

Reason Papers

A Journal of Interdisciplinary Normative Studies

Articles

- EditorialTibor R. Machan
Is Economics Independent of Ethics?*Jack High*
How the Jacksonians
Favored Industrialization*Paul McGouldrick*
Economic Warfare
in Defense of Liberty*Juliana Geran Pilon*
Choice and Rationality*Antony Flew*
On Improving Mankind
by Political Means*Lester H. Hunt*
Constraining the Choice Set: Lessons
from the Software Revolution*David Levy*

Discussion Notes

- The Randian Argument Reconsidered:
A Reply to Charles King*Paul St. F. Blair*
Is "Flourishing"
a True Alternative Ethics?*David L. Norton*

Review Essays & Reviews

- John Gray's *Mill on Liberty: A Defence*
and Hayek on Liberty*Nicholas Capaldi*
Tom Regan's *The Case for*
Animal Rights*John Hospers*

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Articles	Editorial	Tibor R. Machan	1
Is Economics Independent of Ethics?	Jack High		3
How the Jacksonians Favored Industrialization	Paul McGouldrick		17
Economic Warfare in Defense of Liberty	Juliana Geran Pilon		33
Choice and Rationality	Antony Flew		49
On Improving Mankind by Political Means	Lester H. Hunt		61
Constraining the Choice Set: Lessons from the Software Revolution	David Levy		77

Discussion Notes

The Randian Argument Reconsidered: A Reply to Charles King	Paul St. F. Blair		91
Is "Flourishing" a True Alternative Ethics?	David L. Norton		101

Review Essays & Reviews

John Gray's <i>Mill on Liberty: A Defence</i> and <i>Hayek on Liberty</i>	Nicholas Capaldi		109
Tom Regan's <i>The Case for Animal Rights</i>	John Hospers		113

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Editorial

THIS IS THE TENTH ISSUE of *Reason Papers*. The journal began as a modest undertaking while I was associated with the Department of Philosophy at Fredonia State University College, Fredonia, New York.

We are very proud to have had in our pages some excellent and otherwise inaccessible discussions bearing on interdisciplinary normative matters. We have featured mostly papers and reviews that focus on the role of rationality in evaluating human institutions and on the central prerequisite of rationality, namely, individual liberty.

I have tried to guide *Reason Papers* toward the treatment of topics that I deem vital and not adequately dealt with by other journals. Mainly I have followed the lead of John Stuart Mill, who had great trust in the free marketplace of ideas. Therefore I have tried to feature competent and fair-minded treatments of relevant topics, critical or constructive. This is what will continue to guide the journal in the future.

I wish to thank the staff of the Reason Foundation for production of the journal since 1979. I wish also to thank the associate editors and board of editorial advisors. They have all stood by me in my efforts to make this an exemplary scholarly yet accessible journal. Readers are encouraged to help if they can with making the journal more available to the wider academic, scholarly market.

We look forward to the next ten issues of *Reason Papers* and ask you to let us know your thoughts about it.

TIBOR R. MACHAN
EDITOR
January 1985

IS ECONOMICS INDEPENDENT OF ETHICS?

JACK HIGH*

George Mason University

Economics and ethics naturally come into rather intimate relations with each other, since both recognizedly deal with the problem of value.

—Frank Knight,
“Ethics and the Economic Interpretation”

TODAY, ECONOMICS IS COMMONLY REGARDED as separate from and independent of ethics. It is not simply that the two are different subjects, like mathematics and physics, but that they are disciplines unrelated in any fundamental way. So marked are the differences between ethics and economics, that Lionel Robbins, in one of the most influential works ever written on the nature of economics, wrote “. . . it does not seem possible to associate the two studies in any form but mere juxtaposition. . . . The two fields of enquiry are not on the same plane of discourse.”¹

Because they are seen to be so different from one another, keeping economics and ethics separate is viewed as a highly desirable state of affairs. Economics is a science, and as such is concerned with facts. Ethics, on the other hand, is concerned with values, which are not amenable to the same rigorous treatment as facts. Disputes in scientific theory can be settled by reason, but differences in basic values are, according to one eminent authority, “differences about which men can ultimately only fight.”² With this view of facts and values, economists quite naturally want to put as much distance as possible between ethics and economics. Any trace of values can only contaminate the scientific nature of economics. Kenneth Boulding, in his presidential address to the American Economic Association, expressed the sentiment thus: “We are strongly imbued today with the

view that science should be *wertfrei* and we believe that science has achieved its triumph precisely because it has escaped the swaddling clothes of moral judgment. . . .”³

Economics did not begin as a science independent of ethics. Adam Smith was both moral philosopher and economist. He made no attempt to draw a sharp line between ethics and economics, or to keep the two separate. Indeed, *The Wealth of Nations* is Smith’s attempt to explain and defend a system of natural liberty.

