder for the straw man. Libertarians deny that it is moral to make an individual subordinate to another's control, and this becomes "libertarians neglect the value of community." This is very transparent caricaturing, but all too common.

Spragens shores up his arguments on this point with a few quotes from earlier writers of the "liberal tradition" to show that historically, liberal authors have had other concerns besides individual freedom. Of course that's true, but it doesn't speak to the libertarian claim that individual freedom has overriding value in the political realm. No one argues that every author in the liberal tradition has been a libertarian. So pointing out other concerns that, say, Madison may have had proves nothing. Having said that, however, it is worth noticing that Spragens tries to enlist John Stuart Mill in this cause, and his inability to do so convincingly shows the extent of the caricaturing that is being used here. Spragens supplies a quotation from Mill about the way in which common undertakings can promote common morality, but tactfully avoids the more famous quotation from Mill, that "the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number is self-protection."

Ultimately, of course, it does not matter at all the degree to which past authors of the liberal tradition were or were not libertarian. We can dig out all the quotes we like, and Mill will look

more libertarian than Kant, but so what? I hope Spragens is not arguing that because many writers in the history of the liberal tradition were not libertarian, that therefore libertarianism is wrong. I concede that Rousseau was not a libertarian. Is that the beginning of the discussion or the end? It can only be the end with a fallacious appeal to authority.

One final point on Spragens' appeal to history: he produces a quotation from Adam Smith which he says "represents . . . a true reflection" of liberalism. The passage from Smith refers to Smith's view that one important check on individual freedom is that we must subordinate our interests to God's law, which of course Locke also thought was the case. It is telling that Spragens thinks this is exemplary liberalism. Last time I checked, it was not part of the liberal tradition to base state coercion on God's will as it is in theocratic states. Again, this is not nit-picking. Spragens might reply, don't take the God part so seriously, that's just an example of the concerns that override freedom. But we have to be more specific if we are to present a convincing case for state coercion. If it is something like God's will, who gets to be in the position of Imam, determining what this is? If not, why bring it up?

Spragens' second argument against libertarianism is that it involves "oversimplifying freedom," that is to say, the libertarian conception of liberty "becomes indistinguishable from mere license or capriciousness." To his credit, Spragens eschews the notion of "positive freedom," which he understands is typically brought out to defend "paternalistic and tyrannical impositions." He says that on this matter, he will agree with libertarians that liberty "always refers in some essential sense to freedom *from* outside interference and not to a so-called freedom *to* attain some specified end." This is a sensible concession, but he goes on to charge that libertarians think that liberty is "freedom to do whatever one pleases." Of course, no libertarian (over the age of sixteen) thinks this. Spragens does not cite a single libertarian on this matter. He simply asserts that libertarians say this. It is no surprise that he cannot find examples of libertarians making this claim, since none do. We can verify this with the simplest of experiments. Think of some libertarians. Nozick, Hospers, Rand, Machan, Den Uyl, Rasmussen, Lomasky, Rothbard, Hayek, Narveson, Friedman. To go beyond this century, we can add Smith and Mill. None of these authors would agree with the characterization of liberty as liberty-to-do-as-you-please that Spragens charges. Some libertarians argue that liberty is freedom to do as you please *as long as your conduct does not harm others*. Some argue that although the state can only interfere when your conduct harms others, there are other moral constraints on action that come into play. But *none* argues for the

licentious version of liberty as charged. This is fiction.

Spragens does, however, cite two authors who do conceive of liberty as license: Hobbes and Filmer. But as Hobbes and Filmer were both monarchists, this seems like an odd place to turn for textual support. Naturally Hobbes and Filmer characterize liberty in this way - it helps them argue in favor of not having liberty as a political value. So Spragens has established that monarchists and other theorists critical of liberty characterize liberty as license, but not that libertarians (or any liberals at all) do.

Spragens goes on with this for some pages, unfortunately. He explains (well) why "liberty as 'absence of impediment' is an ungeneralizable norm" because "one of us can be free of impediment only by wholly dominating another." He says that this conception of liberty is "morally unworthy," as well as "self-undermining." Of course this conception is not a workable one - which is probably why no libertarian has this conception of liberty. Spragens differentiates liberalism (which is how he wants to be identified) as being committed not to self-indulgence but to autonomy. All libertarians would agree with this, raising the question, Has Spragens read any of the libertarians he would castigate, or does he have a criticism of libertarianism that he doesn't want to be committed to publicly, and so will criticize it with caricatures?

One particularly nasty and disturbing caricature he presents is the charge that libertarians think drunk drivers have the right to be on the road. Since even a cursory reading of as straightforward a theorist as Mill reveals that this is false (by violating the harm-to-others principle), one wonders if this is a deliberate appeal to fear.

Spragens' third major point is the familiar charge that the libertarian emphasis on political freedom is either based on or promotes moral relativism. As was the case in the previous argument, this too is a straw man with no textual basis in libertarian thought. (It is an interesting strategy for a non-libertarian liberal to use against libertarianism, though, because this charge is often made against all of liberalism by socialist and communitarian theorists.) The distortion is not hard to find. A libertarian might argue that the state has no business dictating moral standards because in the real world no ruler is in a better position than a citizen to know the Form of Justice. This becomes the straw man argument that society must tolerate everything because morals are subjective. One last time: valuing political freedom is an example of demarcating the difference between right and wrong, that is, holding it wrong to coerce people into serving others' ends. It is not an example of having "no view" about right and wrong.

In this section of the article, Spragens refers to Hobbes as a

liberal theorist. This will come as a surprise to those who thought that a monarchist who denies the right to rebel against an abusive sovereign could not qualify as a liberal, but it is telling that Spragens classifies Hobbes thus. Spragens earlier wanted to argue that libertarianism was not an heir to liberalism, but if Hobbes is a liberal, most libertarians will undoubtedly concede the point.

Spragens quotes Mill as saying that a free government can survive only if people actively cooperate with the law. But that is exactly why Mill recommends the libertarian legal principle embodied in the aforementioned famous passage. When society makes into law the wishes of the few, or even of the many, there is bound to be unrest. Mill recognized that we could all more readily agree to endorse laws prohibiting harm to others. Widely disrespected laws erodes respect for all law. Having many such laws destroys that respect. Spragens says that "functioning civil society requires some minimum of orderliness and adherence to basic norms of behavior that distinguish it from a state of war." That is true, but if there is any reason why libertarian principles of individual freedom, self-government, and personal dignity and autonomy won't satisfy that condition, I cannot see it. This is a critique of licentiousness, not of libertarianism.

When Spragens sums up this portion of his critique, he phrases it this way: "libertarian theory fails to 'see' the legitimate role that moral equality, fellow feeling, and obligation play in a good democratic society." It seems clear that libertarians "see" as much as anybody else that moral equality and fellow-feeling are important, so let's consider next the charge that libertarians aren't living up to their obligations. Libertarians are typically quick to defend the importance of contracts, so Spragens must have in mind obligations not voluntarily contracted. And indeed he says that "each participant [in society] is in debt to all sorts of fellow citizens whom he or she has never met and cannot even name." This claim is generated by the familiar argument that since he enjoys the benefits of society, he owes something to society.

He illustrates this with curious examples, for instance, that the facilities of his university were provided by friends and alumni that went before. It is not clear what sort of obligation this provides, but the more important point is the general claim, which raises a substantial philosophical question. Can one have obligations that result from unasked for benefits? We have no choice about what happened in the past. I didn't ask the early Dutch settlers to swindle the Indians out of Manhattan. What exactly do I owe, and to whom do I owe it, as a result of this? To take a more concrete example, am I obligated to fight in Kuwait now because without the revolutionary army, we would not have achieved independence? South Africa has the same infrastructure that Spragens enjoys here. What "obligations" does a black South

African have towards the regime there? A libertarian might argue that actual consent is the best way to determine obligation. Spragens might well want to challenge this and produce another account of obligation. But this hardly makes the libertarian "a fool and an ingrate," guilty of "patent unreality and moral myopia."

Spragens argues next that libertarian doctrine is "unhelpful in shaping good family policy." Is anything? Why should the state take on the role of meta-parent at all? Spragens says that children are effected by the morals in society. This is surely true, but why does he presume that rulers are better suited to protect children from harmful social forces than parents are? The critique of individualism in this section seems to suggest that the state has a legitimate role to play in regulating sexuality, and explicitly endorses laws regulating marriage and divorce. Spragens doesn't even sound like a liberal at this point.

Spragens evidently will not accept the idea that individualism fosters respect for others by recognizing them *as* individuals, and that the solidarity that arises from voluntary cooperation in an enterprise is more substantial and authentic than state-enforced fellow feeling. He seems sympathetic to some of the reasons libertarians favor political freedom, but unwilling to explain why it is moral to force people to serve others' ends. He simply stipulates that it is, and then criticizes libertarianism for denying it.

Spragens is correct when he says that freedom and democracy are not the same thing. Libertarians are aware of this when they develop theories that give individual freedom priority over majority rule. It is begging the question, though, to argue from the premise that democratic regimes require abridgments of freedom to the conclusion that democratic regimes are good and libertarian ones are bad. What Spragens calls libertarian distortions of liberalism are either products of his own mind (such as the conception of liberty as licentiousness) or moral premises he disagrees with (such as the priority of individual autonomy over the will of the majority). The "limitations of libertarianism" have not been convincingly demonstrated; to the contrary, the unexplored potential of libertarianism is obscured by Spragens' caricatures.

Book Section:

PHILOSOPHY AS DIALOGUE

Charles L. Griswold, Jr.'s
Self-Knowledge in Plato's Phaedrus.
(New Haven: Yale University Press, 1986).

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When he [Plato] was about to die, he saw in a dream that he had become a swan and was going from tree to tree, and in this manner he caused the greatest trouble for the bird-catchers. Simmias the Socratic judged that Plato would elude those after him who wished to interpret him. For the interpreters who attempt to hunt out what the ancients had in mind are similar to bird-catchers, but Plato is elusive because it is possible to hear and understand his words in many ways, both physically, and ethically, and theologically, and literally, just like those of Homer as well. - *Olympiodorus* ¹

The rumor about Heidegger put it quite simply: Thinking has come to life again; the cultural treasures of the past, believed to be dead, are being made to speak, in the course of which it turns out that they propose things altogether different from the familiar, worn-out trivialities they had been presumed to say. There exists a teacher; one can perhaps learn to think. - *Hannah Arendt* ²

1.

Olympiodorus and Hannah Arendt concur: writing and reading are not incidental to philosophic teaching and learning. Today, thinking and reading are intimately connected. In the seminar room, Heidegger showed that thinking comes to life when “dead” texts are made to speak by their readers. Such reading, however, is not equivalent to necromancy. To the contrary, the great texts - our “cultural treasures” - are implicitly alive; they are dead only insofar as their readers are able to hear in them merely the repetition of banalities. Bad reading kills good writing. Yet Arendt recalls us to the thrilling recognition that intelligent reading gives new life to philosophical authors: as we learn by thinking through their written memoranda, they are revived as our teachers.

In what does intelligent reading consist? Olympiodorus’ anecdote, which employs the avian imagery of the soul developed in the palinode of the *Phaedrus*, captures the simultaneous promise and challenge of the Platonic texts, and by extension of all of the written cultural treasures from which one may learn genuinely to think. The dialogues of Plato are beautiful and prophetic, yet their meaning is elusive; what is more, Plato’s authorial soul seems to rejoice in its ironic and evasive flight.³ To interpret a text is to speak about it, at least in thought and to oneself, often with others, and sometimes in the form of writing. Plato’s dream underscores the risks of interpretative discourse. It correctly predicts that in the hands of readers who proceed like hunters the dialogues will come to resemble dead swans, or be transformed by the reader’s speech into still and silent images that bear little resemblance to the living, moving originals for which they are mistaken. To hunt is to pursue with intent to grasp or pin down. Yet living swans can best be seen and heard without being touched. To put this point in the language of the *Phaedrus*, interpretation requires a combination of madness and sobriety that resembles Socratic self-knowledge: it is an erotic activity that must nevertheless be regulated by self-control or *sophrosyne*. Plato’s dream thus challenges the reader and would-be thinker to articulate what is “seen” and “heard” in the Platonic dialogues while preserving the “distance” that allows these texts to manifest their intrinsic natures.

2.

Charles Griswold explores and responds to the latter challenge in *Self-Knowledge in Plato's Phaedrus*, for which he was granted the Matchette Prize (awarded biennially for the best book in philosophy by an author no older than forty) in 1988. The interpretative considerations sketched above are especially pertinent to the *Phaedrus*, a written text that records a spoken dialogue in which Socrates criticizes writing on philosophical grounds, and that therefore "contains within itself the possibility of reflection on its own status qua written work" (p. 219).⁴ Griswold argues that "the *Phaedrus*' development . . . suggests indirectly an intensely reflexive defense of dialogue" (p. 241), and more specifically of the claim that "dialogue (*dialegesthai*) . . . [is] the comprehensive and indispensable medium of philosophizing" (p. 61). *Self-Knowledge* provides precisely such a defense, and does so in the broadest possible terms. Griswold's reading of the *Phaedrus* shows not only that the quest for wisdom entails self-knowledge and so necessitates Socratic dialogue, but that pre-philosophical *eros* leads inevitably (through a "self-moving dialectic" that exhibits "the cunning of desire" [p.66]) to speech about the objects of desire and desire itself, and thereby opens up the philosophical problem of self-knowledge. What is more, Griswold connects the defense of philosophic dialogue with a defense of Plato's dialectical art of writing in a way that both exemplifies intelligent reading and suggests a reflexive justification of his own written treatise on the *Phaedrus*. These interlocking levels of argument constitute the basic components of Griswold's clear and forceful response to those who (like Richard Rorty and Jacques Derrida) contend that putatively "philosophic" discourse cannot sustain its claim to be speech about the truth, but is instead self-enclosed (and so self-vitiating) speech about speech - "a never-ending exercise in self-commentary" (p. 234). In brief, *Self-Knowledge* is a book about the possibility of philosophy that Socratically seeks to measure itself against its strongest opponents. It is of value to anyone who reads or writes for the sake of thinking.

Self-Knowledge aims, in part, to make us more reflective and self-conscious as we speak, read, and write for philosophic purposes. Griswold's detailed attempt to show that the *Phaedrus* provokes us to pursue self-knowledge, however, presupposes that his own interpretative practice is from the outset more adequately self-conscious than rival modes of reading the Platonic dialogues. The reading set forth in *Self-Knowledge* is thus rooted in the claim that interpretation moves within a hermeneutical circle. This claim is consistent with Socrates' assertion, prior to the palinode's teaching concerning divine madness and our recollective pre-awareness of the Truth, that "the soul is somehow mantic" (*Phdr.* 242c), or that philosophic inquiry is itself

rooted in the partial accessibility of the truth within pre-philosophical experience (more on which below).⁵ The latter assertion, however, would be rejected by Plato's anti-Platonic readers.⁶ Furthermore, other readers who might accept Socrates' general characterization of our access to the truth would challenge some of Griswold's more specific interpretative assumptions. Can Griswold sustain his own implicit claim to interpretative self-knowledge?

Griswold's assertion of the philosophical priority of dialogue entails that no argument is by itself adequate to support the latter claim, precisely because no argument is fully intelligible "by itself," or considered independently of the rhetorical context within which it is advanced. It is a central contention of *Self-Knowledge* that all *logos* (speech) - including spoken or written philosophical arguments, as well as those advanced within the silent discourse of thought - is rhetorical in that it aims at persuading, or "leading souls through words" (*Phdr.* 261a).⁷ This contention, together with the indispensability of *logos* as a medium for the articulation and examination of our intuitions (pp. 104 ff.), has specific consequences for the practice of philosophizing. Most important, it validates the Socratic conception of philosophy as dialectical self-interrogation. Socrates prefers the city to the country from the standpoint of learning (*Phdr.* 230d) because self-knowledge requires "the mirrorlike presence of another soul" (cf. Plato, *Alc. I* 132c ff.) and thus "possesses an irremediably 'social' or (in the broadest sense) 'political' character" (p. 32). Philosophic dialogue is "a rhetoric that lets us compare our insights with those of others such that we can clarify or deepen them" and that thereby allows the soul to "look at itself through the eyes of others" (p. 108). The philosopher can never be satisfied, however, with the mere fact of agreement: his enduring challenge is "to distinguish, in any given situation, between intelligent and unfounded agreement," (p. 60), or, more generally, between reflections "that will cause one to move in the direction of self-knowledge" and those that "simply mirror what one is already or what one would vainly like to think of oneself as already being" (p. 32). The quest for self-knowledge therefore terminates only in death: the philosopher must unceasingly seek out "context[s] of disagreement for himself" so as to avoid the danger of "[being] persuaded that what reveals itself to him is true just because he sees it as true" (pp. 171-172).⁸

Griswold's reflections upon the fundamentally rhetorical character of *logos* also have consequences for our evaluation of his reading of the *Phaedrus*. *Self-Knowledge* implicitly asks to be judged not on the level of argumentation or *logos* alone but of *ergon* (deed) - most generally, in terms of the ability of its *logos* to provoke reflection in the soul of the reader. For the same reason, it would be inappropriate to evaluate Griswold's claim to interpretative self-knowledge apart from

the rhetorical context of contemporary approaches to Plato, and in relation to the important alternative strategies of reading against which he is concerned to argue.⁹

Griswold's reading of the *Phaedrus* is governed by the general maxim that "the form of the [Platonic] dialogue is as intrinsic to its meaning as the content" (p. 2). He argues that the reader must begin his study (but is not thereby forced to conclude) by assuming that Plato composed his dialogues with "logographic necessity" (*Phdr.* 264b), or "by granting the claim, definitive of philosophers, that the text articulates the truth and does so in the most precise manner allowed by the subject matter and by the level of the readers to whom the author wishes to address himself" (p. 11). The assumption that the text is coherent and possesses a unified meaning poses a special challenge in the case of the *Phaedrus*, which presents the appearance "of a tapestry that has come partially unraveled into a tangled skein of themes and images" and of "a colorful but poorly patched quilt" (p. 1). In seeking reasons for these features of the *Phaedrus* within the dialogue itself, Griswold embraces Platonic irony, understood as "a tension in the dialogues between the surface of the text and its context . . . that points to an underlying meaning" (p. 12). This interpretative strategy finds support in Socrates' claims in the *Phaedrus* and elsewhere (see above, n5) to the effect that the structure of ordinary experience is itself ironic, in that it is characterized by the presence of imaging relationships that enable the "prophetic" movement of learning.¹⁰

The approach to interpreting Plato exemplified in *Self-Knowledge* is in crucial respects similar to that of a number of scholars who were influenced by the example of Heidegger, including Leo Strauss, Hans-Georg Gadamer, and Jacob Klein. The most important alternatives to Griswold's approach are those represented by orthodox Anglo-American Plato scholarship on the one hand, and by Derrida - who was also influenced by Heidegger - on the other. (I omit mention of Rorty only because he is far less interesting on the subject of Plato than Derrida.) It will be useful to refer to these alternatives, respectively, as "Traditionalism" and "Skepticism." A third approach, championed by Martha Nussbaum, is a variant of Anglo-American Plato scholarship that I shall call "Neo-Traditionalism."¹¹ While each of these modes of interpretation is in certain respects unself-conscious, each also has significant virtues, and one, that of Nussbaum, suggests important new territory for Platonic studies.

The Traditionalist is defined by his claim that we possess at least a rough knowledge of the chronological order in which the Platonic dialogues were written, and that this information provides a key to the interpretation of Plato because it allows us to trace crucial changes in his thought. The Traditionalist has one great virtue: he reads Plato in the expectation that the dialogues might have something to teach him about the truth. In this respect, he sides with Griswold and against the Skeptic. In fact, the Traditionalist might claim to endorse most or even all of Griswold's interpretative assumptions, with one exception: Griswold's reading of Plato in no way rest upon hypotheses about Plato's putative development or the order of the dialogues' composition (as opposed to their internal, dramatic chronology). The Traditionalist might also claim that the inclusion of chronological considerations is compatible with Griswold's assumptions about the significance of the dialogue form, Plato's adherence to logographic necessity, and Platonic irony, so that his own interpretative practice is free to incorporate all of the virtues of Griswold's own approach.¹²

Traditionalism is open to two kinds of criticism. The first has been fully developed subsequent to the publication of *Self-Knowledge*, and concerns the vicious circularity of the arguments by which the Traditionalist attempts to establish his first and most crucial contention. In particular, it has recently been shown in detail that any attempt to ascertain the relative dates of the dialogues - including the statistical analysis of Plato's style, a putatively scientific technique long regarded as the most solid foundation for chronological hypotheses - must rely upon a selective and arbitrary interpretation of the ancient external evidence, as well as unfounded assumptions about the relevance of data extracted from the dialogues.¹³ Although he typically proceeds with an air of theoretical rigor, the Traditionalist is insufficiently reflective with regard to his own presuppositions, and so falls victim to the charms of pseudo-science.¹⁴

The second kind of criticism is developed by Griswold in *Self-Knowledge*: Traditionalism is incompatible with reading the Platonic dialogue as a dialogue. Griswold argues that each dialogue itself - and not "Plato's psychological history" - is "the primary whole relative to which the parts of the dialogue are to be judged" (p. 15). The key point here is that one cannot consistently appeal *both* to what Plato is alleged to have thought at a certain time *and* to features internal to a given dialogue (including its dramatic time and setting, narrative structure, the character of its interlocutors, literary and historical allusions, and the like) in order to explain the kinds or styles of argument one finds in it. The Traditionalist may claim to be sensitive to the fact that the dialogues, as written records of living conversations, must be

understood in terms of their rhetorical and dialectical dimensions, but he undercuts this claim precisely at the point where he appeals (as inevitably he must, given his fundamental interpretative presupposition) to putatively independent chronological considerations. Insofar as he bases his interpretation upon chronological hypotheses, the dialogue reveals itself as a concealed monologue that registers what Plato "actually" thought while maintaining the pretence of Socratic debate and critical self-examination. But if, on the other hand, he attempts to avoid this conclusion by admitting that the feature in question could equally well be explained in terms of the dialogue as a whole, chronological speculation becomes philosophically otiose (although it may retain some interest as the basis for imaginative psycho-biography). The Traditionalist cannot have it both ways.