The ethical roots of economics can still be seen in the modern terminology. Value remains one of the standard subjects of economic theory; economists still speak of scarce resources as goods; welfare is a branch of economic theory that still fares well; and wealth, which many eminent economists have regarded economics to be the science of, comes from the root word *weal*, meaning well-being.

Not only was economics born of ethics, but the two subjects possess obvious similarities. Both take as their subject matter human conduct. Both take as their starting point the fact that man is rational, i.e., that (within limits) we can choose among alternatives; finally, both are fundamentally concerned with human values. Pointing out these similarities does not deny that economics and ethics approach their subject matter from different angles. But it does suggest, at the least, that they are not as different as the modern view would have them.

This paper undertakes to show that economics is not independent of ethics. Moreover, it argues that recognizing the connection between the two fields can improve economics. The first section of the paper gives a brief history of how economics separated itself from ethics. The second section shows the intimate connection between economics and ethics. The third section shows the advantages for economics of recognizing the interdependence. The fourth section concludes the arguments.

A BRIEF HISTORY OF THE INDEPENDENCE DOCTRINE

David Ricardo was the first economist to drive a sizeable wedge between ethics and economics. Ricardo was a businessman, not a philosopher. His *Principles* (1817) reflected the penetrating mind of a man of commerce but revealed none of the erudition of Smith. Ricardo described how the produce of society was distributed among workers, landlords, and capitalists. He took the distribution he described as more or less inevitable. He did not discuss either the justice of it, or alternative social arrangements to contemporary England. As one commentator put it, Ricardo put economics on a diet, and it lost the weight of its ethical content.⁴

Ricardo did not separate economics from ethics through argument, but through example. The task of arguing for an ethics-free economics fell to Ricardo’s successors, Nassau Senior and John Stuart Mill.

Economics declared its independence from ethics in 1836, the year

Senior published *An Outline of Political Economy* and Mill published "On the Definition of Political Economy and on the Method of Investigation Proper to It."⁵ The line of argument first set down by Senior and Mill was enlarged and refined by John Cairnes (*The Character and Logical Method of Political Economy*) and later by John Neville Keynes (*The Scope and Method of Political Economy*).⁶ The doctrine that economics is independent of ethics is in large part the legacy of these four economists.

The main propositions of the independence doctrine are ably presented by John Neville Keynes. Keynes noted that economics as a positive science is distinct from economics as an art of advising or prescribing policy. We can explain economic phenomena without passing judgment on their worth, and without comparing them to any ideal standard.⁷

So obvious did Keynes deem this proposition that he called it a truism, and set about examining why anyone doubted it. He found two reasons: a) Moral judgments *can* be applied to economic actions; and b) the economist *must* study the effects of moral forces. However, neither the possibility of morally judging economic acts nor the necessity of studying moral forces made economics a moral science.⁸

Keynes gave three reasons for freeing economics from ethics. First, we can gain in mental clarity if we study one discipline at a time. Second, combining them gives people a false image of economics; the general public begins thinking of economics as policy. Finally, studying a narrower range of phenomena encourages agreement among economists by removing a source of disagreement.⁹

Despite his advocacy of independence, Keynes did not believe that economics and ethics should never meet. No one wants to stop short at positive economics, he assured his readers. Positive economics is not an end-in-itself, and no solution to a practical issue is complete until the ethical aspects are considered. Therefore, economic policy cannot be discussed without also discussing ethics.¹⁰

The main tenets of the independence doctrine had been worked out by the time of the marginal revolution in economics (ca. 1870–1900), but much as that revolution did to turn economics on its head, it left the independence doctrine intact. W. Stanley Jevons restricted his ethical comments to a general endorsement of utilitarianism, whence the doctrine had originated.¹¹ Carl Menger, in his fight over method with the German Historical School, affirmed the essentially distinct natures of economics and ethics.¹² Leon Walras made no separation of economics and ethics in his pioneering *Elements*, but his most famous disciple, Vilfredo Pareto, did.¹³ Thus did all three strands of the marginal revolution endorse the independence doctrine of the classical writers.