Consider, for example, rival explanations of the appearance of the method of division and collection in the second half of the *Phaedrus*. The Traditionalist does not hesitate to account for Socrates' introduction of this method by means of an appeal to chronological arguments. As Griswold notes, chronologically-minded scholars regard the "meta-physical" conception of knowledge as recollection of the Ideas (which Griswold refers to as "Episteme") to be a distinctive feature of the "middle" Platonic dialogues, while the "methodological" approach to knowledge through division and collection ("episteme" in Griswold's terminology) is widely thought to characterize the "late" dialogues (p. 6). Since orthodox Plato scholarship situates the *Phaedrus* somewhere between the "middle" and "late" dialogues, the following kind of account finds ready acceptance among the Traditionalists:

It is generally admitted . . . that his [Plato's] thought . . . underwent a development during this period. The *Phaedrus* is apparently the first dialogue of a group that uses a new picture of dialectic, known as the Method of Division; one of the jobs of the second half of the dialogue is to announce and defend this method.¹⁵

In brief, the method appears in the *Phaedrus* because its author wants to tell us about a new idea. This claim does not, however, explain the context in which Plato chooses to announce his new idea. Yet Socrates' introduction of the method shortly after the conclusion of his great myth constitutes a major part of the famous problem of the unity of the *Phaedrus*, a problem exacerbated by Socrates' explanation of logographic necessity in terms of the requirement that a *logos* possess organic unity (*Phdr.* 264c). In particular, it is unclear why "the enthusiastic and erotic idiom of the first half [of the *Phaedrus*] seems replaced by a detached and analytic idiom" (p. 157). It is crucial to

see that this problem has to do with the structure that the *Phaedrus* possesses in its own right as a written image of a philosophic conversation, and independently of any of the circumstances of its composition. Chronological considerations are wholly irrelevant in this connection. Indeed, to rest content with the Traditionalist's "explanation" of the appearance of the method of division and collection in the *Phaedrus* is to concede that, considered as a dialogue, the *Phaedrus* is fundamentally incoherent. If in composing the dialogue Plato has followed the dictates of logographic necessity, however, the method of division and collection appears when and where it does because it has to.

Griswold's massive accomplishment in *Self-Knowledge*, precisely, is to show that the unity of the *Phaedrus* resides in the dialectical development of its Socratic discourse. In particular, Griswold is able to demonstrate that the method of division and collection plays a crucial role within the structure of the "living" conversation depicted in the *Phaedrus*, a conversation that involves a series of speeches and subsequent recantations, or odes and palinodes. Although the point is generally overlooked, it should not be irrelevant to the evaluation of chronological arguments about the *Phaedrus* that Socrates refers in the course of the dialogue to what Griswold calls his "knowledge of ignorance" about himself (*Phdr.* 229e-230a), a consistent theme of those dialogues conventionally regarded as "early" or "Socratic." Griswold relates Socrates' knowledge of ignorance to "a third sense of self-knowledge [besides 'Episteme' and 'episteme'] signaled by the term 'gignoskein'" (p. 6). *Gnosis* is "recognition" or "familiarity"; it describes the non-epistemic self-awareness commanded by the Delphic Oracle (*Gnothi Sauton*, "Know Thyself"; cf. *Phdr.* 229e). According to Griswold's reading, the dialectical development of the *Phaedrus* displays the priority of gnostic self-knowledge to its epistemic rivals: "gignoskein" signals "a sense of self-knowledge that tells us 'what it is to be human' without transforming the soul into a special type of abstract object (whether an Idea or a complex of forms and causes)" (p. 6; cf. p. 261, n23). Put succinctly, the method of division and collection, far from being "*the* method of dialectic and *the* occupation of the philosopher . . . [that] replaces (and is incompatible with) the hypothetical method of *Phaedo* and *Republic*" (Nussbaum, *Fragility*, p. 470, n5, italics in original), is a self-qualifying, subsequently recanted moment in the reflective movement of gnostic self-knowledge.

In brief outline, the discourse of the *Phaedrus* develops as follows. Lysias' speech (read aloud by Phaedrus) depicts reason as an instrument for the fulfillment of physical needs, the satisfaction of the desire for pleasure, and the preservation of reputation. (Lysias fails to mention the soul.) Lysias' businesslike composition is notably deficient as a seduction speech, however, since it is wholly devoid of "the

rhetoric of love" (p. 46). Such a speech would fail miserably in practice because the beloved desires to be regarded as beautiful, noble, and so on; that is, he desires to be desired as more than an indiscriminate object of animal sexuality (cf. p. 126). The conflict between *logos* and *ergon* that is implicit in Lysias' composition anticipates Socrates' later criticism of writing ("the utter impersonality of Lysias' speech . . . seems to epitomize writing as such": p. 50) and recalls us to the original, erotic context of speech, within which context the Lysian "nonlover" is obliged to "transcend in his own rhetoric the level of his own intentions" (pp. 50-51). The "uplifting energy" of *eros* (p. 51) thus leads the nonlover to seek self-knowledge, at least to the extent that he begins to reflect upon the implications of his own rhetoric (even if only from the standpoint of efficacy). Socrates' first speech, that of the "concealed lover," displays its own conflict between *logos* and *ergon* (see pp. 57-58), but "expands our vocabulary and conception of *eros*" (p. 66) by proceeding in a more reflective and self-conscious fashion than Lysias' discourse, and by introducing rhetorically edifying terminology that is appropriate to the erotic aim of the speaker (including references to the soul, mania or "madness," *sophrosyne*, and "divine philosophy"). Socrates' speech thus succeeds in its goal of improving upon that of Lysias (*Phdr.* 235c ff.), but it is nonetheless unable in its own base terms to account for the edifying notions it introduces, for the desire of the beloved to regard himself in the light of such notions, or for the relationship between reason and desire manifested in the behavior of the speaker himself (pp. 62-65). It is also unable to provide "an account of *eros* that explains the desire of Phaedrus and Socrates to listen" to speeches such as Lysias' and Socrates' (pp. 68-69). These inadequacies are a source of shame (cf. *Phdr.* 237a), a pre-philosophical phenomenon to which "clever" demythologizers, but not the "wise," are perhaps insensitive (p. 83; cf. *Phdr.* 229d, 245c). Lysias' composition and Socrates' first speech lead to their recantation just insofar as they elicit shame and thereby remind us, through their very deficiencies, of our ordinary experiences of beauty, nobility, and the elevating character of *eros* - experiences of "what we are" that prophetically "contain something of the truth" (p. 38). This means that the transition to the palinode will not be persuasive to unprophetic, unmusical, erotically deficient, or shameless souls. (I shall return to this point below, in discussing the Skeptic.)¹⁶

Socrates' palinode attempts to articulate a framework that can account for our ability to recognize the inadequacy of the previous two speeches. The palinode exhibits gnostic self-knowledge in its teaching that "to know the soul is to understand its role in the cosmos," which amounts to understanding the soul's erotic openness to the Whole of things (p. 92; cf. p. 98). The myth in which most of the

palinode consists, however, connects Socrates' knowledge of *eros* with his knowledge of ignorance or of the limitations of his knowledge: "knowledge of *eros* is finally knowledge of being intermediate or, in the *Symposium's* language, 'in between' wisdom and ignorance" (p. 136).¹⁷ Socrates' knowledge of the soul's intermediacy, in turn, involves the understanding that divine *mania* is equivalent to true *sophrosyne*, a point that is metaphorically expressed in the relationship between the charioteer's recollection of his original vision of Beauty and *Sophrosyne* and his restraint of the dark horse in the presence of the beloved (*Phdr.* 254b-c). But precisely insofar as it teaches that the ascent of the soul involves the soul's regulation of madness by self-control, the palinode underscores the implicit conflict between its *logos* and its *ergon*. The first two speeches of the *Phaedrus* had to be recanted because they were excessively sober, or devoid of uplifting erotic madness. The palinode itself, however, is excessively "mad," or deficient in "philosophical self-possession" and therefore in *sophrosyne*, "in the sense that if it is true the person narrating it could not know it is true (given the criteria for knowledge presented within the myth itself)" (p. 152). Thus the palinode, in turn, partially "recants itself when we compare its *ergon* with its *logos*" (p. 153).

Griswold's insight is that the technical discussion of speech that follows the palinode, and within which Socrates offers his account of the method of division and collection, provides precisely the kind of sober and self-conscious "talk about one's talk" that is demanded by the myth's mad *logos*.

The myth's teaching marks off the limits of human knowledge and in so doing presupposes a standpoint beyond them. That standpoint in turn shows itself in the need for limitation, a limit realized by the turn from myth to *techne*. (p. 153)

The "putative incoherence of the *Phaedrus* " is thus "an intentionally generated step in the development of the self-knowledge theme" (p. 154). The method of division and collection is a moment in a "dialectic [that] fluctuates between madness and sobriety"; the method "comes alive" only "when viewed relative to its context - the whole of which it is a part" (pp. 153, 182). In clumsily cutting the method out of this context and treating it as though it possesses independent philosophical significance, the Traditionalist butchers the whole and disfigures the part.¹⁸ The *Phaedrus* as a whole argues against Dogmatic assumptions: to identify the method with "the occupation of the philosopher" would be to fall prey to the madness of excessive sobriety, and therefore to fail to understand the nature of one's own soul. For "the

dialectic of the myth's self-limitation is the dialectic of self-knowledge"; *mania* and *sophrosyne* - the "desire for a comprehensive and beautiful mythos about the soul" and the "desire for detached analysis" - both "animate the philosopher's soul," and can be combined only dialectically, in the alternately self-transcending and self-qualifying medium of dialogue (pp. 154, 155).

Griswold clinches the latter point by showing that the development of the second half of the *Phaedrus* (which in important respects begins on the rhetorical and ontological level of Socrates' first speech) parallels that of the first half: Socrates' ode to episteme is recanted in the palinode of the Theuth/Thamus myth, which teaches that technical knowledge must be subordinated to the recollective awareness of the ends of human life (pp. 161-163, 202 ff.) The parallelism of the two halves of the *Phaedrus* does not, however, imply a lack of progress: the criticism of writing set forth in the Theuth/Thamus myth presupposes the notion of recollection that Socrates developed in his earlier myth, a notion that is now connected with the activity of dialectical discourse (p. 207 ff.). This criticism of writing, in turn, is partially recanted by Plato's deed of authoring the dialogues, a form of writing of which Socrates seems not to have conceived (p. 210). The dialogues, finally, recant themselves by returning us to the indispensable context of ordinary experience within which the live activity of philosophizing takes place - an activity that "must ultimately focus on the knowledge of oneself as *this* individual in this time and place and in these circumstances" (p. 223, italics in original).¹⁹

4.

Neo-Traditionalism can be treated in briefer compass. This interpretative approach shares the definitive characteristics of Traditionalism: its : its chronological vice and truth - seeking virtue. What is new and important about Neo-Traditionalism is its insistence - albeit necessarily a rather schizophrenic insistence - upon the philosophical significance of the dialogue form, particularly insofar as this form invites reflection upon the place of Plato's writings within the context of the Greek literary tradition. In *The Fragility of Goodness*, Martha Nussbaum positions herself among the "very few moral philosophers . . . in the Anglo-American tradition" who "have welcomed stories, particulars, and images into their writing on value," and who have "showed a responsiveness to metaphorical and emotive language" (*Fragility*, pp. 187, 394). Nussbaum's sensitivity to these same elements in the Platonic texts leads her to formulate the following criticism of her Traditionalist peers:

All too often, when we ask, 'Why did Plato write in dialogues?', we ask ourselves why the dialogues are not philosophical treatises, not like Mill, say, or Sidgwick, or even Aristotle - rather than, why they are not poetic dramas, not like Sophocles or Aeschylus. We can recover the philosophical thrust of his decisions as he planned them only by approaching them historically, asking how his project is defined by differentiation from its surroundings. (*Fragility*, p. 122)

Nussbaum adds that "Plato acknowledges the influence . . . of at least six different kinds of texts: epic, lyric, tragic, and comic poetry; the prose scientific or historical treatise; and oratory" (*Fragility*, p. 123). These observations, together with Nussbaum's thoughtful discussion of points of resemblance between the dialogues and tragic drama (*Fragility*, pp. 126-129), open up the exciting prospect of a reading of the Platonic dialogues that would bring to them the virtues appropriate to the interpretation of other genres of Greek literature - including sensitivity to the details of characterization, dramatic and rhetorical context, metaphor, symbolic imagery, tragic ambiguity, comic irony, and narrative and mythical structure - while simultaneously exploring the various ways in which these philosophic texts themselves engage in a "meta-dialogue" with their most challenging literary competitors. Neo-Traditionalism's distinctive virtue lies in its ability to visualize such an interpretative agenda, even though its own adherence to Traditionalist preconceptions about Plato's development - preconceptions that arbitrarily narrow the horizons of legitimate interpretation - prohibits the adequate realization of this agenda.²⁰

Of special interest in this connection is the relationship between the writings of Aristophanes and Plato. Although there is evidence both external and internal to the dialogues that points toward the significance of this relationship, it has remained almost wholly unexplored by ancient philosophers, classicists, and political theorists.²¹ It would be difficult, in particular, to overestimate the significance Plato attaches to Aristophanes' criticisms of Socratic philosophizing; insofar as every Platonic dialogue constitutes an attempt to distinguish between philosophy and sophistry, every dialogue is arguably a response to the *Clouds*.²² Reflections of this nature lead to an insight about Plato's use of myth that is not formulated in *Self-Knowledge*, but that is implied by Griswold's analysis and suggested by Neo-Traditionalism. In an "Excursus" on the significance of myth in the dialogues, Griswold notes that the "intentional ambiguity" of Platonic myths "lead[s] the reader to engage in a complex hermeneutic task whose result is philo-

sophic reflection," that the provocative combination of simplicity and complexity in Plato's myths "does not seem translatable into a conceptual idiom," and that myth is an idiom appropriate to discourse about the soul (pp. 141, 149, 150). Especially in the light of the latter observation, one feels compelled to add that in employing the language of myth Plato appropriates, reshapes, and thus reflectively responds to pre-existing mythical articulations of the soul and its experiences.²³ In the case of the *Phaedrus*, Plato seems in particular to be responding to the implicit challenge of Aristophanes' *Birds*.

A full exploration of the relationship between the *Phaedrus* and the *Birds* would begin with Aristophanes' myth of the circle-people in the *Symposium* (189c-193d), a dialogue that, as Griswold notes, precedes the *Phaedrus* in dramatic chronology and is linked to the latter through the theme of *eros* and the character of Phaedrus (pp. 19-21). Although it is certainly a Platonic invention, the myth of the circle-people provides a synopsis of certain central themes of Aristophanes' comic dramas. In particular, the myth distinguishes between two fundamental aspects of human erotic longing: the "upward," spirited striving to become divine that expresses itself in politics and philosophy, and "horizontal" sexual desire and affection. The fate of the circle-people teaches that upward-directed striving is hubristic, and does violence to the integrity of human life as well as the Whole. The myth thus implicitly reflects the judgment of philosophy that Aristophanes sets forth in the *Clouds*, in which Socrates, the corrupter of young and old alike, is portrayed as despising or looking down upon the human things as well as the gods (*Clouds*, 226, 1399-1400). While Socrates attempts in the *Symposium* to respond to Aristophanes' challenge by depicting *eros* (and philosophy, as the perfection of upward erotic striving) not as a force that sunders the Whole but as a bond that binds together its parts (*Symp.* 201d ff.), the dialogue concludes with a renewal of Aristophanes' charge in Alcibiades' unmasking of Socratic philosophizing as the cruel and overweening desire for mastery, a desire that refuses to restrain itself even before the gods themselves (*Symp.* 214d). If the treatment of *eros* in the *Symposium* is ultimately inadequate, as Griswold suggests (p. 19), it is because the *Symposium* fails to defend philosophic *eros* against the calumnies of Aristophanes and Alcibiades.

At the beginning of the *Phaedrus*, Socrates raises the issue of the nature of *eros* within the context of his quest for self-knowledge, and formulates this issue in terms that recall the problematic of the *Symposium*. In particular, Socrates wonders aloud whether he is a beast more complex and more puffed up with pride than Typhon, or a tamer and simpler being who participates in some untyphonic and divine lot (*Phdr.* 230a). *In imagining a beast more typhonic than*

Typhon, Griswold writes, *Socrates envisions an "unnatural creature" whose "extreme hubris . . . must be equivalent to an irrational desire (cf. [Phdr.] 238a1-2 and context, where eros is a species of hubris) to be master of the universe"* (pp. 40-41). Typhon is described by Apollodorus as part man, part beast, and winged all over (pp. 39 and 253, n26); this mythical figure thus anticipates Socrates' "much more edifying and beautiful, but nonetheless equally monstrous and unnatural, image of the soul's idea" as a charioteer and two horses, all of which are winged (p. 95; cf. p. 93). Socrates' allusion to Typhon, the theme of *hubris*, and the avian imagery of *eros* also help to specify the Aristophanean subtext of the *Phaedrus*. The aforementioned elements of the dialogue, together with its dramatic setting (two Athenians engage in conversation outside of the walls of Athens), the danger that the dialogue might degenerate into an affair of "poor comedians" (*Phdr.* 236c), and the pervasiveness of the theme of rhetoric, all bring to mind Aristophanes' *Birds*, a comic drama in which two Athenians (following in the footsteps of the typhonic character of Tereus, who was turned into a bird after raping his sister-in-law and cutting out her tongue) leave the city of Athens and are subsequently transformed into winged men/beasts. One of these Athenians, Peisthetaerus ("Persuasive Companion"), talks his way into ruling the birds, whereupon he formulates a plan that effectively bisects the cosmos by cutting off all intercourse between gods and men, thereby allowing him to seize the supreme power that once belonged to Zeus. In brief, the *Birds* - in which *eros* is itself represented as a bird (*Birds* 696) - is a fantasy of unrestrained desire that reiterates the teaching of the *Symposium's* myth of the circle-people.²⁴

The great myth of the *Phaedrus* is itself a fantasy of *eros* (cf. p. 73). Griswold notes that "the comic interchange of roles between Socrates and Phaedrus does not continue past the interlude between Socrates' two speeches" (p. 67; cf. pp. 1, 8, 30), but the palinode represents the overcoming of comedy in several other senses as well. While in the *Birds* upward erotic striving seeks to overthrow Zeus, in the *Phaedrus* the "highest achievement" of the human soul that "aspires to the divine . . . is to follow Zeus, not to usurp him" (p. 42; *Phdr.* 246e ff.). And while the rhetorical speech of Peisthetaerus leads to the political silence of absolute tyrannical mastery and thus, in a manner reminiscent of Tereus, to the loss of the distinctively human capacity of *logos* (cf. the reference to the cutting out of the tongue at *Birds* 1705), Socrates' myth teaches that persuasive philosophical *logos* alone enables the soul recollectively to reunite "the hyper- and hypouranian places, that is, images with their originals, opinions with their grounds," and thereby to recapture "the wholeness of self" (p. 112).²⁵ In brief, while Aristophanes teaches that upward erotic striv-

ing threatens to fragment and debase human existence, Socrates indicates that only upward-directed *eros*, or *eros* properly understood, can preserve our humanity. As Griswold puts this point:

The gods . . . have no need for self-knowledge. The entire problematic of self-knowledge is thus deeply revealing of what it means to be human. To ignore the problematic is to become either sub- or superhuman. Socrates will mention that no incarnate soul can hope to be superhuman in this life; hence the price of failing to know oneself is that one approaches the bestial. (pp. 105-106)

5.

Kierkegaard begins the third chapter of his *Philosophical Fragments* by reflecting on the fact that Socrates, "a connoisseur of human nature," was unsure whether he was "a more curious monster than Typhon or a friendlier and simpler being, by nature sharing something divine." "This seems to be a paradox," he continues. "But one must not think ill of the paradox, for the paradox is the passion of thought, and the thinker without the paradox is like the lover without passion: a mediocre fellow."²⁶ Elsewhere, Kierkegaard turns this insight upon the academy:

Take the paradox away from a thinker - and you have a professor. A professor has at his disposal a whole line of thinkers from Greece to modern times; it appears as if the professor stood above all of them. Well, many thanks - he is, of course, the infinitely inferior.²⁷

Kierkegaard's Socratic appreciation of the passion of thought gives us a way to express the peculiarity of Derrida's approach to Plato (as exemplified in "Plato's Pharmacy")²⁸: the Skeptic is a professor masquerading as a thinker with a paradox. I mean by this that "Plato's Pharmacy" manifests a profound sense of the provocative tension and ambiguity of the Platonic dialogues - so much so that one is astonished, to borrow Griswold's words (p. 211), that the permanence of the erotic search for wisdom is not written in the soul of its author. Yet the Skeptic is defined, in part, by his insistence that "wisdom" and the "soul" are merely self-negating constructions of discourse.

Derrida's reading of Plato exhibits a host of interpretative virtues not shared by Traditionalism or Neo-Traditionalism. Derrida sensibly regards the Platonic texts as intricate (albeit always unraveling) tapes-

tries that are connected with one another by a subtle network of filaments. The interpreter is therefore free "to slip away from the recognized models of commentary, from the genealogical or structural reconstitution of a system" and to follow these filaments throughout the Platonic corpus ("Pharmacy," p. 104). Derrida exhibits a thorough appreciation of Plato's employment of "philosophemes," his name for Plato's philosophical appropriation of the mythical units of meaning that Claude Levi-Strauss calls "mythemes" ("Pharmacy," p. 86), and his interpretation of these philosophemes makes extensive use of scholarship in a wide range of areas, including the excellent work of French cultural historians such as Jean-Pierre Vernant. "Plato's Pharmacy" is guided in particular by the keen insight that one such filament, the notion of the *pharmakon* ("drug," "poison," "charm," "dye"), provides a sure point of entry for an exploration of the problematic (and for Derrida, unsustainable) distinction between philosophy and sophistry. In developing this insight, Derrida assembles and analyzes numerous Platonic texts within which philosophy is presented as a *pharmakon* or "antidote" that "must be opposed to the *pharmakon* of the Sophists and to the bewitching fear of death" as "a pharmaceutical force opposed to another pharmaceutical force" ("Pharmacy," pp. 124, 138). In my view, "Plato's Pharmacy" possesses enduring value as a fascinating and provocative demonstration of the thesis that within the Platonic dialogues "the parties and the party lines [in the battle between philosophy and sophistry] frequently exchange their respective places, imitating the forms and borrowing the paths of the opponent" ("Pharmacy," p. 108).

Yet for all of its virtues, Derrida's approach to reading Plato in significant respects resembles the "recognized modes of commentary" from which he claims to slip away. Like other, less brilliant professors, "Derrida does not ask why Plato wrote *dialogues*" (p. 235, italics in original). He does not reflect upon the specific rhetorical contexts of the passages he analyzes, in part because he refuses to grant, as a heuristic assumption, that each text is a distinct whole constructed in accordance with logographic necessity. This refusal is connected with his insistence that neither the written nor the spoken word has a "father" - that no one stands for or behind a *logos*. The notion that *logos* can be made to say what one wants is in Derrida's view rooted in an illusory distinction between speaker and speech, between signifier and signified, that springs from the play of *logos* itself.²⁹

It is important to notice that the latter are assumptions Derrida brings to the study of Plato. "The strategy of Rorty and Derrida," Griswold notes in another context, is ostensibly that of the "classical" (as opposed to the "dogmatic") skeptic, who "limits himself to showing on his opponent's ground that his opponent's claims fail."³⁰ But Der-

rida's "Socratic," internal critique of Plato fails in its own terms just insofar as Derrida refuses at the outset to occupy Plato's own ground, that is, to begin "by taking seriously the text's claim to articulate the truth" (p. 239). Such a beginning, unlike Derrida's, maximizes one's opportunity to learn from the text (if indeed there is anything to learn) but does not prejudice one's reading: "it may still turn out that the text is incoherent" (p. 240). Derrida is, after all, dogmatic about his skepticism. The counter-argument I have just sketched admittedly does not "refute" the Skeptic, since the very notion of argumentative refutation presupposes a framework of philosophical dialogue that he rejects.³¹ *Logos* alone cannot settle this dispute, because what divides the Skeptic from his philosophical opponents is *eros*, which is prior to *logos*. As Griswold says, the dispute takes place "not between positions, but between the persons who hold them" ("Plato's Metaphilosophy," p. 156). The Skeptic is a person like Phaedrus: he is a lover of speeches who "has completely forgotten himself in the World of the Text," and whose "passion for beautiful speeches ignores the Delphic 'Know thyself'" (pp. 237, 238). More strongly, the Skeptic is closed to "the everyday" and to the prophetic character of pre-philosophical experience, experience that "is not just preparatory for philosophy but regulative of it." The "Derridean and Rortean deconstruction of philosophy" is thus "also a deconstruction of prephilosophic life, and this is why their playful palinodes finally resemble merely sophisticated poems of the 'clever'" (pp. 238-239).³²

6.

Although the Skeptic cannot be refuted, there remains hope that he can be persuaded. Because he does not succeed in formulating an internal critique of Plato, he concedes rhetorical space to the defenders of philosophic dialogue. But because he denies the possibility of philosophic discourse, this space cannot effectively be occupied by a philosophic speech. It must instead be occupied by a philosophic deed. The Skeptic will not give up his dogmatism - will not read, write, or speak with the intent to learn - unless the *eros* for wisdom can be awakened in him. The Platonic strategy for awakening philosophic *eros* is to try to *show* (rather than merely to assert) that learning is possible. This is the strategy of the *Phaedrus* itself (cf. p. 120), and it is the strategy Griswold follows in his explication of the *Phaedrus*. Perhaps the most that can be said in conclusion is this: those with eyes to see and ears to hear will agree that in their own ways both Plato and Griswold succeed admirably in dramatically displaying the *ergon* of learning.³³

1. *Olympiodorus: Commentary on the First Alcibiades of Plato*, ed. L. G. Westerink (Amsterdam: North-Holland Publishing Company, 1956), 2.156-162.
2. Hannah Arendt, "Martin Heidegger at Eighty," *New York Review of Books* 17.5 (Oct. 21, 1971), p. 51.
3. Swans belong to Apollo and so are endowed with prophetic powers: Olympiodorus (cited above, n. 1), 2.29-31; Plato, *Phd.* 84e-85b. On Plato's Apollonian nature, see *Olympiodorus*, 2.24-26, 2.164-167.
4. Unless otherwise indicated, all page numbers cited parenthetically in the text refer to Griswold's *Self-Knowledge*.
5. Socrates' assertion is repeated in similar contexts in other dialogues. In the *Republic*, Socrates speaks of the prophetic character of the soul's awareness of the Good just prior to introducing the images of Sun, Line, and Cave (*Resp.* 505d, 506a). Socrates' account in the *Symposium* of his initiation by a prophetess into the Mysteries of *eros*, which is itself a *daimon* that interprets (*hermeneuei*) for human beings that which is divine (*Symp.* 201d ff.), is anticipated by Aristophanes' remark that the erotic soul "is not able to say, but divines and speaks oracles about what it wants" (*Symp.* 192c-d).
6. Rorty, for example (in his *Philosophy and the Mirror of Nature* [Princeton: Princeton University Press, 1979], p. 34), maintains that "an intuition is never anything more or less than familiarity with a language-game." Griswold cites this and similar remarks on p. 290, n3.
7. Cf. *Phdr.* 271c: "the *dynamis* ['power'] of *logos* is *psychagogia* ['the leading of souls']." On p. 172 Griswold observes that "speaking (and writing) is always a matter of a soul's leading or following, even if it is only leading or following itself. *Logos* and persuasion are inseparable." Consider in this connection the private experience of writing and revising an academic essay.
8. A highly compelling statement of this point that is compatible with Griswold's argument may be found in Alexandre Kojève's "Tyranny and Wisdom," in Leo Strauss, *On Tyranny* (1963), revised and expanded edition, ed. Victor Gourevitch and Michael S. Roth (New York: The Free Press, 1991), pp. 135-176. On p. 155, Kojève writes: "Philosophy is, by definition, something other than Wisdom: it necessarily involves 'subjective certainties' that are not *the* Truth, in other words 'prejudices.' The philosopher's duty is to turn away from these prejudices as quickly and as completely as possible. Now, any closed society that adopts a doctrine, any 'elite' selected in terms of a doctrinal teaching, tends to consolidate the prejudices entailed by that doctrine. The philosopher who shuns prejudices therefore has to try to live in the wide world (in the 'market place' or 'in the street,' like Socrates) rather than in a 'cloister' of any kind, 'republican' or 'aristocratic.'" Kojève, however, endorses the view that "Being itself is essentially temporal (Being=Becoming) and creates itself insofar as it is discursively revealed in the course of history" (*On Tyranny*, p. 152). One could argue that this "radical Hegelian atheism" forecloses the possibility of self-knowledge insofar as it eliminates, in Kojève's own analysis, any essential distinction between the philosophic search for self-knowledge and the tyrannical quest for "recognition."
9. Similarly, Griswold's decision to write about the *Phaedrus*, and in particular to write a treatise, must be understood as an appropriate response to the rhetorical context of contemporary scholarly discourse. The importance of this context is reflected also in the structure of *Self-Knowledge*, which begins with an Introduction that addresses methodological issues and concludes with an Epilogue that aims to defend philosophic dialogue against the anti-philosophic attacks of Derrida and Rorty.
10. "Anamnesis ['recollection'] heavily depends on seeing the world as saturated by images of the divine" (p. 180). Image-saturated experience points beyond itself, and thus incorporates - originally, as it were - the tension that Plato, as mimetic artist, imitates within the ironic structure of the dialogues. With regard to the connection between irony and prophecy, consider Griswold's observation that "two components of irony - the pre-

sence of a meaning 'beyond' the obvious one and the tension between these two levels of meaning - seem . . . to be very much like enthusiasm or madness itself" (p. 156). A detailed exploration of Socrates' account in the *Republic* of the relationship between the imagistic structure of experience and the prophetic character of philosophy may be found in ch. 9 of my *Plato's Republic: The Odyssey of Philosophy* (New York: Twayne, 1993).

11. See Martha Nussbaum, *The Fragility of Goodness: Luck and Ethics in Greek Tragedy and Philosophy* (Cambridge: Cambridge University Press, 1986). Hereafter cited parenthetically in text. Although my assessment of Neo-Traditionalism and Skepticism is based only on the work of Nussbaum and Derrida, respectively, these authors establish interpretative paradigms that rival those exemplified in the work of both Griswold and the Traditionalists.

12. A strategy rather like the one outlined above is pursued by Terence Irwin, a leading figure of Anglo-American Plato scholarship, in his debate with David L. Roochnik in *Platonic Writings, Platonic Readings*, ed. Charles L. Griswold, Jr. (New York: Routledge, 1988), pp. 183-199. Roochnik identifies seven principles that "are implicit in Irwin's interpretive strategy" (p. 184). Irwin accepts the first two principles, including the claims that "Plato's thought underwent significant transformations as he matured" and that "The interpreter should articulate the pivotal transitions of this development and outline the chronological development of the philosophical content of the dialogues," but he rejects the other five, including the claim that "The context that surrounds . . . arguments, be it dramatic, rhetorical, mythic, or humorous, should be dismissed in the search for correct analysis of isolated arguments" (pp. 184-185, 194). (Irwin also "deprecates the use of the term *Anglo-American* to refer to a philosophical school or outlook" [p. 195]. Nussbaum, however, speaks without qualms of "our Anglo-American tradition" [*Fragility*, p. 12].)

13. Jacob Howland, "Re-reading Plato: The Problem of Platonic Chronology," *Phoenix* 45.3 (1991), pp. 189-214. This article also argues that the application of ostensive chronological distinctions to the interpretation of the dialogues requires one to make assumptions that are both intrinsically paradoxical and incongruous with the dialogues themselves, including in particular the assumption that Plato was an unself-conscious, unreflective philosopher who fundamentally misunderstood the nature of his own writings (see esp. pp. 203-205). Insofar as he brings this ungenerous and self-defeating presupposition to the study of the Platonic texts, the Traditionalist resembles the Skeptic. "Re-reading Plato" also discuss an ancient interpretative tradition that anticipates Griswold's attention to Plato's literary artfulness and provocative, Socratic pedagogy.

14. It is worth noting as well that Traditionalism involves a number of questionable, characteristically modern preconceptions about the *psyche* (including the "unconscious") and psychological evolution, about the nature of philosophical writing, and about the relationship between the psychology of the philosopher and the activity of writing (see "Re-reading Plato," esp. pp. 195-205). Because Traditionalism has long reigned in Plato scholarship (and has run, I might add, something of a closed shop), the Traditionalist has never been required to shoulder the burden of proof for these preconceptions.

15. Nussbaum, *Fragility*, p. 228. Cf. pp. 470-471, n5, where Nussbaum discusses the methods used to determine the relative date of the *Phaedrus*. The reader will note that while Nussbaum adverts to suppositions about the relative date of the dialogue to explain Socrates' introduction of the method of division and collection, she finds that the presence of the method in the *Phaedrus* is the "most striking" piece of evidence for its relatively late date. She does, however, preface this remark with the admission that, whereas "doctrinal considerations are most probative" in dating the *Phaedrus*, they are "difficult for us to use here without suspicion of circularity[!]"

16. Cf. p. 72: "Self-knowledge and an understanding of the noble are inseparable. . . . In sum, an inner voice, madness, the power of edifying opinion, the example of noble character, the sayings of the poets (some based on musical knowledge), respect for the

divine, and the feeling of shame in the face of blasphemy are the pivots on which the transition from the low to the high discourses turns." On p. 78, Griswold adds: "The palinode is in part a phenomenology of love. Those who see nothing familiar in the phenomenology will feel quite unpersuaded."

17. The following passage from "What is Political Philosophy?" (in Leo Strauss, *What is Political Philosophy? and Other Studies*, 1959 [Chicago: University of Chicago Press, 1988], pp. 38-39) offers a striking characterization of Socrates' non-epistemic self-knowledge that illuminates the kind of mythical cosmology he offers in the *Phaedrus*: "Socrates was so far from being committed to a specific cosmology that his knowledge was knowledge of ignorance. Knowledge of ignorance is not ignorance. It is knowledge of the elusive character of the truth, of the whole. Socrates, then, viewed man in the light of the mysterious character of the whole. He held therefore that we are more familiar with the situation of man as man than with the ultimate causes of that situation. We may also say that he viewed man in the light of the unchangeable ideas, i.e. of the fundamental and permanent problems. For to articulate the situation of man means to articulate man's openness to the whole. This understanding of the situation of man which includes, then, the quest for cosmology rather than a solution to the cosmological problem, was the foundation of classical political philosophy."

18. Cf. Mitchell H. Miller's sensitive and unusual attempt (in Miller, *The Philosopher in Plato's Statesman* [The Hague: Martinus Nijhoff, 1980]) to understand the Eleatic Stranger's method of diaeresis within the context of the *Statesman* as a whole.

19. Griswold argues convincingly that Socrates' model of the written work as a living animal (*Phdr.* 264c) "fits the artfully written treatise perfectly": "Such a work . . . should have an introduction in which key terms are defined (the 'head' of the work), then should continue with an analysis of its theme (the 'body' of the argument) . . . and finally conclude with an apt summary" (p. 212, italics in original). To the extent that the dialogues overcome Socrates' criticisms of writing, they are able to do so in part because they lack the specious air of authority conveyed by this artful structure. This is true of the corpus as a whole as well as the individual dialogues: "There is no preface or conclusion to Plato's thought within the corpus - no head, middle, or extremities" (p. 220). Traditionalism masks this fact by trying, through its chronological speculations, to give the Platonic corpus the beginning, middle, and end - the "head" and "feet" - it lacks.

20. In "The Tragic Philosopher: A Critique of Martha Nussbaum," *Ancient Philosophy* 8 (Fall, 1988), pp. 285-295, David L. Roochnik observes that Nussbaum "isolates various Socratic statements without making reference to the ongoing discussion of which they are a part . . . and then uses them as support for the interpretation she proposes" (p. 290). Nussbaum's failure to appreciate Platonic and Socratic irony is evidenced in her claim that "Plato embodies important features of his own earlier view in the first two speeches [of the *Phaedrus*]," so that Socrates' palinode "is a serious recantation of something that Plato had seriously endorsed" (*Fragility*, p. 202). In partial support of this claim, Nussbaum recalls her earlier finding that Plato denigrates *eros* and *mania* in the *Republic*. Yet that finding is itself rooted in a failure to appreciate the comic and mythical subtexts of Socrates' treatment of *eros* in the *Republic*; in a striking omission, Nussbaum mentions neither comic drama nor epic poetry in her reading of the *Republic* in *Fragility*. Especially when viewed in the light of the *Republic's* Homeric and Aristophanean subtexts, Socrates' remark at the beginning of Book 5 that he is prostrating himself before Adrasteia (*Resp.* 451a) appears to be a recantation, in advance, of the speeches to follow. (Readers interested in these matters should consult the studies cited below, in n22.) It is hard to avoid the conclusion Griswold reaches in his review of *Fragility* (*The American Scholar* 57.2 [1988]: 314-319): "Nussbaum pays insufficient attention to Platonic anonymity and its crucial consequences, as well as to the dramatic or rhetorical situation of the discourses uttered by Plato's dramatis personae. In sum, Nussbaum does not take

the dialogues seriously enough as works of literature. She thus fails to be true to her own thesis about the close proximity of philosophy to literature" (p. 317).

21. Plato is said to have sent Dionysius of Syracuse a work or works of Aristophanes in response to his request for material that would teach him about Athenian political life (this anecdote is cited in Alan H. Sommerstein, *Aristophanes: Acharnians*, vol. 1 of *The Comedies of Aristophanes* [Warminster, England: Aris and Phillips, 1980], p. 8), and to have written the following epigram on the occasion of Aristophanes' death: "The Graces, seeking to grasp some sacred ground that would not fall, discovered the soul of Aristophanes" (Olympiodorus [cited above, n. 1], 2.71-72). Internal evidence includes Socrates' reference to the *Clouds* in the Apology, the speech of Aristophanes in the *Symposium*, allusions to several Aristophanean dramas in the *Republic*, the crucial political metaphor of weaving in the *Statesman*, which is taken directly from Aristophanes' *Lysistrata*, and the relationship between the *Phaedrus* and the *Birds* that I discuss below.

22. I make the case for reading the *Republic* as a sophisticated and respectful response to the *Clouds* in my *Plato's Republic: The Odyssey of Philosophy* (cited above, in n10). The importance of viewing the *Republic* in the light of the writings of Aristophanes has been virtually unnoticed in the secondary literature; one should consult also Arlene W. Saxenhouse, "Comedy in Callipolis: Animal Imagery in the Republic," *American Political Science Review* (1972), pp. 888-901, and Allan Bloom, "Aristophanes and Plato: Response to Hall," reprinted from *Political Theory* 5.3 in Bloom, *Giants and Dwarfs* (New York: Simon and Schuster, 1990), pp. 162-176.

23. A thoughtful elucidation of this insight may be found in Charles Segal, "'The Myth Was Saved': Reflections on Homer and the Mythology of Plato's *Republic*," *Hermes* 106.2 (1978): 315-336.

24. The myth of Tereus and its sources are given in *Aristophanes: Birds*, vol. 6 of *The Comedies of Aristophanes*, ed. and trans. Alan H. Sommerstein (Warminster, England: Aris and Phillips, 1987), p. 202, note to lines 15-16. The Athenian companions Peisthetaerus and Euelpides ("Son of Good-Hope") together represent the upward-directed and horizontal aspects of *eros*. Like the men of political ambition of whom Plato's Aristophanes speaks in the myth of the circle-people (*Symp.* 191e-192b), *Peisthetaerus' sexual preference is homoerotic (Birds 137-142); Euelpides, however, is associated with the desire for food, drink, and conviviality (Birds 128-134). (The reader should be warned that Sommerstein regularly reverses the traditional and almost certainly correct assignment of the speeches of the two Athenians in the first 161 lines of the Birds. See Sommerstein's explanatory note on p. 201.)*

25. As Sommerstein observes in his note to *Birds* 1705 (p. 309), the tongue was traditionally cut out of animals during sacrifice. Peisthetaerus also resembles Tereus in that he threatens to rape the goddess Iris (*Birds* 1253-1255) and eats his fellow birds. As Leo Strauss notes (in Strauss, *Socrates and Aristophanes*[1966][Chicago: University of Chicago Press, 1980], p. 187), this is arguably worse than cannibalism, insofar as the birds are now Peisthetaerus' gods.

26. Soren Kierkegaard, *Philosophical Fragments, Johannes Climacus*, ed. and trans. Howard V. Hong and Edna H. Hong (Princeton: Princeton University Press, 1985), p. 37.

27. Quoted in the Hong edition of *Philosophical Fragments, Johannes Climacus*, p. 287, n3.

28. This essay, a translation of "La pharmacie de Platon," is available in Jacques Derrida, *Dissemination*, trans. Barbara Johnson (Chicago: The University of Chicago Press, 1981), pp. 61-171. Hereafter cited parenthetically in text.

29. "Plato does not make a show of the chain of significations we are trying progressively to dig up. If there were any sense in asking such a question, which we don't believe, it would be impossible to say to what extent he manipulates it voluntarily or consciously, and at what point he is subject to constraints weighing upon his discourse

from 'language'" ("Pharmacy, p. 129; cf. p. 73). On p. 130, Derrida writes: "In a word, we do not believe that there exists, in all rigor, a Platonic text, closed upon itself, complete with its inside and outside."

30. Griswold, "Plato's Metaphilosophy: Why Plato Wrote Dialogues" (in *Platonic Writings, Platonic Readings* [cited above, n12], pp. 143-167), p. 290, n26. In this essay (henceforth cited parenthetically in the text), Griswold justifies the dialogue form on meta-philosophical grounds. He maintains that Plato's fundamental argument was with "the hordes of anti-philosophers" (p. 152), among whom we must now include Derrida and Rorty. Anti-philosophers are of importance to philosophers because the philosopher "cannot 'justify' or 'demonstrate' his own activity except by coming across or finding someone who is *not* already persuaded by its possibility and worth" (pp. 156-157, italics in original). Griswold concludes that Plato's philosophic dramas respond to the challenge of the anti-philosophic horde on the level of *ergon* rather than of *logos*, i.e., by attempting to *display* the deed of learning.

31. "Plato's Metaphilosophy" is helpful on this point. Griswold notes that Derrida and Rorty are engaged in attempting to persuade the philosopher that "philosophy is a hopeless, Sisyphean task." "This persuasion is not, in the final analysis, an argument. It is a rhetorical effort to shake the philosopher's faith in reason by raising ever more difficult metaphilosophical questions that the philosopher cannot yet answer and soon despairs of ever answering" (p. 155). As Griswold observes in *Self-Knowledge*, "the Derridean's participation in a discussion with the philosopher . . . contains an element of ruse and dissembling" (p. 236), because the Derridean rejects the very notion of philosophical discussion.

32. Criticisms of Derrida similar to Griswold's may be found in "Platonic Reconstruction," ch. 2 of Stanley Rosen, *Hermeneutics as Politics* (Oxford: Oxford University Press, 1987), pp. 50-86. Rosen argues that Plato is "entirely superfluous" to Derrida's enterprise, that Derrida ignores "the stabilities of pretheoretical or everyday life," and that he has "a tin ear for theology" and "trivializes prophecy" (pp. 66, 70, 73, 74).

33. I would like to thank my colleague Paul A. Rahe for reading a draft of this essay and offering a number of helpful suggestions.

NATURAL RIGHT AND LIBERALISM

Douglas B. Rasmussen and Douglas J. Den Uyl's
Liberty and Nature:
An Aristotelian Defense of Liberal Order
(La Salle, Illinois: Open Court, 1991)

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Liberty and Nature, by Douglas J. Den Uyl and Douglas B. Rasmussen, is an exposition of what the authors call "An Aristotelian Defense of Liberal Order" - "an effort to resuscitate the founding philosophy of the American political tradition" (p. 225) from a roughly "libertarian" perspective. Combining scholarship from Aristotelian studies and libertarian political theory, the authors argue that a modified conception of Aristotelian ethics can be reconciled with a basically Lockean theory of natural rights. Such a theory of rights, they continue, provides the theoretical foundation for a rationally defensible constitutional order. Though the book often discusses historical issues, its basic thrust is philosophical rather than historical; the point Rasmussen and Den Uyl wish to make is not that either Aristotle or Locke have been read "wrongly," but that plausible interpretations of both philosophers puts them closer *in principle* than contemporary philosophers had previously realized.

As the subtitle suggests, *Liberty and Nature* takes Aristotle's thought as its basic point of departure, though it does contain a discussion of Adam Smith's *Theory of Moral Sentiments* and the public choice theories of James Buchanan. Perhaps the most prominent figure in Rasmussen and Den Uyl's argument, however, is not Aristotle, but Ayn Rand, whose ethical and political arguments appear at crucial junctures throughout the book. Unlike much of the writing to come from thinkers influenced by Rand, the authors make a conscious commitment to engage would-be academic critics, and to make their exposition congenial to such an audience. Rand's place in the book constitutes a special theoretical problem for Rasmussen and Den Uyl, however. At times, the authors appear unaware of the extent to which their Aristotelian-Lockean project clashes with Rand's highly unorthodox philosophy, Objectivism. Rand's Objectivism is, to be sure, both Aristotelian and Lockean. But one needs to distinguish - more clearly than Rasmussen and Den Uyl do - Rand's arguments and project from that of the Aristotelian-Lockean tradition. The problem, it is worth noting, is not that the authors fail to distinguish between what those philosophers "say" and what Ayn Rand "says," since they do that at the very outset of the book (p. xv). Rather, they are insensitive to theoretical and conceptual inconsistencies between the Aristotelian-Lockean philosophical tradition, and Ayn Rand's Objectivism. This difficulty, I think, consistently imperils many of the fundamental arguments of the book.

I will begin by summarizing the main theses of *Liberty and Nature*, and by discussing the authors' methodology in broad outline. I will then discuss in some detail their neo-Aristotelian approach to the justification of ethics. Finally, I will ask whether the authors' Aristotelian ethical premises in fact support the liberal political conclusions they infer from them.

1. Summary and Methodology

Rasmussen and Den Uyl devote the first two chapters of *Liberty and Nature* to establishing the meta-ethical foundation of their neo-Aristotelian ethics. Chapter 1 focuses on the critics of neo-Aristotelianism, while Chapter 2 sets out the basic theses of neo-Aristotelian ethics and meta-ethics and defends them in more detail. Chapter 3 extends the meta-ethical and ethical conclusions of the preceding two chapters to derive a theory of "natural rights" construed as "meta-normative" principles safeguarding a legal system of negative liberties. Chapter 4 attempts to reconcile this conception of rights with an individualist interpretation of the "common good," while critiquing the traditional holist conceptions of the common good propounded by such neo-Aris-

Aristotelian arguments or terminology seriously, especially when those arguments are literally to be lifted (sometimes with, and sometimes without modification) from the Aristotelian corpus to answer questions about contemporary social theory. Thus much of the discussion of friendship in Chapter 5 (pp.173-191), which contains a rather detailed analysis of Aristotle's theory of friendship, is likely to strike the non-Aristotelian reader as quite anachronistic. The same, as we will see, may be said of other parts of the book as well.

At a very basic methodological level, Rasmussen and Den Uyl need to explain why such Aristotelian works as *De Anima* or the *Nicomachean Ethics* are, even at the very broadest level of generalization, relevant to issues in twentieth century political philosophy. Since Rasmussen and Den Uyl see their principal task in theoretical rather than historical terms, they often "modify" traditional Aristotelian theses to fit their project, candidly admitting that the view in question may or may not in fact be Aristotle's own view. At such points in the book, however, the reader may wonder why Aristotle was even brought up at all: for if the issue is simply the soundness of a particular argument, its provenance should be of no concern, and needs no discussion (but is often discussed in great detail in the book); on the other hand, if Aristotle's own view is in question (and often it is),² the authors' approach to the issue will hardly suffice to answer the important questions.

2. Ethics and Meta-Ethics: Aristotelian Teleology

It would be a mistake, of course, to convey the impression that *Liberty and Nature* is only incidentally an "Aristotelian" book. The difficulty is not that the book is insufficiently Aristotelian, but that it is not clear in what way the authority of Aristotle and the Aristotelian tradition are meant to bolster the soundness of the arguments advanced. One particularly striking example of this is Rasmussen's and Den Uyl's wholehearted endorsement of Aristotelian teleology as the meta-ethical foundation of their ethical argument.

"Teleology," as the authors rightly note, is one of the most misunderstood and abused words in philosophical ethics. In ethics, the term has come to denote any of a variety of ethical theories which emphasize the achievement or fulfillment of some ethically significant end or set of ends, in terms of which human action is to be judged and ordered. Teleological ethical theories, of course, differ widely in content. They differ, for instance, in respect of *what* end or set of ends are to be privileged and pursued - whether aggregate utility (utilitarianism), or the good life of a community (versions of Aristotelian-

ism), or the will of God (versions of theological ethics, e.g., Thomism). And, finally, they differ on the metaphysical basis of teleology itself - the way in which teleology is to be fitted into a scientific conception of the world. In the simplest terms, a theological teleology which takes the fulfillment of God's will on earth as its basic telos will likely differ a great deal from a utilitarian view oriented to utility-maximization, both of which will differ from a "naturalistic" Aristotelian view. Each sort of teleology has its own justificatory problems. At least one reason for the rejection of Aristotelian teleology is the charge that Aristotle's teleological biology is hopelessly archaic and incompatible with contemporary evolutionary and molecular biology.

According to Rasmussen and Den Uyl, Aristotelian teleology is a unique ethical theory which is neither consequentialist, as utilitarian moralities are, nor dependent on a theological metaphysics, as most of the historical forms of Aristotelianism (e.g., Thomism) have been. Nor is it historicist, as are many contemporary forms of Aristotelianism. (e.g., those defended by Alasdair MacIntyre, Charles Taylor, and others). Rather, Aristotelian teleology is essentially biocentric: it is rooted in certain very broad generalizations about the biological character of life, which, when applied to the human case, provide moral norms which, in turn, can be applied to ethics and politics. The specific quasi-biological claim on which much of Rasmussen's and Den Uyl's argument turns is the observation that all life, as such, is goal-directed, i.e., is action on the part of an organism *for the sake of* certain goals, values, or ends. Crucially, Rasmussen and Den Uyl are "realists" about teleology. On their account, the claim that an organism (or agents) act "for the sake of" goals is not merely to say that we, as observers, construe organisms to act in a goal-directed fashion, but that, biological activity is itself best factually characterized as goal directed. "Teleology" therefore is not a mental construct of ours, but a basic property of biological action which exists independently of our concepts. As Rasmussen and Den Uyl put the issue, teleological explanations in biology signify a level of causal interaction not explicable by reference to an account of the interaction of the material constituents of the process in question (pp.42-46).

Though Rasmussen and Den Uyl do not mention it, this account of Aristotelianism has an interesting, and very contemporary, pedigree. In Aristotelian scholarship, the "biocentric" interpretation of Aristotle's works on teleology was pioneered by J.H. Randall in the 1960s, and has recently been pursued by Allan Gotthelf, whose work figures prominently (though I think misleadingly) in the second chapter of *Liberty and Nature*.³ It was Ayn Rand, however, who noted the significance of this "biocentric" conception of Aristotelian teleology for the justification of ethics. As Rand argued in "The Objectivist Ethics," the fact

totelians as Jacques Maritain, John Finnis, and Alasdair MacIntyre (among others). Finally, Chapter 5 ends with an unusual discussion of the political ramifications of friendship in which Rasmussen and Den Uyl attempt to reconcile Aristotle's account of friendship from the *Nicomachean Ethics* with the sociology of modernity as described by the classical economists (principally Adam Smith). (I will not be discussing this last chapter in my review.)

Before proceeding to the substantive issues of the book, it may be worthwhile to consider some methodological issues.

It is not clear why Rasmussen and Den Uyl begin the book with a chapter rebutting *criticisms* of neo-Aristotelianism before they lay out their own version of neo-Aristotelianism. There is a certain awkwardness in proceeding in this way, since in effect, the authors respond to their critics before the reader has even been acquainted with their positive views on the subject. The authors justify this procedure by presupposing "some familiarity on the part of the reader with [the] basic tenets of Aristotelianism" (p. 2). But since much of the controversy they describe in Chapter 1 concerns the precise meaning of such Aristotelian terms of art as "teleology," and "eudaimonism," one would have expected an account of Aristotelianism before a refutation of its putative critics.

Moreover, it is unclear throughout the book just how particular Aristotelian texts are being used to defend the arguments Rasmussen and Den Uyl themselves propound. Early in the book, they issue the caveat that the terms "Aristotelian" and "Aristotelianism" will be used in a loose way to designate a general approach to philosophy, rather than as denoting a pledge of allegiance to philosophical positions actually held by Aristotle himself. "Such work thematizes Aristotle's ideas within a new framework within a new intellectual context in a manner which is apart from the systematic interconnections they held in Aristotle's philosophy" (p. xv).¹

Unfortunately, this characterization begs some important questions. One would have thought that the burden of proof would have rested with Rasmussen and Den Uyl to show *whether* Aristotle's ideas can be "thematized" within the intellectual context of modernity - i.e., within the context of a Lockean conception of politics and a laissez-faire conception of economics. One needs to know whether it even makes *sense* to use Aristotle's positions, as they put it, "without necessarily being linked with Aristotle or working within Aristotle's framework and method." It's certainly not apparent that it does; in fact, many historically-minded philosophers have advanced powerful arguments to the contrary. There is an unfortunate lack of precision on this issue which runs throughout the whole of the book. It is never made clear in the book why anyone outside of the Aristotelian tradition should take

that all organisms, including human beings, act for ends takes on ethical significance if we ask why “must” an organism act-for-ends? Or, in the human case, “Why does man need values?” Rand argued that, generally, the phenomenon of valuation arises as a response to an organism’s need to sustain its life; “life” is the ultimate value, or end-in-itself, because it represents both the means by which and end for the sake of which organisms keep themselves in existence. Since life is conditional on a course of goal-directed action, and failure to pursue a highly specific course of action “negates, opposes, or destroys” life, life is the necessary and sufficient condition for the existence of values. Life is necessary because values could not exist unless there was an alternative to force their existence; life is sufficient because the fact that an organism is alive entails that it must value if it is to remain alive. In the human case, choice is the necessary and sufficient condition for the existence of moral values; thus, a choice to live is the act by which humans, as volitional beings, make the sustenance of their lives their ultimate moral obligation. The crucial assumption, of course, is that these generalizations are not only compatible with scientific accounts of goal-directed action, but are fruitful enough to generate a coherent set of norms for ethical and political conduct in human societies. On Rand’s argument, they are supposed to generate an ethic of virtues which forms the core of a morality of rational egoism.⁴

Rasmussen and Den Uyl reiterate this argument in greater detail than Rand, with more attention to its roots in various Aristotelian texts, and with an earnest attempt to engage contemporary philosophers of science and ethicists as to its perspicacity. Unfortunately, the greater detail and attention to scholarship do not necessarily make for a more precise or clear argument; in fact, I think the very embellishments Rasmussen and Den Uyl add to the original Randian argument eventuate in a series of needless theoretical encumbrances and confusions.

This is most evident in authors’ unfortunate tendency to run together arguments about: (1) Aristotle’s own conception of teleology (involving analysis of primary text or scholarly interpretation of those texts); (2) the relation between teleology and reductionism in contemporary biology and philosophy of science; (3) Ayn Rand’s Objectivist Ethics; (4) various Rand-influenced arguments for teleology such as those of Tibor Machan and Eric Mack; and (5) contemporary Aristotelian arguments for teleology, such as those of Henry Veatch. Apparently, Rasmussen and Den Uyl see no substantial theoretical tension between these sets of writers and philosophical concerns, nor see methodological difficulties to be surmounted in discussing them simultaneously.

But the difficulties are enormous, and present difficulties for Ras-

mussen's and Den Uyl's argument. Conflating issues (1) and (2), for example, they repeatedly cite Aristotelian texts and Aristotle scholarship in order to formulate (and often, as if to validate) the *biological* accuracy of their account of teleology (p. 43).⁵ Quoting a passage from Aristotle's *De Generatione Animalium* (743b19-735a4), they claim that "when it comes to understanding what living things are and how they grow and develop, teleological explanations seem to be required." Relying on a passage from a scholarly interpretation of Aristotelian teleology, they then formulate the issue in the following way:

Thus the question of whether teleology exists comes down to the question of whether the laws in terms of which organic phenomena are explained can be reduced to laws which make no mention of the end or goal of the living process but only of how the material constituents interact (p. 43).

This, of course, is how Aristotle himself formulated the issue in the fourth-century B.C. (if he had had a notion of "scientific law"), entirely ignorant of gigantic scientific advances to follow. This is not, however, a formulation a contemporary philosopher of biology would take seriously, and Rasmussen and Den Uyl give no biological reasons for such philosophers to do so. Given their evolutionary and/or molecular perspective, contemporary philosophers of biology take for granted that teleological explanations can be reduced in principle to efficient-causal explanations. As one philosopher has put the issue: "Nowadays both scientists and philosophers take ontological reduction for granted. . . . Organisms are 'nothing but' atoms, and that is that."⁶ The thought that organisms are something "over and above" atoms (as Rasmussen's and Den Uyl's implies) would strike such theorists (and indeed, most theorists, biologist or not) as wildly unscientific. Remarking that the possibility of teleological explanation ultimately depends on the *impossibility*, inadequacy, or incoherence of reductionism in biology, they claim:⁷ "Whether the reducibility thesis [i.e., the inadequacy of reductionism] has any real possibility cannot be answered from the philosopher's armchair. Yet it was Aristotle's belief that the evidence did not warrant it . . ." It is not clear whether Rasmussen and Den Uyl here intend Aristotle's opinion to count as evidence against contemporary views on reductionism in biology. In any case, their argument is not helped by the evidence they *do* marshal against reductionism, which comes from yet another scholarly interpretation of Aristotle: ". . . the core of Aristotle's teleology has been vindicated by modern biology. For the point is that life processes are self-regulating in virtue of inherent forms or structures." (p. 44)⁸ This claim, even if true, hardly

stance). "In order to know that maintaining one's integrity or having a friendship is a right thing to do, it is not necessary to examine whether the consequences of maintaining one's integrity . . . or having a friendship . . . will promote human flourishing"(p. 61). We only need to know that these goods "constitute human flourishing." Though Rasmussen and Den Uyl make this argument in several different ways in the text, it is close to impossible to pin any precise meaning to their exposition which go beyond generalizations about "rational activity" and "the flourishing of the individual." It may be true, for instance, that "the ultimate end of human action, the basis for all moral judgments, is the fulfillment of the individual human being"(p. 72).¹² But in the absence of a worked-out account of what counts as fulfillment, and the specific causal conditions required for bringing it about, these claims can at best take the form of a promissory note.

Apart from picking out flagrantly self-destructive behavior or senseless behavior, the standard of "rational living" as such, is a vacuous one. At the very least, the account is circular, for Rasmussen and Den Uyl have just defined "flourishing" in terms of "rationality" and "rationality" in terms of "flourishing" without giving any determinate content to these terms. The most that we know about their meaning is that the same analogical relationship obtains between them as obtains for dogs and "canine living," cats and "feline living," etc. That, however, does not tell us very much. A moral judgment in terms of "rationality" cannot be considered objective if one's account of "rationality" consists in a highly generalized picture of "desirable" traits, which in turn are arbitrarily designated as conducive to "well-being" or "flourishing." If this is one's procedure - as I think it is Rasmussen and Den Uyl's - then a "flourishing ethics" does indeed fall prey to the sort of subjectivism ascribed it by analytic philosophers. To avoid subjectivism or circularity, an ethical standard must be derived from non-normative concepts. Likewise, a non-circular account of human flourishing must be derived from a non-normative conception of "man's life qua man."¹³

3. Natural Rights

In the remaining chapters of the book, Rasmussen and Den Uyl extend their analysis of teleological ethics to defend an essentially Lockean conception of society. The difficulty that arises in this part of the book is whether the authors' account of politics is in fact consistent with the ethical theory they espouse.

Historically, Rasmussen's and Den Uyl's venture is almost uncharted territory; most philosophers and historians of ideas, the authors

rightly note, would consider the idea of reconciling the Aristotelian and Lockean traditions akin to the task of "squaring a circle." Traditionally, the chasm between the two traditions has been characterized (rather baroquely) as the dispute between "ancient natural law" and "modern natural right." On this analysis, popularized by Leo Strauss' *Natural Right and History*,¹⁴ the ancient natural law tradition, from Plato and Aristotle through Cicero and Aquinas stressed the "objective features of man's essential nature," and, in so doing, necessarily emphasized his communal or social features. The natural rights tradition, originating in Hobbes and subsequently bastardized by Locke and the American Founders, emphasized man's subjectivity and individuality as *distinct* from his metaphysical nature. In focusing on human individuality (so the Straussian story goes), the proponents of natural rights were forced away from a coherent account of man's nature, and aimed at a theory designed only to satisfy his contingent desires. Twentieth century (classical) liberals, then, are confronted with a dilemma of the following form: if they want a grounding of morality in terms of man's essential nature, they have to relinquish the desire for individualism; if they want to keep individualism, they must settle for the fact that it will not be possible to give an ultimate justification of their moral-political practices.

Rasmussen and Den Uyl point out, correctly, that there is a crucial lacuna in this account of intellectual history. Are the ancients - particularly Aristotle - really as collectivistic or "communitarian" as the tradition would have us believe? Similarly, does the individualism of the moderns - principally Locke and Adam Smith - rest on as shaky a foundation as we are usually led to believe? Their answer is no: the impasse in the ancients/moderns debate is the result of a variety of deep philosophical confusions, perpetuated not only by Strauss, but by such contemporary critics of liberalism as Alasdair MacIntyre, and such neo-Aristotelians as John Finnis, David Norton, Henry Veatch, and Jacques Maritain.¹⁵ Eschewing a historical debate, Rasmussen and Den Uyl want to argue that, in principle at least, Aristotelianism and Lockeanism can be modified to permit mutual accommodation (p. 132).

Theoretically, the crux of the matter is this: How are we to combine the Aristotelian insight about the pursuit of our natural end qua man with the essentially duty-centered, or deontic, morality connected with the notion of Lockean natural rights? Might not the pursuit of man's natural end, whether individually or collectively, clash with the requirements of a rights-based legal polity?

Rasmussen and Den Uyl seek to forestall the possibility of conflict here by making a hard-and-fast distinction between ethical principles and political principles, and between ethics and politics in general (p. 40-41). *Ethical* principles are ones we use in our daily life, in

interpersonal interaction - which, for the most part, is carried on in "civil society," rather than with the state. *Political* principles have to do with governmental affairs - i.e., with the state's monopoly on the use of retaliatory force. Given this distinction,¹⁶ "rights" are to be understood as political, rather than ethical principles. Rights are broadly defined rules of governmental conduct, not principles to be invoked to settle everyday moral questions (pp.106-7, 111-2). Rights are, as Rasmussen and Den Uyl put it, a "meta-normative" concept:

Meta-normative principles do not provide an individual guidance in how to conduct his life, be it alone or in the company of others. Rather, meta-normative principles provide guidance in the creation of a constitution whose legal system provides the social and political conditions necessary for individuals to apply the principles of normative ethics to their lives among others. Meta-normative principles are meta-normative in the sense that they underlie or provide the context in which people pursue the good or perform right actions in society. These principles are not meta-normative if this is taken to mean that they are, somehow, not moral principles. They are, however, a unique type of moral principle; for though their moral justification is based on the nature of human flourishing, they only have a point in the legal creation of a social and political context. (p. 239, n20)

And again: "Rights" is the concept which specifies "particular moral obligations to respect the self-directedness of others" (p. 112).

This is a highly interesting way of putting the point, and may be the most valuable contribution of the book. On their argument, we might see rights in effect as necessary principles for the guidance of political policies at the *constitutional* level. Given a constitutional structure based on natural rights - a theme pursued in depth in Chapter 5 of the book - a polity would subsequently be free to solve its specific political-economic problems in a variety of ways, so long as it remained within a natural rights framework. The conception of rights embedded in the legal structure of the polity would provide the broad, universal legal norms within which peaceful political and civil discourse would take place. In this sense, natural rights would be universal (p. 102). Since such a system of rights would have to be compossible, or mutually "exercisable," the system would be rooted in *negative* rights enjoining respect for persons to take action of their choosing without coercive interference, rather than positive rights issuing injunctions for the performance of specific actions. To the extent that one's natural

rights cannot contradict any positive demand for action, these rights are inalienable (pp.82-3, 107-8). And finally, since natural rights arise from man's metaphysical nature, they are "valid independent of the government" (pp. 77-129).¹⁷

Although this account of rights is generally illuminating, Rasmussen and Den Uyl do not answer some of the harder questions about the compatibility of natural rights with Aristotelian teleology. This, of course, is crucial to the possibility of grounding their theory of rights in their theory of ethics. Though they ably knock down a host of competing theories of rights, they do not construct a viable argument combining the insights of the chapters on ethics with those defending negative natural rights. Their arguments against coercion, while often insightful, generally consist in responses to the most questionable collectivist, authoritarian, or egalitarian assumptions of various critics of libertarianism. In their attempts to rebut such critics, Rasmussen and Den Uyl mention and develop a number of lines of argument: the Hayekian argument that central government planning of an economy makes individual economic planning impossible (p. 152); Ayn Rand's argument that ethical principles do not necessarily apply to emergencies (pp. 144-151); an anti-holist argument to the effect that the common good of a polity is reducible to the good of each of its individual members (pp. 132-141); and most plausibly (though still insufficiently) moral-psychological arguments to the effect that virtue must be self-directed since self-direction requires choice and coercion inculcates dependency (pp. 70-5, 92-96 *passim*, 112-114, 212-3). None of these arguments conclusively establishes what Rasmussen and Den Uyl think that they establish, viz., a theoretical argument proving the necessity of individual choice in - or the incompatibility of coercion with - all moral action *qua* moral.

The most plausible of Rasmussen and Den Uyl's arguments against coercion is the one I have called moral-psychological, and which Rasmussen and Den Uyl seem to think follows directly from their meta-ethical account in Chapter 2. The argument takes roughly the following form. On an Aristotelian teleological understanding of the good, the good is indexed to individuals - what is good is good-for a given, individual agent. The human good is defined as the fulfillment of one's function *qua* man, where man's function, as we saw earlier, is "defined objectively" and obliges an individual prior to and independently of any of his choices. So the obligation to flourish is our "natural end," one we must fulfill whether we choose to or not. Flourishing, however requires virtue, and virtue, to be virtue, must be "self-directed"; it must issue from within the agent. Thus, "self-directedness or autonomy is not merely the necessary means to human well-being. Rather, it is an inherent feature of those activities which consti-

tute the human good that is human flourishing. . . . There is no single human activity that is [morally] right that does not involve autonomy or self-directedness" (p. 93).¹⁸

Therefore, Rasmussen and Den Uyl argue, virtue must be *chosen*, and must be protected by a scheme of negative liberties and rights such that no group, individual, or government can legitimately coerce any individual to take an action he does not choose to take, be it a prohibition on buying pornography or the demand that one finance welfare projects through taxation. To do so is to subtract a vital constituent of flourishing - choice - from acts of virtue. The form of the argument may be presented as follows:

1. Virtue is an irreducible complex of good intention (autonomy) and right action.
2. Both good intention and right action are constitutive of virtue.
3. Coercion can destroy both good intention and right action by separating intention from right action.

So: coercion is an impermissible infringement on the very constitutive features of a person's flourishing.¹⁹

Coercion, on this argument, can never help anyone to flourish; rather, coercion imposed *on* a person is always destructive of that person's ability to flourish - no matter how depraved the person, and no matter how much better we can make him (p. 94). Similarly, coercion on behalf of a person in the name of altruism always ends up making the recipient worse off than he would have been without help. It follows (Rasmussen and Den Uyl conclude) that choice is a necessary condition for all moral action *qua* moral.

This argument is unconvincing for at least three reasons. First, as far as I can see, Rasmussen and Den Uyl give no argument to support their (frequently reiterated) claim that self-directedness or autonomy is constitutive of the human good. Nor do they explain why self-directedness for one person should not require infringing on the good of another.

Second, this claim contravenes fundamental parts of their earlier meta-ethical account. If, as they argue early on in the book, man's function is "defined objectively" and obliges one prior to and independently of any of his choices, why should "self-directedness or autonomy make . . . human flourishing a 'moral good?'" (p. 93).²⁰ The obligation to pursue one's function, on Rasmussen's and Den Uyl's meta-ethics,

has nothing to do with choice. Given this view, (which Rand would have called “intrinsicism”) one is left without sufficient reason to explain why autonomy or choice should *make* flourishing a “moral good” for any given person. If a person’s fulfillment of his “objective” function is obligatory for him independently of any choice he has made about the matter, and independently of some causal chain linking his choice to each specifically incurred obligation, then choice is *not* a necessary condition for moral action, and coercion is perfectly legitimate in some cases (however one delimits the cases). The moral property of “goodness-for-x” bears no necessary relation to choice at all. In order for choice to be necessary for the existence of moral action, it must be the case that choice is itself necessary for the existence of the property “moral.” But Rasmussen and Den Uyl go to great lengths to reject this possibility. (p. 42)

Third, from premises about the individualistic nature of virtue, and the importance of uniting intention and action, we do not necessarily reach conclusions about the primacy of choice in *all* virtuous action qua virtuous. From the premises that (1) virtuous action must have its source in the agent’s own intentions, and (2) the agent must act for his own good, it does not follow that the agent must always *choose* the good for himself, or conversely, that no moral reasons exist to coerce someone in order to force him to flourish. It only follows that it is desirable for this to happen, other things being equal. But this desirability could be trumped by other considerations, and apart from the bare assertion that self-direction is constitutive of the good, I see no argument in the text to the contrary.

To make this more concrete, consider a case in which it seems better for an agent’s future flourishing to coerce him out of a situation in which he will make flourishing impossible for himself. It could plausibly be the case that one must coerce someone at time t(1) to enable him to flourish from time t(2) onwards - at which point (it may objectively be determined),²¹ he will surely be able to meet conditions (1) and (2) in a more efficacious way than he could have under present circumstances. Coercion *may* divorce intention from action for a limited period of time (and for that matter, it may not). But that coercion may precisely facilitate the possibility of virtuous action later on - e.g., for the rest of the agent’s life.

Again, consider a case in which coercion is applied to one person for another person’s welfare in the name of “securing the set of conditions that allows for the well-being and self-actualization of the community’s members.” To say that this “set of conditions” is constituted by a set of negative rights which precludes coercion begs the question. How do we know that it isn’t objectively *good* for oneself to be coerced for certain reasons? Imagine that we have a teleological

“potentiality for generosity” which we would not choose to actualize unless coerced by certain authorities. By Rasmussen’s and Den Uyl’s account, we had the obligation to actualize that potentiality before any choice we might have made. Couldn’t we then be better off by the standards of *self-fulfillment* if we were coerced into becoming more generous, especially if cultivating generosity will serve us better in the long-run than not?

Such arguments pose problems for proponents of negative rights which cannot be defused simply by appealing to premises from the social sciences - e.g., by pointing out the persistent flaws in welfare programs or the psychological dependency produced by them. Nor will it suffice to stipulate a distinction between “ethical” and “political” principles, and argue that the distinction itself legitimates a conception of natural rights. The first set of criticisms, while important, only concerns technical problems in the administration of coercive policies. The second argument begs the question. None of them substitutes for a philosophical argument which connects the very source of moral value to the human capacity for and act of choice.

4. Conclusion

Though I found much of *Liberty and Nature* theoretically and methodologically problematic, it is worth noting that Rasmussen and Den Uyl have at least done us the service of putting their arguments in print, and subjecting them to the test of scrutiny. Also valuable is their attempt (not always successful) to show connections between their Aristotelian-Objectivist approach, and that of contemporary analytic and Catholic philosophy. In this respect, we might see *Liberty and Nature* as one of a continuing number of attempts to create an Objectivist-Aristotelian “tradition.” Despite (what I take to be) the book’s flaws, it would be wrong to conclude that Rasmussen’s and Den Uyl’s ample efforts in the book have been wasted. (A critical book review has the unfortunate tendency of conveying that impression.) The creation of a tradition, after all, is a long-term, ongoing project, and the first steps towards creating one are always the hardest to take. At the very least, we can be grateful to Rasmussen and Den Uyl for having taken that first step, and pointing the direction for future efforts.

1. Rasmussen and Den Uyl credit this conception of Aristotelianism to James Collins, *Interpreting Modern Philosophy* (Princeton: Princeton University Press, 1972), pp. 54-5.
2. Cf. pp. 97-101, and Chapter 5 *passim*.

3. See Randall's *Aristotle*, chs. 4 and 11, (New York: Columbia University Press, 1960). For a good scholarly account of Aristotle's natural teleology, see Allan Gotthelf, "Aristotle's Conception of Final Causality," in *Philosophical Issues in Aristotle's Biology* (Cambridge: Cambridge University Press, 1987); and Gotthelf, "The Place of the Good in Aristotle's Natural Teleology," *Boston Area Colloquium in Ancient Philosophy*, Vol. IV (1988): 113-139, with commentary by Theodore Scaltsas.
4. See Ayn Rand, *The Virtue of Selfishness: A New Concept of Egoism* (New York: Signet, 1964).
5. See also pp. 34, 40, 43-6.
6. David Hull, cited in John M. Cooper, "Hypothetical necessity and natural teleology," 274 n31 in Gotthelf and Lennox, *Philosophical Issues*.
7. "Impossibility, inadequacy, or incoherence" is my formulation, and meant to be inclusively disjunctive. I am not clear what the authors' view is here. Nor is it clear whether what their view on reduction is targeted against reductive materialists, eliminative materialists, or both.
8. From Michael Bradie and Fred D. Miller Jr., "Teleology and Natural Necessity in Aristotle," *History of Philosophy Quarterly* 1 (April 1984): 143.
9. Eric Mack, "How to Derive Libertarian Rights," *Reading Nozick*, ed. Jeffrey Paul (Totowa: Rowman and Littlefield, 1981).
10. It is worth noting a misquotation of Rand in the vicinity of the passage I've excerpted. Rand writes: "In answer to those philosophers who claim that no relation can be established between ultimate ends and the facts of reality, let me stress that the fact that living entities exist and function necessitates the existence of values and of an ultimate value which for any given living thing is its own life." Rand, "Objectivist Ethics," p. 15. On p. 45 of *Liberty and Nature*, this passage becomes (without square brackets or ellipses): "The fact that living things exist and function necessitates the existence of values." This substantially abbreviated version of Rand's claim simply obscures the differences between her position and that defended in *Liberty and Nature*.
11. Cf. pp. 42 and 46.
12. See also pp. 56, 57, 61, 62-70, 73.
13. Ironically, this is the point of some of the scholarship Rasmussen and Den Uyl cite to make their argument.
14. Leo Strauss, *Natural Right and History* (Chicago: University of Chicago Press, 1950)
15. Rasmussen and Den Uyl are more sympathetic to Veatch and Norton than to the other theorists.
16. The distinction itself rests on normative presuppositions about the relation between civil society and the state. A critic could object that the ideal society was one in which it was impossible in principle to make such a distinction.
17. I unfortunately lack the space to discuss Rasmussen's and Den Uyl's theory of property rights.
18. See also p. 96.
19. This is a distillation of the argument of pp. 70-5, 92-6, 112-4, 211-13 *passim*. One of the problems with the authors' treatment of the issue of coercion is their failure to state their view concisely in any one section of the book. This, of course, makes it difficult to discern or state the logical structure of their argument.
20. Cf. pp. 42, 46.
21. Nothing in Rasmussen's and Den Uyl's argument demonstrates the epistemological impossibility in making such predictions; indeed, one would think that making them was necessary for ordinary moral judgement.

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WITHOUT SENSE OR REFERENCE

J.G. Merquior's
*From Prague to Paris: A Critique of Structuralist and
Post-Structuralist Thought.*
(London: Verso, 1986)

Gregory R. Johnson
The Catholic University of America

J.G. Merquior (1941-1991) was a Brazilian diplomat, intellectual historian, and social scientist. The holder of three Ph.D.'s, he was the author of twenty books in three languages, including six English-language titles: *Rousseau and Weber: Two Studies in the Theory of Legitimacy* (London: Routledge and Kegan Paul, 1980), *The Veil and the Mask: Essays on Culture and Ideology* (London: Routledge and Kegan Paul, 1979), *Liberalism Old and New* (Boston: Twayne, 1991), *Foucault* (London: Fontana, 1985; Berkeley: University of California Press, 1987), *Western Marxism* (London: Paladin, 1986), and *From Prague to Paris: A Critique of Structuralist and Post-Structuralist Thought* (London: Verso, 1986; Henceforth cited as *PTP*).

These books, together with Merquior's other works, are unified by a single project: a sustained defense of modernity. Merquior was a radical individualist. He was also a liberal in the classical tradition. Unlike many contemporary classical liberals, however, he was skeptical about basing his convictions upon Lockean rights theories or free mar-

ket economics. The precise nature of this skepticism is unclear. Merquior could have been skeptical of the philosophical and scientific validity of these ideas. Or, as a sociologist and intellectual historian, he could have permanently bracketed the question of validity to focus on the question of contingent social-historical origins.

If, however, one focuses upon the question of "Why, as a matter of fact, do people believe in the morality of individualism or the utility of the free market?" - as opposed to the question "Why ought they believe such things?" - then one soon realizes that capitalism and individualism are inseparable from the broader phenomenon of modernity. They cannot be understood apart from it, and if one despairs of defending them directly, by philosophical means, it is tempting to defend them indirectly, through a comprehensive theory of history culminating in a defense of modernity.

The positive aspects of Merquior's account of modernity are largely derivative of the work of Rousseau, Hegel, Weber, and Gellner. There are, moreover, significant weaknesses in his positive account of modern political legitimacy.¹ Instead of working out an adequate positive account of modernity, Merquior devoted a large part of his energies to the negative task of criticizing anti-modernist and postmodernist strands of thought, which he called *Kulturkritik*. On Merquior's account, *Kulturkritik* has two essential features: a moralistic hatred (his word) of modernity, specifically of bourgeois culture, and a systematic obscurantism, a denial of rational methods and criteria in the study of society. Three of Merquior's English-language titles are devoted to the criticism of *Kulturkritik*: *Foucault*, *Western Marxism*, and *From Prague to Paris*.

The best of these studies are *Western Marxism* and *Foucault*, which are minor classics. *From Prague to Paris* - the title under review - is, however, a much weaker effort, which is not to say that it is without value. At its best it equals Merquior's best work. But it is not always at its best, occasionally lapsing into cheap polemics - e.g., against Lacan and Derrida. In general, Merquior is at his best when dealing with the Saussurean elements of structuralism and post-structuralism and the applicability of these ideas to sociology, anthropology, and literary theory and criticism. He is weakest in dealing with the philosophical sources of post-structuralism, particularly its Husserlian, Heideggerian, and Nietzschean aspects. Thus the illuminating quality of his explication and critique wanes as the philosophical element of his subject waxes: from full moon (his treatment of Levi-Strauss) to half-moon (Barthes) to total eclipse (Derrida).

The questions that Merquior asks of structuralism and post-structuralism are: Do they allow us to understand the historical and causal genesis of the phenomena they study? (In this case, Merquior's focus is almost entirely upon the phenomena of literature, art, and myth.)

Do they take into account and accord with the best interpretive and factual data available while allowing us to discover and interpret new data? Do they grant the reality and integrity of phenomena, or do they seek reductionistically to eliminate them? And finally: In advancing our knowledge of man and world, do they impede or advance the cause of human emancipation?

From Prague to Paris is divided into five chapters, the first, "The Rise of Structuralism," being a brief sketch of the origins of structuralism in the work of Ferdinand de Saussure and the main lines of its development in France into high structuralism and post-structuralism. Especially illuminating is Merquior's account of the peculiar structuralist combination of scientism and romanticism. On this account, high structuralism's attitude toward science is profoundly scientific rather than scientific, for it is essentially a romanticization and aestheticization of science, with no more scientific content than the average science fiction novel, but sporting all the accoutrements of scientific form and formalism (a stylistic infatuation most hilariously exemplified by Lacan's "algorithms"). Merquior claims that the scientism, anti-humanism, and anti-subjectivism of high structuralism is a reaction to - or determinate negation of - the subjectivistic excesses of Bergsonian *Lebensphilosophie* and Sartrean existential phenomenology. The romanticism is accounted for by the fact that a trace of the other survives every differentiation. The post-structuralist abandonment of the scientism and universalism of high structuralism is accounted for by the superficiality and epistemological groundlessness of their original adoption.

Saussure's most influential teaching is his analysis of the referential, i.e., object-directed nature of language. His analysis, therefore, presupposes for its very intelligibility the reality of the phenomenon of reference - an obvious though important fact all too hastily discarded by many structuralists and post-structuralists. The thrust of Saussure's teaching is rather simple: the object-directedness of a sign - say "sheep" - cannot be accounted for solely in terms of a causal chain of physical and then neurological excitations given off by the sheep; nor can it be accounted for solely in terms of an active "ray" of intentionality directed from the mind to the sheep, a ray which imbues the sign with object-directedness.

To be sure: there is nothing in Saussure that would prevent both causality and intentionality from playing roles in an account of reference; but the phenomenon cannot be reduced solely to these factors, either taken separately or in tandem. The understanding of reference presupposes a third element: the differentiation of the sign "sheep" from other, closely related signs. Consider the English "sheep" and the French "mouton." At first glance, both words refer to the same kind of placid, stupid beast. But a closer inspection reveals otherwise. In

English, "sheep" is related to and differentiated from "mutton," whereas in French there is no such distinction. In virtue of this fact, the reference of "mouton" is wider than those of either "sheep" or "mutton."

Thus the analysis of the phenomenon of reference requires that the differential relationship of a sign to other signs also be taken into account. Aphoristically: difference determines the range of reference. Or, in analytic language: intension determines extension. To borrow Frege's terminology in a slightly different context: meaning must be analyzed both in terms of sense (*Sinn*), the relations of signs to other signs, and reference (*Bedeutung*), the relationship of signs to the world. An interesting phenomenon, but hardly, one would think, cause for alarm.

The second chapter, "The Prague Crossroad: Between Formalism and Socio-semiotics," sketches the fateful divergence of two different appropriations of Saussure's work in aesthetics and literary criticism: the assimilation of Saussurean categories to the tradition of formalist criticism, led by Roman Jakobson (1896-1982), and the socio-semiotic school led by Jan Mukarovsky (1881-1975), which combined a Saussurean theory of the linguistic sign with a sensitivity to the social context of literature. Jakobson's formalism, not Mukarovsky's socio-semiotics, became the most historically effective tradition, exercising an immense influence on the subsequent development of structuralism and post-structuralism.

Merquior regards this as a disaster. The socio-semiotic combination of a Saussurean theory of the sign with a concern for history and social context preserves the referentiality of signs and literature, the idea that meaning is not simply constituted by the internal relations of signs and texts, but also by the relationship of signs and texts to the world. Returning to Frege's terms, the socio-semiotic school analyzes the phenomenon of meaning both in terms of sense and reference. By contrast, the formalist appropriation of Saussure stresses only the aspect of sense: of the relations of signs to other signs within a holistically-conceived semiotic system. In Merquior's words: "Formalist structuralism . . . looked at the verbal stuff of literature as though its meaning lay in a narcissistic self-reflection. The first commandment became: never treat literature as if were about anything except language" (*PTP* 29). This move represents a reductionism in the analysis of meaning: the reduction of meaning to sense and the dismissal or outright denial of its referential aspect. Difference swamps reference.

Merquior counters this reductionist move with an analogy:

From the fact that literature is made of language it does not follow that literary meaning (let alone value) is some-

thing reducible to language. My car is made of metal, glass and rubber; but it would never cross my mind to say that it is in any sense 'about' rubber, glass or metal; it is 'about' transportation. (PTP 31)

One can amplify this anti-reductionist point along the following lines. When meaning is reduced to difference and reference is eliminated, skepticism quickly follows. From the very beginning, philosophers have been indulging the nigh irresistible temptation to spatiotemporally "locate" manifestly non-spatial, non-physical "beings" like language, ideas, thoughts, concepts, appearances, etc. either "in here," in our heads, "out there" in the world, or way out there in some "Platonic" realm or the mind of God. (It is probably useless to protest this physicalistic prejudice, for the genuine Platonist claim - repeated by such thinkers as Plotinus, Hegel, Frege, Husserl, and even Heidegger and Popper - is that language, thoughts, ideas, etc., are nowhere at all, but real nonetheless, which sounds to most just as outlandish as the alternatives.)

If we locate language "in here," then we naturally understand reference as the bridge that takes us from "in here" to "out there." Thus, when we hear Derrida claim that the differential nature of signs means that reference is forever deferred, for each signifier refers us not to the world but to yet another signifier, ad infinitum, we naturally conclude that we are hearing a skeptical argument that we are locked up inside the prison house or padded cell of language, cut off from the world. Reversing Rorty's popular "mirror of nature" metaphor: if reference can be likened to a ray of illumination and sense to the mirror which reflects it onto the world, illuminating things under a particular aspect, then Derridean *differance* is the claim that the ray of reference is caught in a hall of mirrors, bouncing back and forth from one to the other and never escaping to illuminate the world.

Now, whether Derrida holds this to be the case or not is an open question. He himself has denied it strenuously - but, as he would be the first to remind us, Derrida is not the final authority on the meaning(s) of his texts.² What is clear, though, is that many of his students do read him this way. But it is a bad argument, resting on the reductionist premise that *either* meaning is reducible to reference without difference *or* difference without reference. The presence of one entails the absence, the exclusion, of the other. Aristotle is probably the only thinker to have held anything like the former position. Consider the following passage from *De Anima*:

If thinking is indeed like sensing, then it would either be a

process of being affected in some way by the object of thought or be some other thing such as this. So [the thinking part of the soul] should be incapable of being affected but capable of receiving the form [of the object of thought] and be potentially such as that but not the [form] itself; and the intellect should be related to the object of thought in a manner similar to that in which the sense is related to its sensible object. And, since the intellect can think every [object of thought], it must exist without being blended in order that, as Anaxagoras says, "it may rule," that is, in order that it may know. For if it appears along [with some other thing] the [latter will] prevent or obstruct [the knowledge of] another kind; hence it is necessary for [the intellect] to be of no nature other than that of potentiality. (429a14-23)³

Here Aristotle seems to argue that since the intellect can know all things, it must be nothing in itself, for if it were to have a determinate structure of its own - a differential system of signifiers, for instance - then these determinacies would impede it in taking on the forms of all things, thus coming to know (i.e., refer to) them. Thus Aristotle holds that the intellect, prior to knowing anything other than itself, has no determinate structure of its own; it is pure potentiality to take on the forms of other things; it is like soft wax awaiting the impression of the signet, or a polished mirror, passively reflecting the world. Aristotle's premise: If difference (determinate structure), then no reference (taking on of forms). Aristotle affirms reference, thereby denying difference.⁴ The deconstructionist accepts the same either/or, but comes to the opposite conclusion, affirming difference, thus denying reference. Both, however, are mistaken. Both difference and reference are undeniable aspects of the phenomenon of meaning; thus both of them must be taken into account in any descriptively adequate account of meaning, rather than simply ignored or denied in favor of rationalistic constructs derived from reductionist premises.

Returning now to Merquior's book for a quick summary of the remainder of the text: The balance of *PTP* is given over to three very long chapters in which the foregoing criticisms, augmented with many more specialized points, are deployed in detailed discussions of major structuralist and post-structuralist thinkers. Chapter three, "Claude Levi-Strauss: The Birth of Structuralism in Social Science," is the high point of the book. In seventy masterfully compressed pages Merquior presents a comprehensive, sympathetic, yet critical survey of Levi-Strauss's work, evidencing an intimate familiarity with his texts and a genuine respect for their author gained from the five years Merquior

spent in Levi-Strauss's seminar at the College de France. Especially valuable is the discussion of Levi-Strauss's aesthetics, a topic treated at greater length in Merquior's *L'Esthetique de Levi-Strauss* (Paris: Presses universitaires de France, 1977). Particularly of interest is Levi-Strauss's critique of modern art, which throws a great deal of light on Merquior's own frequent critical asides on the subject. Merquior acknowledges the full measure of Levi-Strauss's genius: his exquisite prose, the myriad subtle illuminations cast by his writings, the dazzling intellectual acrobatics of his structuralist analyses.

Nonetheless, Merquior also advances a number of criticisms, both scientific and ideological. The scientific objections are primarily methodological, having to do with Levi-Strauss's conformity, not to empiricism, but to *empeiria*: the frequent vacuousness and Procrusteanism of his obsession with binary oppositions as classificatory schemes, his refusal (wholly admirable to my Platonist ears as a resistance to physicalistic biases) to "locate" mind and structure;⁵ his reductionistic exclusion of historical evolution and social context from his explanations, etc. The ideological criticisms focus on Levi-Strauss's deeply conservative anti-modernism, which issues in a revulsion against history and an ethics of despair and withdrawal, and which prevents him from producing a full-fledged theoretical account of modernity.

Chapter four, "Literary Structuralism: Roland Barthes," and chapter five, "Structuralism into Post-structuralism: An Overview," also span about seventy pages each. In them the quality of Merquior's exposition and critique steadily declines. The argumentative thrust of the Barthes chapter is that the genuine critical value of Barthes's works does not stem from their structuralist conceptuality; quite the contrary; to the extent that Barthes's work was self-consciously structuralist his critical intelligence became stilted and straightjacketed. The principal value of the chapter is Merquior's careful attempt to separate the genuine critical value of Barthes's work from both his structuralist conceptuality and his anti-modernist *Kulturkritik*. The worst aspects are the increasingly hasty and shrill polemics and asides directed at such figures as Lacan and Bataille, whose works may well be every bit as mantic (the former) and decadent (the latter) as Merquior claims, but no arguments or even exegesis in support of such claims is to be found.

This unfortunate tendency worsens in the final chapter, in which the transformation from structuralism to post-structuralism is characterized in terms of the progressive radicalization of the former's reductionism of meaning to difference and the progressive abandonment of its universalism in favor of various forms of particularism, historicism, and pluralism. Philosophically, Merquior's treatment of the Hegelian, Nietzschean, Husserlian, and Heideggerian elements of post-structuralism are wholly inadequate. Rhetorically, the chapter is an unremitting, rabid

diatribe.

In sum: *From Prague to Paris* is a flawed effort, but one deserving of a qualified recommendation. The first two chapters are sketchy but provocative. Chapter three, on Levi-Strauss, is a masterful and economical critical introduction to his thought. Chapters four and five, however, decline so rapidly into diatribe that one cannot resist thinking that although Merquior was truly a scholar among diplomats, he was no diplomat among scholars.

1. For a fuller account of the strengths and weaknesses of Merquior's work, see my essays "A Friend of Reason: Jose Guilherme Merquior," *Critical Review* 5, no. 3 (Summer 1991): 421-46 and "Modernity and Postmodernity in the Thought of J.G. Merquior," in Ernest Gellner and Cesar Cansino, eds., *Liberalism in Modern Times: Essays in Honor of Jose G. Merquior* (Cambridge: Cambridge University Press, forthcoming), particularly the latter.
2. Derrida calls this reading "stupid." See "Dialogue with Derrida," in Richard Kearney, ed., *Dialogues with Contemporary Continental Philosophers* (Manchester: Manchester University Press, 1984), pp. 123-4.
3. *Aristotle's On the Soul*, trans. Hippocrates G. Apostle (Grinnell, Iowa: The Peripatetic Press, 1981).
4. This is the interpretation offered by John Hermann Randall, Jr., in his *Aristotle* (New York: Columbia University Press, 1960), p. 91
5. There is, of course, a grain of truth to this criticism, especially as pressed by such wilters as Pierre Bourdieu. Even though Levi-Strauss is in my eyes admirable for refusing to "locate" ideal structures, it is still incumbent upon him at least to try to explain the interaction or overlap between ideal structures and psychic states on the one hand and concrete social institutions and practices on the other. Perhaps, however, it is unfair to demand too much on these lines, for what is at issue is actually one of the oldest and thorniest of all philosophical problems: the problem of participation. I think that, at this point, the best thing we can say about this problem is that the relationship is one of "identity in difference," i.e., that ideal structures are both *identical* with psychic states and concrete institutions and practices (thus accounting for interaction and overlap) and *different* from them (thus accounting for their ideality, their "ontological difference"). Of course this is hardly a deep "explanation" of the situation. It is simply a description of it, but it may be the case that we are dealing with such a fundamental phenomenon that one cannot go beneath it or behind it to explain it; one must simply contemplate the "surfaces," and acquiesce to their ultimacy and inescapability.

ATTENTION-MONGERS

Ernest Gellner's
*The Psychoanalytic Movement:
It's Place in Thought and Society.*
The Cunning of Unreason
(London: Paladin 1985)

J.G. Merquior

Psychoanalysis has often been employed to highlight sociological problems, especially in relation to modern or modernizing society. The late Roger Bastide, to quote just one of many possible examples, spent most of his publishing life digging out the social meaning of religion with the help of psychoanalytical concepts, e.g., he explained the survival of Afro-Catholic cults in the swelling towns of proto-industrial Brazil by a deft combination of Durkheimian and Freudian categories

In *The Psychoanalytic Movement: Its Place in Thought and Society*, Ernest Gellner sets out to do just the opposite. Instead of resorting to psychoanalysis to explain modern society, he applies a theory of modern society to explain the survival of psychoanalysis in our midst. His book, wittily subtitled *The Cunning of Unreason*, aims at giving a truly sociological account of psychoanalysis. This is, as far as I know, at this global level, something never attempted before. Recent studies

like Robert Castel's on the "phenomene psy" are at most critical descriptions of today's psycho-therapeutic culture, but they do not probe deep enough in the functional role of psychoanalysis in our society. Moreover they deal with the diaspora of therapeutic methods, not with the Freudian rite which goes on enjoying a unique position among the lay soteriologies of our time. Philip Rieff's insightful disquisitions on post-Freudian schools are not sociologically oriented either.

Gellner's main thesis is that Freud's ideas and especially his therapeutic dispensation answer a deeply felt need in the modern individual. Unlike traditional man, modern man has overcome the natural environment. But the secular culture which achieved this also put the individual at the mercy of other people. While nature has been tamed, personal relations are what worry and frighten us. Our life has largely ceased to be a struggle for bread but has become a constant hankering after attention and acceptance. Gellner subscribes to Riesman's views about the other-directed character of the denizens of affluent society. But he dramatizes the picture by stressing a predicament defined by acute attention-deprivation. The primary function of the analytical relation is to ensure attention.

Through psychoanalysis, attention-starved people buy complete concern from the Other. Yet in the analytical relation the patient is at once given full attention and denied a role. Our trouble is that most of us just play roles nobody seems to care much for - we live in constant fear of being ignored. Now analysis grants us a role as soon as an interpretation of our life-story, and therefore of our character, is endorsed by the "Authorized Other": the man sitting beside the couch. However, the grant of a role is hard to get; analysis is a painful, laborious process. Moreover the analyst is protected from the claims one normally addresses to others in equally emotionally intense relationships. One cannot possibly require the analyst to give one his time or personal commitment as though he were a friend or a lover; the attention-giving of the soul doctors is strictly rule-bound. A double bind ensues, which can only enhance the drama of salvation through therapy.

Of course, catering for attention is not all there is to psychoanalysis. Part of Freud's success derives from the greater realism of his dark portrayal of man as compared to the previous naturalist views on mind and behavior. For the empiricist tradition epitomized by Hume, man was the prey of a set of stimuli and responses stirred by too gentle passions. Freud replaced these almost idyllic psychological assumptions by a nastier but much more plausible picture. With him the soul became once again the arena of a battle between Beast and Angel, just like in the old religious vision, but this time, the drama of psychic strife spoke the naturalist language of a secular culture.

Gellner fully recognizes that Freud was by no means the first to substitute psychological realism for the angelism of classical empiricist psychology. Between Freud and Hume there came Nietzsche, a superb explorer of harsher psychological stuff. If anything, Nietzsche's name for the Beast, will-to-power, is still more realistic than Freud's pansexual image, since craving for domination seems still more ubiquitous and Protean than the search for libidinal gratification. Yet in comparison to Dr. Freud, Nietzsche had at least three disadvantages: he did not speak with the voice of science, did not offer an ecumenic recipe for salvation (his superhuman ideal, "transvaluation of all values," was something definitely out of the reach of most of mankind), and, last but not least, he did not organize a ritual and a "church" to enforce his salvationist ideas. In the event, notes Gellner, we got one of modern history's best jokes: whereas Nietzsche, the Teutonic thinker, is so ironical about himself, Freud, a Jew, comes out as a self-confident prophet. . . . But surely one side of the joke had a momentous precedent in the passage from, say, a Heine to Marx?

As is only too well known, Freud never boasted that he had discovered the unconscious; he just claimed the discovery of "the scientific method" to explain (and cope with) it. As an epistemologist, Gellner cannot buy this: he follows the impressive cohort of those for whom Freud's theories are a vast non-sequitur, since they illegitimately infer from an unquestionable truth - the reality of the unconscious - a set of fanciful explanations based more often than not on the crudest of unwarranted determinisms. So to Gellner what Freud really did was by no means science. Rather, he provided the unconscious "with a language, a ritual and a church."

Gellner's criticism of psychoanalysis *qua* knowledge explicitly recalls Chomsky's strictures against behaviorism. What is wrong with both Freud and Skinner is not the fact that they make determinist claims; rather, it is their failure to support the latter by identifying true causal mechanisms, convincing deep structures presented in acceptable non-anthropomorphic terms. Conventional wisdom puts Freud alongside Darwin as a great "decenterer" of man's self-image. But the truth is that Freud's story of the unconscious is too cosy, all too human, for scientific comfort.

For here lies the major intellectual weakness of psychoanalysis: despite his recognition of the mind's complexity, Freud simplified too much our idea of psychological knowledge by holding a naive realism whenever it comes to assessing the possibilities of self-apprehension. Our objective grasp of ourselves is far more arduous and problematic than Freud ever admitted. Therefore we are left with a shaky cognitive theory coupled with a notoriously doubtful therapy, which goes on comparing poorly with the performances of most non-Freudian techni-

ques and even with the mere absence of therapy. The devastating criticisms of Hans Eysenck are reinforced - on the epistemological level - by the lavish demonstrations of a Frank Cioffi of the unrepentant cognitive license of Freudian literature, and by the sharp remarks of Adolf Grunbaum on the fallacies involved in our assumptions about introspection. One of the extra interests of Gellner's book lies in the way he weaves all these lines of criticisms into his own philosophico-sociological arguments.

In the Gellnerian *oeuvre*, which roughly amounts to a sustained theory of modernity, *The Cunning of Unreason* provides the completion of his inquiry into modern ideology: it contains his critical interpretation of our culture's main individual soteriology, the counterpart, as it were, to Marxism as a collective salvation faith. As in Marxism, Gellner thinks that the key to the appeal of Freudianism comes not so much from the doctrine as from the practice it generates, once the organizational weapons (the party, the psychoanalytic guild) are set on their feet. There is always a functionalist anthropologist in Ernest Gellner, a creative disciple of Evans-Pritchard and the new Professor-designate of Anthropology at Cambridge; and it is he who believes that society normally endows what is vital for it with ritual significance. What is vital for societies is in turn both their ways of sustenance and their objects of fear and bewilderment. Industrial society, states Gellner, is an oddity in this respect since it does not normally invest its own vital spots with "sacral" meaning. Hence the gap filled by the Freudian creed.

Given the intensity of the "creedal" side of psychoanalysis, Gellner's book will probably be passionately dismissed by Freudian circles (for Freudians, too, are capable of fierce "resistance"). Gellner himself notices a curious discrepancy between established religion and Freudian faith. Now that most Christian churches in our midst are just societies for the preservation of collective folklore, inspiring neither fear nor hope any longer, Christians often welcome many a sociology of religion, as though they were anxious to find in social science some alien solace or support for the rickety foundations of their beliefs. The Freudian tribe, by contrast, still reacts angrily to any attempt to account for its functions in other terms than its own. Gellner reads it as the mark of creedal strength: Freudianism, as distinct from Christianity, is socially still in its prime, no matter how increasingly discredited its theories have become by sheer intellectual standards.

Gellner cannot be held responsible for what he does not propose to do. For instance, clearly his explanation of the role of psychoanalysis keeps at a strictly social level, a level of reasonably assumed social averages. Therefore it does not purport to explain why individuals as such choose to go into analysis. Had it done so, it would be difficult

to account in its terms for the fact that not every attention-starved person, who could afford to pay for it, seeks Freudian analysis. Like other high moments of Gellner's sociology, above all his *Nations and Nationalism* (Ithaca: Cornell University Press, 1983), *The Cunning of Unreason* is an impressive achievement of theoretical analysis of culture, not an empirical research in social psychology.

On the other hand, one might wish that Gellner had extended his discussion in at least two directions. One is social structure. He is of course well aware that psychoanalysis remains a bourgeois cult - a custom, on both sides of the couch, of "people whose work is non-manual, and consists of manipulating people and meanings rather than things, presupposes education, verbal sophistication, the habit of persistent inner monologue, the expectations of coherence which is offended by free association and status-anxiety due to a formally egalitarian, fluid, yet prestigious and status-conscious milieu." But he does not elaborate on the intra-class differences within the Freudian believers, nor indeed does he stress this class context in its manifold symbolic projections in our narcissistic culture. It would be rewarding to have him uncovering the social underpinnings of Christopher Lasch's loose but often perceptive phenomenology of the hydra-headed narcissism of our affluent bourgeoisies.

The other area where one feels more could have been said refers to some latter-day developments in Freudian culture. While Gellner's decision to stick to orthodox Freudianism, neglecting its historical dis-sidences, is certainly wise, sharpening as it does the sociological focus of his analysis, a number of significant changes within Freudianism could have benefited from his approach, if at the cost of some conceptual adjustment. How are we to account, for instance, for a phenomenon like the vogue of Lacan? Officially a Freudian fundamentalism in point of doctrine, Lacanianism broke spectacularly with more than one Freudian tenet both in theory and therapy, going as far as to drop the hour-long session. Furthermore, it brought about a decisive blend of psychoanalytical theory and humanist lore in avant-garde literature, (pseudo-)linguistics and continental philosophy from Hegel to Heidegger - an intellectual move blatantly alien to Freud's own cast of mind, so much more materialist and positivist. What in particular is the real position of Lacan, the Freud of the humanist clerisy, amidst what Gellner has felicitously termed (in previous works) the "ironic culture" of the half-rationalized, half-romantic civilization of late industrialism?

Freud set great store by the power of scandal of psychoanalysis as a striking challenge to Victorian sexual taboos. But his countryman Wittgenstein (not exactly Gellner's favorite philosopher) saw it differently. He shrewdly observed that instead of shocking, Freudian

therapy was bound to spell a lot of charm. In the hostile time of troubles of our century, thought Wittgenstein, the myth of a warm (however beastly) unconscious would act as one's guardian angel, protecting each of us from the excessive impersonality of our social environment. Such is the insight to which Gellner has now given the backing of a full sociological argument. That he does so in his customary graphic style, enlivened by a deft use of metaphor and his knack for witty epigrammatic formula, can only add to the distinction of this cogent essay.

Douglas J. Den Uyl's
The Virtue of Prudence
(New York: Peter Lang, 1991)

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I think it is accurate to describe our scene as awash in cleverness but devoid of wisdom. As defined by Aristotle, cleverness is ingenuity of persons at getting what they want. As a form of wisdom, *phronesis* is knowledge of the good. As "practical wisdom" it is self-guidance in progressive actualization of one's own potential worth, producing objective value in the world and providing to the self *eudaimonia*, which is the gratification of self-fulfilling living. *Phronesis* became the Latin *prudentia* and our "prudence," but in the translations wisdom was lost, and our term means to us something like cautious foresight. While *phronesis* was in Aristotle's world the supreme personal virtue, we regard prudence as a skill with dubious moral standing.

With exemplary clarity and insight, Professor Den Uyl shows how and why the transformation has come about. Fulfilling the promise of its title, the book is a careful study of the virtue of prudence, but it is also a scrupulous study of prudence as a non-virtue. Because the transformation was effected by the exchange of the classical model of ethics for the modern model, the book is a comparison of the two models. As such it is immensely useful at explaining the current revival of "virtues ethics" by increasing numbers of American (and some British) ethical theorists. By demonstrating the incommensurability of the two models, it is also a powerful argument that one can't "have it

both ways" by mixing the two modes. This should be heeded by, for example, today's so-called "moderate" virtues ethicists¹ who propose to simply add virtues considerations to mainstream ethics (Kantian, utilitarian, or contractarian). It should likewise be heeded by feminists who presently argue that caring for the self (prudence) is a condition of caring for others,² without recognizing that this entails an exchange of ethical frameworks with implications spreading in all directions. And in the end I think it forbids the conjunction of Aristotelian ethics and libertarian (classical liberal) politics that Den Uyl arrives at. But this comes late in the book, and I will save my comments on it for the end of this review.

In its historical aspect, *The Virtue of Prudence* begins with a consideration of the work of practical wisdom in Aristotle's ethics, and then charts the decline of prudence as a virtue in Aquinas, Hobbes, Adam Smith, and Kant. Den Uyl uses Aquinas to show that the decline of prudence as a virtue is not entirely attributable to the intellectual revolution that inaugurated modernity, having been begun by Christianity in its subordination of natural life to a supernatural afterlife, access to which is ultimately gained by God's grace. In this context human wisdom is incapable of knowledge of human ends, for it is natural and they are supernatural. This of course is the summoning of Christian faith.

In chapters devoted to each, Hobbes inaugurates modernity by renouncing the classical worldview including the classical mode of ethical theory; Adam Smith is presented as the last significant moral theorist to ascribe importance to prudence, while at the same time undermining his own effort by working within the modern framework; and Kant marks the first appearance of an ethics from which prudence is expressly and decisively excluded.

The concluding four chapters of the book are Den Uyl's work at restoring prudence to the status of the supreme virtue, which requires nothing less than a reconceptualization of the nature of human beings, of individuality, of good lives, including good social relations (which in Aristotelian fashion Den Uyl extrapolates from a close analysis of friendship), and of politics. Throughout, Den Uyl is reviving Aristotelianism, but by no means slavishly, for he makes important revisions that are required both by knowledge that has been gained since Aristotle and by our allegiance to democracy. He rejects as contradictory Aristotle's contention that it is the function of government to *produce* a citizenry of self-directed persons (p. 232). He insists upon the "inclusive end" reading of Aristotle, in which persons differ in the kind of life that is best for each, against the "dominant end" reading that specifies an identical outcome for all well-lived lives (and he provides the strongest argument I have seen for the "inclusive end" interpre-

tation: see p. 212). And he modifies Aristotelian teleology by rejecting the idea of an innate end, or *daimon*, in favor of what he terms a "nexus," which he describes as "that set of habits, endowments, circumstances, talents, interests, histories, beliefs, and the like which descriptively characterize an individual and which he brings to any new situation" (p. 170). It is this nexus that Den Uyl employs as the objective criterion of individuated choices. It enables him to avoid in his teleology what Israel Scheffler has termed the "myth of fixed potentials" in classical teleology.³

The heart of the book on its descriptive and historical side is the author's proposal of five contextual conditions under which prudence is likely to be regarded as a crucial virtue, together with their five contraries representing conditions under which prudence is unlikely to be regarded as a virtue. Because the former are the foundations of classical ethics while the latter are the foundations of modern ethics, this keen analytical work equips the reader with clear maps of the two territories together with a demonstration of their incommensurability. I will here provide just the obstructive conditions of modernity (pp. 50-51), leaving the reader to supply their classical contraries, and then I will briefly suggest Den Uyl's line of argument in regard to the one he regards as the keystone.

Negative Condition 1, the "Polarity" condition: "When ethics is considered to be fundamentally concerned with the conflict between duty and self-interest, prudence will be unlikely to surface as a significant virtue."

Negative Condition 2, the "hedonic" condition: "Any moral theory which takes desire alone to be either motivationally or axiologically foundational will thereby fail to accord prudence the status of a virtue."

Negative Condition 3, the "impersonalist" condition: "A moral theory which understands duty in essentially impersonalist or agent-neutral terms will be inimical to the development of prudence as a virtue."

Negative Condition 4, the "non-teleological" condition: "Prudence does not thrive in non-teleological contexts."

Negative Condition 5, the "communitarian" condition: "If our relations with others are given foundational importance in ethics, the virtue of prudence will, to the extent that the individual self is given secondary or derivative status, diminish in importance as a virtue."

I cannot here follow Den Uyl in his careful attention to each of these five theses (as well as to their positive counterparts), but must content myself with offering something of his argument against the "impersonalist" negative condition, which he regards as the most decisive.

Impersonalism is clearly definitive of modern ethics, being established alike by Hobbes's *Leviathan*, Smith's Impartial Observer, Kant's universalizability criterion, utilitarianism's "each to count for one and only one," and Rawls's veil of ignorance. It serves the important purpose of preventing persons from giving preference to themselves, either as recipients of value or as exceptions to a rule; but it also has the effect of precluding justification to the dedication by particular individuals to particular values. On this point, Den Uyl cites Loren Lomasky as observing that impersonalism requires that "one be tentative with respect to all one's values and goals, because no license can be taken to weight one's own goals higher than the next person's" (p. 28). In other words, impersonalism erases the commitment that is entailed in truly accepting responsibility for particular values. To see this, suppose that one has chosen to identify with values composing set A, and these values come under attack. If values are agent-neutral, one can with impunity shift to set B, thereby avoiding trouble; and if set B is attacked, allegiance may again be shifted with impunity to set C, and so on. In short we have here a fair weather philosophy that erodes both integrity and responsibility, in any real meaning of either term.

A virtue of impartiality and universalizability is that they serve as a corrective to the provincialism in which all human lives begin. Thanks to the fatality of being born at a particular time and place, as a helpless infant destined to a lengthy childhood of dependence, we inevitably begin by knowing only the beliefs, values, and patterns of conduct that we are taught. As we gradually learn of others, we initially maintain allegiance to those we have been taught by regarding them as the whole and exclusive truth, while perceiving alternatives as the many ways of going wrong. This provincialism-cum-absolutism requires a corrective, and impartiality supplies it by demanding recognition and appreciation of varieties of value. But we speak here of the domain of knowledge. In the domain of practice, actions are particulars, and human lives are finite. One can appreciate a multiplicity of values, but one can dedicate oneself to only a few, because dedication entails actualization, conservation, and defense of these values, and to dedicate oneself in this sense to all values is clearly impossible to a finite being. If there is no good reason for an individual to assume responsibility for certain values rather than others, then allegiance may shift with impunity, and we have the fair weather syndrome described above. If it is thought that society assigns our values-identifications ("my station and its duties"), then this is sociological determinism that precludes self-directed living and is inimical to the autonomy that we expect of adult lives.

Den Uyl criticizes the impartiality requirement of modern ethics

for its employment of empty universals, which preclude justification to choices of particulars (values) by particulars (individual persons). Against it he commends the Aristotelian insistence that judgment is "a process of employing the universal to gain insight into the particular, while at the same time recognizing the contingent and unique character of particulars" (p. 72). One might say that Aristotle is here exhibiting loyalty to his kind - his humanness - as a "thinking particular," while modern impersonalists are betraying their kind. (I cannot resist invoking Nietzsche's profound observation that human beings are perpetually prone to self-betrayal and have assembled innumerable ingenious devices by which to accomplish it.)

Aristotelian prudence, then, is precisely the judgment that mediates between particulars and universals without abandoning either. It is in Den Uyl's words "the practical wisdom needed by individuals for achieving their own particular form of self-perfection" (p. 238). It is "the intelligent management of those goods necessary for eudaimonia" (p. 187). It serves alike the self and others (this is part of Aristotle's meaning in defining human beings as inherently social), because it produces objective values in the world, i.e., values that will be of worth to (some) other persons.

Den Uyl makes a substantial contribution by spelling out what he believes are certain implications of Aristotle in regard to prudence that remain merely implicit or insufficiently explicit in Aristotle's writings. Den Uyl makes a case for certain "generic goods" (the moral virtues, health and beauty, pleasure, economic sufficiency, friendship, honor, justice, intellectual ability, and intellectual and artistic pursuits) as necessary to all good lives. Then prudence, in one of its dimensions, "is the application of intelligence to a compossibility problem" (p. 175), namely the problem of integrating these goods. Den Uyl terms this the "horizontal" dimension of prudence, and devotes half of Chapter 8 to it. The rest of the chapter is given to excellence, the "vertical" dimension, which prudence contains because the good that practical wisdom perceives is an ideal that requires to be served by actualization.

Primary goods are generic, but how these goods are combined, and in what proportions, "is open to the individual's own creative input" (p. 168), as likewise is the specificity that generic goods require (the particular way to earn one's income, the preferred liquid to satisfy one's thirst, and so on). Here is Den Uyl's conception of individuation, and he contends that it is not an arbitrary or merely conventional matter. For Aristotle its objective ground is innate and individuated (on the "inclusive end" reading) potentialities. For Den Uyl individuation likewise has an objective ground, but it is what he terms each person's "nexus."

For my part, I think that only Aristotle's full-bodied teleology

can do the work that Den Uyl asks of the nexus. We earlier followed Den Uyl in his description of the nexus as each individual's habits, endowments, circumstances, talents, interests, histories, beliefs, and the like. This avoids Aristotle's predication of what are in some sense fixed potentials. The problem is that what Den Uyl describes is pretty clearly produced in persons initially by the processes of socialization in childhood, and evidently Den Uyl is comfortable with this because at one point he says that the formative agencies in the early formation of a person's nexus may be "as arbitrary as one's father pushing one into mathematics because he liked it and did well in it in school" (p. 172). True, Den Uyl has introduced objectivity into the formation of good character by his identification of generic goods, i.e. goods that all well-lived lives require. But he holds that individuation is modulation of these goods in accordance with one's nexus, and if the nexus can satisfactorily be formed by arbitrary factors, then whatever may be the objective constraints on generic full humanness, the individuation of that humanness will be arbitrary.

I will conclude by amplifying my remark at the outset that I perceive Den Uyl as hoist by his own petard when he combines Aristotelian ethics with libertarian (classical liberal) politics. Aristotle famously held that ethics and politics are inseparable, and it is because Den Uyl agrees with this that he turns to politics in the penultimate chapter of the book. But the politics that Aristotle combined with his eudaimonistic ethics is eudaimonistic politics. Den Uyl's combination is I think precluded by his own demonstration of the incommensurability of classical and modern frameworks.

I must make two qualifications here. The first is my complete agreement with Den Uyl that contradiction appears when Aristotle expects politics to produce self-perfecting persons, whereas on his own thesis self-perfection presupposes self-direction. The second is my belief that Den Uyl in fact compromises his libertarianism by accepting a key Aristotelian political thesis, namely that rights derive from responsibilities. In support of this Den Uyl says, "But the appeal to self-perfection does make politics dependent on ethics, for it is the obligation to achieve self-perfection that gives politics a context of meaning" (p. 232), and ". . . rights are given their contextual meaning and purpose by the obligation for self-perfection" (p. 233). Classical liberalism and libertarianism define human beings as rights-bearers and derive responsibilities from this base, beginning with the responsibility to respect the rights of others. Conversely eudaimonism begins with the responsibility of every person for self-perfection, and derives rights therefrom.

Den Uyl's libertarianism is apparent in his insistence that natural rights are exclusively the negative rights to non-interference. And it is certainly true for eudaimonism that some natural rights are negative,

for self-directed living requires the protection they provide. But eudaimonism (on my understanding, of course) gives equal importance to positive rights. The reason for this is its recognition of the imperative for good growth. No human being begins life as self-directed, for we are neotenus beings, born in an embryonic condition. As a developmental outcome from initially helpless creatures, self-directedness can be prevented, not just by others' interference, but by absence of the necessary conditions for such development. To see that some of these conditions are positive, we need only ask ourselves if we think that in order to grow optimally, children and young people need only protection against interference.

I will close by saying that it is a pleasure and a privilege to take issue in one or two matters with so scrupulous and insightful an author as Professor Den Uyl. His book does great service, alike for the virtue of prudence, for virtues ethics generally, and for ethical philosophy as a whole. It is a valuable contribution to our discipline. Because it provides solid orientation by skillfully contrasting the classical and modern frameworks, it is likely to be received with gratitude by students in college ethics courses, undergraduate and graduate, which use it as a text.

1. See, e.g., Kurt Baier, "Radical Virtue Ethics," in Peter A. French, Theodore E. Uehling, Jr., and Howard K. Wettstein, *Midwest Studies in Philosophy*, vol. XIII, *Ethical Theory: Character and Virtue* (Notre Dame: University of Notre Dame Press, 1988), pp. 126-135.

2. A leading example is Carol Gilligan, *In a Different Voice* (Cambridge: Harvard University Press, 1982), ch. 3.

3. Israel Scheffler, *Of Human Potential* (Boston, London: Routledge & Kegan Paul, 1985), pp. 10-16.

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John Casey's
Pagan Virtue: An Essay in Ethics
(Oxford: Oxford University Press, 1990)

Kelley Dean Jolley
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In a memorable line in his *The Illusion of Technique*, William Barrett confides to his reader that he would have been seduced by Buddhism, if the Bible and Russian novels had not kept getting in the way.¹ Early in his *Pagan Virtue* John Casey expresses a similar sentiment about adopting a thoroughly pagan ethic. Too much time has passed and too many competing ideas have held sway for anyone to forego the other aspects of our "complicated inheritance"² and become pagan to the core.

Still, getting straight on exactly what a pagan ethic might look like is in Casey's estimation a worthwhile endeavor. The reason for this, according to Casey, is that we (that is, we Westerners) have long been of two minds about ethical matters. One mind, the "Christian" one, has been primarily other-worldly, concerned with persons as rational agents, with the possession of a good will. The other mind, the "pagan" one, is decidedly this-worldly, concerned with persons as beings either favored or unfavored by fortune and with the possession of practical wisdom. The trouble with this two-mindedness is that we are unaware of it. Casey intends to change this by developing and advocating a pagan position. Thus, his hope is not to convert us into pagans but rather to make us aware of and perhaps more sympathetic to the presence of the pagan in our ethical tradition.

Casey acknowledges that his purpose requires his primary aim to be one of "modest rediscovery and (hence) criticism" of our ethical tradition. Casey warns his reader that his criticism is not what is often thought of as "philosophical criticism"; instead, he likens it to literary criticism, since in his estimation a moral philosopher "cannot fruitfully assume that what he does stands outside history." In other words, the moral philosopher is not in the position to design a morality *ex nihilo* because his guiding sympathies, his intuitions, have been (at least in part) formed by his historical station. *Qua* moral philosopher, the best he can do is to comment on and to interpret the continuing narrative, so to speak, of which he is a part - his and his culture's history. Suggestions toward changing the direction of the narrative can, of course, be made, but they must be circumspect and must not presume to entirely reroute the narrative's direction. Casey remains admirably true to his intention throughout the book. His approach to the issues is consistently ruminative, not argumentative.

One of the most interesting issues Casey explores is the role of anger in our moral lives, an issue he returns to repeatedly.³ Casey's claim is that anger, proper anger, may be a moral achievement. Failure to become angry in appropriate situations is the result of "poor-spiritedness." A person who is never angry, or who at best reacts by retreating into a sort of "dumb mortification" when mistreated lacks the necessary confidence in himself that self-assertion demands. And a person who lacks this has a diminished "sense of what he is."

That Casey chose to spend a great deal of effort describing and appraising the role of anger in our moral lives is evidence that he is indeed exploring an aspect of our moral lives often overlooked.⁴ With the exception of occasional harassing of money-changers, anger and actions which express it have been devalued if not condemned by most modern, Christian-influenced moral theorists. Thinking about an ethical tradition which assigned high value to anger and actions which express it, which is what Casey induces us to do, throws new light on the moral theory or theories we tend to inhabit. The new light shows us that our previously comfortable theoretical home might have been usefully drawn on a different plan.

Casey's debt to Aristotle, who is most often invoked when the pagan tradition is being explored, is obvious. Also, his debt to both MacIntyre and Nussbaum will be clear to anyone familiar with their work.

On the whole, Casey's book is an excellent treatment of its topic. It enhances our understanding of both the pagan ethical tradition and our own. It also demonstrates unsuspected philosophical similarities, like that of Sartre to Aristotle. Casey's style is natural and easy and his mastery of a heterogenous set of thinkers is impressive. The book's

only fault, if indeed an intended aspect of a book can be cited as a fault, is its lack of pointed argumentation. Like a person enjoying a relaxed conversation with a learned friend, Casey's reader is sometimes hard-pressed not to lose the thread of the discussion while attending to its graces.

1. William Barrett, *The Illusion of Technique* (Garden City: Anchor Press/Doubleday, 1978), p. 343
2. The phrase is Casey's, from his Introduction, p. ix.
3. A brief glance at Casey's index is enough to confirm this.
4. There are also chapters on "Courage" and "Temperance."

Tibor R. Machan's
Capitalism and Individualism:
Reframing the Argument for the Free Society
(New York: St. Martin's Press, 1990)

John D. McCallie
University of Maine

Despite the obvious economic superiority of capitalism, Tibor Machan has stressed on numerous occasions that capitalism requires a moral defense of individual rights to check the steady encroachment of statism. In *Capitalism and Individualism*, Machan amplifies why he considers the current economic defense is inadequate and even harmful to the cause of capitalism. He is especially critical of the pretense of imperialism in economics, where the economic view of man is used to theorize about man's life in general. As an alternative, he offers a view of man that supports an objective view of value and a moral argument for the free society but limits the scope of economics. His remarks are indeed aimed at some of the most distinguished Nobel laureates and defenders of the free-market, including members of the Chicago, Austrian, and public-choice schools. Accordingly, this review mainly examines the book's agenda for economics.

Understandably, one's view of the essential attributes of man greatly shapes one's ethical and political views. In this respect, the author contends that the current framework of economics is largely based on a warmed-over version of Thomas Hobbes' *homo economicus* model of human nature. That is, following Hobbes' desire to comprehend everything by reference to Newtonian laws of mechanical motion, economics is also heavily swayed by the idea that science can be

reduced to physics, which is commonly known as “reductive materialism” or “monism.” Here man is mechanistically driven by a calculated self-interest and fully determined by subjective motives produced by his circumstances. The amoral considerations of this framework are well understood. In short, the good is that which man desires; the bad is that which he avoids. This framework fits well into the scheme of positivism by holding the alluring prospect of approaching the so-called value-free methods of physics and mathematics.

Nevertheless, Machan argues that this “neo-Hobbesian” view misfires badly. Among other pitfalls, it greatly founders on the self-defeating and faulty elements of determinism and subjectivism. Determinism, if taken seriously, leaves no room for morality or justice as they are correctly understood. By rejecting free will, the moral considerations of individual rights and responsibility are meaningless. Subjectivism on the other hand considers that values are merely arbitrary and denies that they can be objectively linked to the facts of reality. These two postulates, among other reasons discussed in the book, subvert any attempt to construct a moral defense of capitalism and individual rights based on an objective view of values.

The book cogently describes the troublesome aspects of these and other elements in the neo-Hobbesian framework. For example, determinism is clearly self-defeating. After all, determinism also leaves any theoretical claims superfluous, since man’s thought processes would have to be mechanistic as well. Moreover, capitalism defended on the basis of subjectivism is a dead-end proposition as well. If values are merely arbitrary, then no objective arguments can be made for the moral superiority of liberty over slavery - of capitalism over socialism. As such, this theory cannot beseech the individual to defend freedom or individual rights on grounds of ethics or justice. Rather, economics proposes that individuals are induced to demand capitalism mainly by the prospect of possibly being wealthier. Machan counters that the economic argument lacks sufficient force. To be certain, “It simply cannot give the support necessary to convince people to defend the system, to stand up for it proudly, to regard it as morally inspiring and even noble, even at a time when socialism is proving to be a practical failure” (p. x).

In contrast, Machan’s alternative framework offers a sketch of an objective view of values that supports a moral defense of individual rights in the Lockean tradition. (Various aspects of his framework are detailed in his prior writings.) Here, an individual’s primary moral responsibility is a thoughtful pursuit of happiness or “success in life,” as properly conceived in the context of man’s attributes. Importantly, the author indicates that it is indeed mistaken to consider the choice to live as either mechanistic or arbitrary.

The moral justification of capitalism is that it honors an individual's quest to enhance his own life. Hence, the state treats individuals as independent, moral agents, who can exercise free will and are thus accountable for their actions. In contrast, a paternalistic state makes a mockery of personal responsibility and independence and thwarts an individual's prospect for happiness.

Hence, the book views the notion of "rational self-interest" starkly differently from how it is viewed in economics. In economics, self-interest is at best a spontaneous, calculating function in man's life with no moral implications. In this way, it is comparable to Kant's amoral treatment of "prudence." At worst, it is considered a natural flaw in man's character but a necessary evil to achieve the public good. For Machan, there is nothing inmechanistic or amoral about it. Rational self-interest is a noble and moral endeavor that one must choose to pursue in order to achieve one's personal success or happiness.

Furthermore, the author argues that economics is in fact conditional on particular moral considerations; that it presupposes ethics. I concur. It presupposes, for instance, that people have chosen to observe property rights and to earn a living. To the extent that they choose otherwise, economic forces are diminished. In order to bring economics within the proper context of ethics, the author prescribes that the scope of economics is limited to market activity (ch. 3). It is not clear here whether the author would dispute the point that market phenomena do indeed reflect everything that impinges on the personal valuations of the market participants, as indicated by praxeology.

To be fair to economics, the conditional aspects of economics were indeed appreciated in earlier times (before the influence of positivism and behaviorism). For example, it was then generally understood that economic analysis abstracts from "force and fraud." I even recall reading a text written around 1920 that defined economics as the study of what happens when people earn a living. The (pre-Hayek) Austrian school certainly recognized earlier that economics does not encompass force, fraud, or other destructive behavior, and that it is duly qualified to the extent that these non-economic forces are present.

In any case, modern economics generally fails to grasp the conditional aspects of economics. It credulously incorporates crime, suicide, fraud, regulation, welfare, and politics within its sphere of analysis while dropping the context that economic efficiency necessarily rests on the mutual exchange of value. Imagine for instance a general equilibrium principle or "Invisible Hand" driven solely by the forces of crime and welfare.

Economists often deflect such criticisms as Machan's by declaring that their assumptions are perhaps unrealistic but fruitful. Machan even

responds that he would have less quarrel if economics actually considered the *homo economicus* model merely as a "useful fiction" but qualified their work accordingly (p. 19). In fact I would argue that economics could rightfully assume that people are generally rational (in an ethical or psychological sense) but acknowledge that human behavior can be irrational (e.g., self-destructive or intentionally harmful to others). "Fallibility" could be treated the same way. Nonetheless, Machan correctly concludes that economists rarely qualify their work for these moral and psychological considerations and generally reveal that they officially embrace subjectivism.

The neo-Hobbesian view is commonly reflected in the teaching of economics. For example, students are frequently asked such questions as what amount of money would be necessary for them to consider "taking" an unintentionally abandoned wallet. Similarly, politicians are cynically portrayed making decisions that solely enhance their political careers. There is nothing inevitable about such behavior; indeed, honesty and statesmanship could prevail. But the underlying lesson from such teachings is that "prices" mechanistically determine social conduct and thus moral and ideological considerations are superfluous.

Consistent with Machan's framework, prices do not in fact allocate resources - people do. Prices merely reflect their valuations. Again, economics typically reverses the cause-effect relationships to suggest otherwise. To illustrate, it is a very well known non-sequitur in economics to infer from an "individual perspective," where it is reasonable to envision prices as data, that prices are actually data from a "market perspective" as well. From a market (or macro) perspective, it is understood that prices and quantities are effects - not causes (barring force). Yet it is common practice to diagnose the effects of price and wage changes, or interest-rate changes, or even price-level changes, without inquiring into what initially caused the change. The egregious flaw of such a practice is well understood in economics.

The influence of determinism is also prevalent in economics. For example, Keynesian economics relies heavily on determinism to fabricate a notion of "underemployment equilibrium" - that is, the proposition that free people *autonomously* get mired down into a enduring state of helpless pessimism. In addition, the monetarists depend on the mechanistic notions of the quantity theory to construct a general glut theory that clings to an age-old fear of too little money. Similarly, this popular theory denies that a free society can solve its money problems without a central bank. "Prisoner dilemmas" and "market failures" are other examples where theorists frequently ignore the possibility of people resolving problems with "ignorance" or "free-riding" by effecting various types of arrangements or agreements.

Importantly, Machan discusses the circular reasoning in the econo-

mic presumption that there is something inherently good about utility maximization or efficiency. This presumption is based on the premise that there is something good about what people desire, which merely suggests that free behavior is utility maximizing - that whatever people do is what they want to do (pp. 12-3). The economic argument thus misses the critical question, that is, "What is good behavior, and why?" To me, the "public good" standard of the classical liberal response merely begs the question. Hence, economics not only evades ethics by assuming that voluntary behavior is indisputably the best behavior by definition but also denies the importance of ethics.

A principal motive for avoiding ethics is the desire to remain value-free. However, as I see it, a value-free stance does not have to imply that ethics (or even ideology) is superfluous. The basic intent of this stance is to keep economic analysis objective and free of ethical and political bias. In this respect, one could achieve objectivity without denying the significance of the moral dimension of economic life by keeping the economic and ethical considerations separate. In any case, economics cannot be strictly value-free when it comes to questions on what and how to proceed in economics, as even Milton Friedman suggests.¹ These value considerations are certainly not subjective or deterministic (which is why methodology is critical).

Interestingly, despite contrary claims by economists, economics is replete with value-laden and policy-biased terminology. To mention a few, terms such as "sticky prices," "imperfect competition," "imperfect information" or "market failure" are necessarily normative by their nature. They beg a standard: Sticky compared to what? Imperfect compared to what? Failure compared to what? And furthermore, policy-bias is manifest when the market is speciously graded on how it stacks up against a standard of what it ought to be in some *ideal* sense.

Finally, the author suggests that both Hayek and Mises have adopted certain amoral aspects of the neo-Hobbesian view of man that induces them to conclude that capitalism cannot be defended on the basis of ethics or justice. Here I think there is little controversy regarding Hayek - his contempt for reason and neutrality on the moral justice of the market are familiar. Although I esteem Ludwig von Mises as one of the most important champions of liberty in this century, his writings can be interpreted to have a certain Hobbesian flavor as well. Though Mises rejects determinism, because free will rules out the possibility of "necessity" (or "constancies") in human action, he does imply that there can be something biologically mechanistic about human action analogous to the neo-Hobbesian view. For Mises, the faculty of reason functions as some kind of amoral calculator mainly for the pursuit of living. For example, he contends that "reason's biological function" is to serve the "vital impulse" of

preserving and promoting one's life, which is in "man's innate nature" (*Human Action*, p. 882). Thus, human behavior is activated by a desire to remove some felt uneasiness. Indeed, "society is a product of . . . the human urge to remove uneasiness as far as possible" (*Human Action*, p. 146). As noted above, Machan would argue that rationality (or reason) is not some amoral or mechanistic biological impulse but a noble virtue that an individual must consciously make an effort to achieve. Nevertheless, Mises' thoughts on the function of reason are consistent with his morally neutral view of rationality.

Mises broadly defines rationality as purposeful behavior without attaching any particular moral or psychological considerations to the ends sought. Granted, this definition is perhaps suitable from an economic perspective, assuming that one is abstracting from these considerations, but Mises clearly indicates he accepts the basic teachings of subjectivism that values or ends are arbitrary and not subject to any rational scrutiny (e.g., *Human Action*, pp. 19-23). Again, Machan would propose that the presumption here is that whatever people want to do is what is "right." Also, it is mistaken to consider the pursuit of life as necessarily arbitrary.

Indisputably, Mises views moral arguments as arbitrary. For Mises, "the notion of right and wrong is human device, a utilitarian precept designed to make social cooperation under the division of labor" (*Human Action*, p. 720). Moreover, it is well known that Mises rejects notions of natural law and any arguable claims of justice. He holds that there exist no sense of justice independent of the established mores or laws of a given social system. For example, he argues that "there is no such thing as an absolute notion of justice not referring to a definite system of social organization. It is not justice that determines the decision in favor of a definite social system. It is, on the contrary, the social system which determines what should be deemed right and what wrong" (*Human Action*, p. 721). Mises of course is wary of misuses of arbitrary notions of justice; but, nonetheless, this view is considerably disturbing. It suggests that a moral case against, say, slavery is merely arbitrary outside state laws or the precepts of social cooperation; that a slave has no moral right independent of society and its "human devices" to cast off his shackles. This type of consideration reinforces why the utilitarian or economic defense of liberty is inadequate.

Thus, regarding the treatment of the current philosophical underpinnings of economics, Machan's book is on solid ground, although one could argue that earlier economists had a much better appreciation for the moral and conditional nature of economics. However well meaning, the current economic framework embraces an unwarranted ethical view that unfortunately yields undesirable unintended con-

sequences. Granted, the task of economics is not to pronounce moral and political judgments, but this does not imply that moral and political philosophy are dispensable, as economics currently indicates. Indeed, this book serves an important function of demonstrating why such considerations are essential to both economics and the defense of the free society.

1. Milton Friedman, "Value Judgements in Economics," in Sidney Hook, ed., *Human Values and Economic Policy* (New York: New York University Press, 1967), p. 86.

Gerard Elfstrom's
Moral Issues and Multinational Corporations
(New York: St. Martin's Press, 1991.)

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An increasing number of philosophers trained in ethical theory have been turning their attention to business practices. In the past, philosophers writing on this topic were as often as not motivated by an anti-business, anti-capitalistic ideology. It is unlikely that such is true today. This is not to say that works in business ethics are filled with pro-business sentiments or any great love for the market. Rather, the writers of today seek merely to apply the tools of "moral theory" to the business context. It does not follow from this, however, that the *effect* of recent analyses is much different than it was in the bad old days of ideology; but at least now authors cannot be accused of bad faith.

Gerard Elfstrom's book, *Moral Issues and Multinational Corporations*, is the quintessence of the current approach to business ethics. The book does is not ideological because Elfstrom makes a scrupulous effort to look for what can be said on behalf of corporations as well as against them. This unbiased examination proceeds, nevertheless, within a set of parameters that is itself skewed in a certain direction. For example, other than a perfunctory reference to Milton Friedman - whose piece on corporate social responsibility is apparently

the only thing the profession believes has ever been written from a "conservative" perspective - no pro-market authors are cited or referenced in this work. Indeed, Elfstrom's own colleague, Tibor Machan, who has authored a business ethics text and written numerous articles in the field is nowhere to be found. This is not to say that one finds a litany of leftist scholarship being cited either. No, the scholarship is all "mainstream" and herein lies the problem of skewed parameters.

The book is sensibly structured. Each chapter deals with a moral topic in business ethics such as "Corporate Moral Accountability," "Corporate Size and Power," "Cultural and Economic Diversity," and the like. But moral theory comes first and business conduct second throughout the book. What this means is that business is not an experiential base *from* which one derives appropriate moral norms, but rather that *to which* one ascribes moral rules or modes of conduct. It also means that multinational corporations and international trade are more the objects of the theory than the subjects. Consequently, the moral framework becomes all important to the movement of this work.

Elfstrom describes himself as a utilitarian, but because the only preferences that really count are those that are consequent upon "reasoned deliberation," the actual tone of the book is deontological. Yet the broad philosophical framework is not what is critical here anyway. What really drives the argument is Elfstrom's concept of a "mature moral order" (MMO). The MMO is described in the following way:

In a mature moral order the members of a community have a distinct sense of accepted standards of conduct: are aware of how responsibility and accountability are assigned to participants; understand that there are effective sanctions for use against those who fail to uphold recognized standards; acknowledge that there are means of recognizing those whose conduct is exemplary; and, most importantly, collectively recognize that they are part of a *moral* enterprise. (p. 7)

This description of the MMO, found in the introduction to the book, may appear innocuous enough, but various phrases contained therein should tip the reader off to what will be coming as the chapters unfold. Responsibilities are *assigned*, conduct must be *acceptable*, moral recognition must be *collective*, and so on. Apart from such questions as who will be doing the assigning, the vision expressed by the MMO is one of moral conservatism. The ideal would be to have all roles, functions, and positions well defined so that no matter what occurs we will know exactly who is responsible, whether the conduct is acceptable

(i.e., fits pre-established acceptable rules), and what sanction any infraction may call for. We have then a neat, static, and closed system that rotates evenly around itself. It is a conservative vision because innovation, indeterminateness, and individual judgment are either signs of defectiveness or impossible to reconcile with the vision.

Of course, in the real world we are some distance away from the vision described by the MMO. The author notes that:

Present circumstances of multinational commerce still fall distinctly short of a mature moral order. Among these lapses are the absence of clearly established and authoritative procedures to identify those who breach standards or to initiate remedial action. Neither are there means to acknowledge or reward those whose conduct is exemplary. Further, the evolution of a genuine international moral community of commercial activity is hampered by the great flux of participants. (p. 10)

As the book continues, we learn that at least the United Nations, if not a new centralized world government, would be the ideal institutional form to remedy the "great flux" that now surrounds international commerce. It perhaps goes without saying that this whole vision, and its institutional expression, are anathema to a market approach to both international commerce and ethics. For apart from any empirical evidence one may have for indicating the inverse relationship between markets and centralized government, and however much this book would benefit from a dose of public choice theory, the vision itself runs counter to the inherent dynamic and spontaneous character of market phenomena. This is why the moral theory appropriate to the regulation of market conduct must in some significant way be strictly procedural and issue in political minimalism. If central authorities have a role, it is the reactive one of protecting rights, not the proactive one of defining duties.

Elfstrom's endorsement of Peter French's notion that corporations are themselves moral agents (rather than a collection of moral agents) further strengthens the vision of the MMO just provided. If our goal is to centrally assign responsibilities and monitor results, then the whole task is much more easily managed when there is one agent to deal with rather than a collection of them. But of course corporations cannot be agents in quite the way you and I are, because they are not individuals. If that is so, then corporations are either agents in a very limited and circumscribed way or they are agents analogously. Either way, the theory suffers, because where the limits are set or where the analogy ends is completely ad hoc, having more to do with

a person's own moral predilections than with the nature of the corporate "agency." In Elfstrom's case the *dissimilarities* between corporate agency and individual agency are more numerous and significant than the similarities. It is as if Elfstrom wants to give corporations just enough agency status to justify controlling their conduct, but not more. Consider, for example, how this would sound if given as advice to an individual:

Corporations should not undertake projects which are designed to make the world a better or more humane place. Neither should they attempt to mold the world in their own image or shape it to their own ideals. Their role in the economic and technological progress of nations has become, and should remain, essentially that of passive collaborators with national governments. (p. 43)

In old-fashioned language anyone who behaved this way would have been regarded as a "slavish" (in more modern terms a "wimp")! And why corporations should behave this way is plausible only if one buys the parameters of the MMO (and I have my doubts even then). Since the MMO is interpreted to prefer bureaucratic to corporate leadership and meddling (I prefer neither), we are led to want passive corporations rather than passive governments.

Now the "good puppy" theory of corporations has been around for years - at least since Laura Nash named it as such in a *Harvard Business Review* article.¹ In Elfstrom's book we see the idea applied to the international arena with the obvious consequence that "good puppies" need strong leashes. While there is some balance with respect to how long or short the leash should be, the drive to attach the leash leaves a number of the supporting examples in the book suspect. For example, the frequent mention of Bhopal fails to mention that Union Carbide was forced by the Indian government to hire (less than qualified) Indian workers in sensitive and technical areas. The discussion of Nestle and the infant formula controversy makes no mention of the fact that *all* the data regarding deaths due to formula are dubious. And South Africa, which is given its own chapter, is unconvincingly presented as a "genuinely different and genuinely special" (p. 96) case for corporate soul searching and thus more deserving of our attention than other rights violating nations such as China or the former Soviet Union.

Once again, then, it is one's response to the MMO that is likely to determine one's response to this book on any level. In this respect, Elfstrom is at least consistent in the application of his vision to any given topic. And as I noted at the outset, he provides us with clear

picture of the sorts of moral and political perspectives to be found in business ethics today. While those perspectives lead to rather predictable conclusions on policy questions, they are directly in line with what the profession regards as acceptable work in the field. In this respect, I suspect that Elfstrom's book will make most of the bibliographies of future works by business ethicists. I also suspect that those other equally deserving perspectives that nevertheless remain outside of accepted parameters will continue to have no influence on the mature intellectual order of business ethics today.

1. Laura Nash, "Ethics Without the Sermon," *Harvard Business Review* 59 (Nov.-Dec. 1981), p.89. See also my response in the letters to the editor section of the following issue of HBR.

Michael Luntley's
The Meaning of Socialism
(La Salle, Illinois: Open Court, 1989)

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The central idea of Luntley's defense of socialism is his conception of The Good Life. Unfortunately, this is a worrisome notion, and the source of many problems. The first problem one runs into concerns whether or not there is any such thing as The Good Life which is the same for every man, woman, and child. The fact of the matter is that people have different interests and pursuits, so a multiplicity of good lives should be possible. Luntley tells the reader that his conception of the good life is prescriptive (the way "society ought to be, regardless of the way it actually is" (p. 3)). This means that some group of unrepresentative elites must determine the one Good Life for all and, presumably, enforce it. Although the previous sentence sounds like I am frantically accusatory, Luntley embraces exactly this over the next several pages. He is not shy about recognizing that this means that in many cases people should not be allowed to make choices or determine their best interests because these private pursuits might conflict with The Good Life. This idea is taken to have motivating force because, as he puts it: "There is more to the achievement of the good life than the satisfaction of individuals' actual preferences" (p. 11).

Although I have phrased my objection to this in the previous three sentences as if it were self-evidently bad to be anti-choice and anti-individual, Luntley obviously anticipates this objection. Presumably this is why he underlies his assertion that the socialist conception is the only way to solve social problems by placing the roots of those

problems on precisely the sort of political morality which values individuals and their choices.

It is somewhat presumptuous for Luntley to suggest that he knows where my best interests lie better than I do, but besides that, I find it logically suspect to claim (he makes no argument for this) that there is more to the good life than human happiness. Although one must concede that people do not always know how best to achieve happiness, no useful conception of the good life can fail to take into account human happiness. (The brute fact that fallible humans do not always know what's best is not by itself an argument for socialism unless the rulers are not fallible humans.)

Luntley relies on a familiar straw-man conception of liberalism to support his claim that liberalism cannot promote The Good Life. He charges: "Liberals [won't tell] another person what is for their good". Liberals are "tolerant to a fault." Liberals are morally agnostic. Liberals manifest something called "economism about values." Any liberal with an intellectual grasp of the tradition will recognize this as nonsense; or at any rate not at all representative of 9/10 of the liberal tradition. As Stephen Holmes has pointed out, this type of straw-man attack has long been a favorite of anti-liberals; the fascists were quite fond of it. Although there is a strain of liberal thought that embraces moral relativism (there is also a leftist strain of moral relativism), most liberals think there is such a thing as right and wrong; for example, Locke's idea that people have natural rights to their own persons. The caricature of the argument goes like this: we need institutions of freedom because, after all, who is to say what is right and what is wrong? But any liberal theorist with an argument about natural rights or human self-development obviously does have an opinion about right and wrong. Hayek, to use an example Luntley uses, is certainly not theorizing in a "moral vacuum." Luntley has a good point when he claims that a "value-free" defense of liberal political institutions is empty. Economists not influenced by Hayek sometimes attempt this sort of defense on the grounds of efficiency. But that is a criticism of a certain strategy for defending those institutions, not of the institutions. Some economists do not seek a value-free stance, and, more to the point, philosophers almost never do. Philosophers who have an interest in defending liberal institutions typically rely on moral grounds to do so. A survey of the history of the field from Locke and Mill to Rawls and Nozick will quickly demonstrate this.

Classical liberalism (nor even radical libertarianism) does not imply moral relativism or nihilism. Emphasis on the individual does not imply a moral "disconnectedness" or nastiness. Quite the opposite, in fact, individualism fosters respect for others as individuals, rather

than as faceless members of ascriptive groups. The liberal tradition broadly construed tends to emphasize respect for persons, autonomy and responsibility, and yes, a concern for how we live together and what values are manifested in the society. But the liberal tradition in general (and libertarians in particular) eschews the use of coercion to accomplish these and other ends, and declines to establish unrepresentative elites as arbiters of The Good Life. I can (and do) have theories of what values are "proper for man" while not forcing them on others through the political process. Contrast, for example, Simone De Beauvoir's now notorious claim that women should not have the choice to raise families because that is precisely what many of them would choose to do. To think De Beauvoir is quite wrong about this is not to have "no view" about right and wrong, but rather to consider it wrong to deprive women of choices.

One of the things that is often thought by liberals to be "wrong" is forcing people to live life according to someone else's standards. Luntley explicitly says that this is what should be done. Socialists like Luntley, and "communitarians" in general, avoid certain unpleasant moral dilemmas that this entails. If you say that, for example, college education is a universal good that may not be denied to anyone, that means that its provision to some will be coercively obtained. If "need" becomes the sole criterion for why one is entitled to a thing, why is the needer's good automatically prioritized over the provider's good? Do needs create rights? This is an important question for a political theorist to face. Luntley simply stipulates that the answer is yes, and never gets around to considering the violence entailed by such a view (except with a few dismissive references to "greed").

Does Luntley's ethic of subordinating individual interest to the community's interest in *The Good Life* mean that religious dissidents can be forced to conform? Or that homosexuality can be banned? It is too easy to valorize "the common good" if you don't address the question of how to reconcile such a goal with individual rights. In any case, collective goals and community solidarity are not *prima facie* goods - Nazism and apartheid are clear examples of *social* aims, not "atomistic individualism" or "economism about values." Claiming that liberals are morally agnostic and unconcerned with society is not only a distortion, but, more importantly, a diversion from the moral questions about coercion that socialists do not want to answer (or have to answer in ways that a liberal with left sympathies doesn't want to hear).

(Notice also how Luntley approaches the subject in terms of "the Right" and "the Left" - as if the only alternatives to socialism were a moral-majority regime or the English National Front. Neither of these

movements is known for its commitment to "rootless individualism.")

But let's say for the sake of argument that there is one Good Life, and its attainment is worth the subordinating of individual rights. How would one know what it is? Who would be in charge of figuring it out? Who makes sure they are right? I am not the only one who has an epistemological problem with the idea of The Good Life - Luntley himself says (pp. 12-3) that this may be difficult to determine. All that matters is that we recognize that it could be done, and that will create the possibility that *someone* will be able to do this. (Although no one from Hammurabi to Hitler has been able to do it.) Is this really the most sensible approach? Given epistemological difficulties, why not permit experimentation with ways to live a life? But this can only be done in an atmosphere of political freedom. If we take political freedom to entail economic freedom, we can see what Luntley's next objection will be.

Luntley asserts that capitalism is bad because "it systematically obstructs the possibility for living the good life" (p. 16). If we take capitalism to be the system of exchange in which people seek their own best interests through voluntary exchange, then it is clear how Luntley is begging the question in this critique. However, if we take capitalism to be bad because of the history of industrialization in Europe (Luntley also makes this point), we will also be begging the question. Another fallacy is the idea that since capitalism has been historically accompanied by (anti-liberal) features such as mercantilism, corporatism, and even feudalism (which exist only as creatures of the state and which really *do* rely on state coercion to accomplish any exploitation), capitalism is bad because of those things, as though those features were necessary conditions of capitalism, not flaws that impede it. However, the classical liberal case for capitalism is against feudalism and mercantilist policies, as well as other forms of state coercion. If a liberal argues against state coercion, it is hardly a criticism to mention historical examples of that coercion as if it would be an embarrassment. Some neo-Marxists define capitalism as mercantilism or corporatism. But that reduces the argument to a semantics game. Luntley at times seems to veer in this direction, but if he really embraces this, his critique of political liberalism will be logically suspect.

A contemporary socialist might next suggest that maybe some political freedom is good, even though the socialist state must provide economic goods. This way we can use the state to improve the worst off in society. Luntley is not interested these "mixed economy" half-measures. Notice the scorn he heaps on mere "travel brochure" socialists (p. 16). How awful that these types should want to help people realize happier lives, because as stated, people deriving more satisfaction from their lives is not a desideratum. Instead, Luntley argues,

socialists should expend their energies ushering in a brave new world.

Contrary to Luntley's assertion, most liberal political philosophers do not grant individuals "unfettered freedom" with regard to values. Personal liberty *is* a value. Before Luntley and his gang of elites assume this awesome responsibility of telling us how to live our lives, he is going to have to argue more persuasively that we all have an interest in devoting our lives to the service of the state. It is false to say that liberal theorists have no vision of personal development and good societies, just as it is false to charge that capitalists "don't care about the poor." Many liberals conceive of personal (and social!) development arising from the freedom that Luntley mocks.

Adam Przeworski's
The State and the Economy under Capitalism
(New York: Harwood Academic Publishers, 1990)

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This monograph is volume forty in the Marxian Economics section of Harwood's "Fundamentals of Pure and Applied Economics" series. Przeworski, an eminent political scientist, demonstrates amazing breadth in his rather concise treatment of this broad subject matter. As a survey, it would serve well as a supplemental text for advanced undergraduate courses that dealt with the theory of the state and the subject of democracy. The book also just goes to prove (or at least support) my contention that Marxists have something important to offer when they are not trying to take over the world.

Przeworski's main purpose is to explain the relationship between the state and the economy. He systematically presents and dissects the three major theories of democratic capitalism. All three theories are criticized from a variety of theoretical, logical, and empirical perspectives (i.e. not just Marxist). Not surprisingly, all three perspectives are found to contribute something to our understanding of the relationship between the state and the economy, but none represents the conclusive explanation. While Przeworski realizes the value of establishing a clear theory of state capitalism, he can only lament that good empirical studies have not been completed that might direct us to the correct theory.

The first theory is where Przeworski defines the strawman of perfect democracy where the state acts efficiently as a perfect agent of the public. The median voter model of democracy is presented as a foundation for perfect democracy, along with all of the real world and theoretical problems of the model. Perfect democracy and the median voter model are shown to be subject to a variety of conditions and constraints. This discussion is followed by a presentation of the neo-liberal critique (Chicago and public choice perspectives) where all government intervention works against the general welfare of society. The author makes a reasonable presentation of this position and his only retort to the neo-liberal position is that it is not consistent with technical aspects of the median voter model and pareto optimality. Anyone familiar with Austrian economics or the natural/property rights perspectives could easily reinforce the "neo-liberal" position.

The second theory of capitalism is where the state is autonomous, that is, not directly affected by the democratic process. Or, in other words, heaven on earth for politicians and bureaucrats. As a strawman description of capitalism, it falls easily to the logical and empirical criticisms brought forward. However, understanding the conditions that allow the state and its bureaucrats to become autonomous to a degree is worthwhile reading. What is largely left out of the discussion is the growing appeal for state autonomy. Obviously, politicians and bureaucrats do not appreciate the constraints placed on them and would like more autonomy, but citizens and academics are increasingly interested in technocracy and autonomous bureaucracies based, incorrectly, on the success of the bureaucratic and mercantile states of Japan, Korea, and to a lesser extent, Germany.

The third theory of capitalism is that the state is constrained by capital and commercial interests. The Marxist theory of the state sees state intervention as a product of the interests of capitalists and that this state interventionism is responsible for maintaining capitalism in the face of the otherwise overwhelming forces of socialization. The contributions of Offe, Habermas, and Poulantzas are presented and critiqued. Ultimately, however, the author concludes that Marxism has not provided support for its central hypothesis of the theory of the state: that capitalism has only survived because state intervention has nullified the otherwise inevitable historical forces.

As an introduction to the topic and a starting point for establishing a comprehensive theory of the state, Przeworski's work is a worthwhile contribution that incorporates the contributions of many different disciplines and perspectives. One cannot but help notice that a more skeptical view of the state is called for here. Marx himself argued in the Communist Manifesto that the democratic process and state interventionism should be used insidiously to undermine the insti-

tutions of market capitalism. I would not only agree with Marx on this point, but would point out that this process is proceeding apace throughout much of the world, despite the downfall of "central planning."

It also seems clear that the answer to the question, What is the correct theory of the state? is not an empirical decision amongst the three theories. Rather, the answer lies in offering a theory that can incorporate all three theories. For example, I have used all three of his theories as raw material to explain the origins and development of prohibitionism in America in my *The Economics of Prohibition* (Salt Lake City: University of Utah Press, 1991). I did not consider myself eclectic or uncommitted as a result. I was merely describing an historical process that began largely under the influence of theory one, grew under the influence of theory two, and developed into something now best characterized by theory three.

Przeworski, unfortunately does not consider the contributions of Austrian economists and libertarian political theorists. He also exhibits a bias towards democracy and state intervention in the economy. For the readers of *Reason Papers*, these and other drawbacks represent important theoretical problems. However, for classroom instruction they can be easily made to facilitate, rather than hamper, the discussion of important topic of political theory, economic policy, and philosophy.

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