Although economics had declared its independence from ethics by the turn of the century, economists still gave ethics a high place among those subjects that economists should study. Taking account of moral forces in economic life and formulating public policy were important

tasks for which economists needed a knowledge of ethics. As Keynes said, "No one desires to stop short at the purely theoretical enquiry. It is universally agreed that in economics the positive investigation of facts is not an end in itself, but is to be used as the basis of a practical enquiry, in which ethical considerations are allowed their due weight."¹⁴

Today, most economists do stop short at the positive inquiry. Ethics is no longer included as a part of the training for economists, and most economists that comment on ethics do so only in passing. Economists were so casual about their ethical pronouncements that T. W. Hutchison, in 1964, complained that he could find nothing but ethical *obiter dicta*, despite the fact that these *dicta* often flatly contradicted one another.¹⁹

Notwithstanding the widespread opinion that economics is independent of ethics, there are considerable grounds for doubting it. The next section argues that economists have not defined some of their most important terms without implicit recourse to ethics.

THE INTIMATE TIE BETWEEN ETHICS AND ECONOMICS

No term is more central to economic theory than "market economy." Economics studies how the market economy works, how its operation is modified by government involvement, and how the market economy differs from the socialist economy.

To differentiate market from government activity, the market is defined as a system of voluntary exchange, whereas government is defined as the apparatus of compulsion and coercion. To differentiate the market economy from socialism, the market is defined as a social system resting on private ownership of the means of production, whereas socialism is defined as a social system resting on public or government ownership of the means of production.¹⁶

To define a market economy without relying on ethics, we first must distinguish between voluntary action and coercion, and between private and public ownership, without relying on ethics. Moreover, our definition must draw a line between market, government, and socialism. This, we will argue, economists have not done.

Voluntary Exchange and Coercion

One method by which economists have distinguished voluntary from coerced action is to employ the "budget constraint" or "opportunity set." These concepts refer to the quantities of goods that a person can buy with his income. If person A's cooperation with person B increases A's income or utility, then A's actions are voluntary. Coercion, then, is defined as "*induc[ing] cooperation by withdrawing or otherwise reducing people's options.*"¹⁷ As long as options and income are independent of ethics, so is this distinction between voluntary and coercive action.

This definition of coercion errs in one and possibly two directions. First, it includes actions that we would not normally think of as coercive, and that are usually regarded as part of market activity. Second, it excludes actions that we would normally think of as coercive, and that are usually regarded as part of government activity.

As an example of the first error (i.e., including actions that are not coercive), consider the following:

Person A owns a retail shop frequented by customer C. The ownership of his shop nets A \$20,000 per year. Then competitor B opens a shop and vies for the business of C by offering a lower price than A. C then approaches A, tells him of the lower price offered by B, and says, "I will continue to patronize your shop only if you match the lower price of B." As a result of C's actions, A is induced to cooperate (exchange) with C, but his income is reduced to \$15,000 per year.

The example is pedestrian. Market competition commonly empowers consumers to induce cooperation by lowering the options of sellers. One of the reasons that competition is considered to be a virtue is that it takes away the businessman's option to charge a higher price and increase his profits. If we are to consider this coercion, then we cannot claim that the market is a system of voluntary exchange. On the contrary, the market is riddled with the coercive effects of competition.

An example of the second error (i.e., excluding actions that are coercive) is equally easy to construct. Assume that firm A, which has the right to pollute the air around its factory, pours smoke into the air, which carries over to the neighborhood. The people in the neighborhood, we will assume, would prefer less pollution, and would be willing to compensate the firm if it would cut back its pollution. But, because of high "transactions costs," it does not pay any one person or small group to organize, collect the funds, and strike a bargain with the factory owner. Into this situation steps the government. It passes a law limiting the amount of pollution, increases taxes on the households in the neighborhood, and pays the increase in taxation to the firm as compensation for reduced pollution. The government does all this, we will assume, in such a way that both the firm and the neighborhood are better off.

This kind of example is commonly offered as a justification for governments to tax and subsidize. Government action in these situations is supposed to make everyone better off. It is supposed to make available to everyone an option that is not feasible in the absence of government. Quite obviously, this takes government out of the realm of coercion, because it does not reduce options. To the extent that government action is beneficial, it is not coercive. We cannot then distinguish between the market and the government on voluntary/coercive grounds. Taxation and threats of imprisonment are classified as voluntary as long as they serve the general welfare.

The crucial issue here is the placement of the benchmark against which we measure a reduction in options. In our first example, the customer was able to "coerce" the seller by threatening to take his

business to a competitor. This reduced the seller's options compared to what they would be without a competitor. But if we do not believe a businessman has a right to exclude competitors, we do not regard this as a relevant benchmark, and we do not believe he has been coerced. In our second example, the ultimate outcome was beneficial to everyone. But it was achieved through taxation, which threatens imprisonment to anyone who does not pay. If we believe in each person's right to liberty, threatened imprisonment is coercion, even though the ultimate outcome is favorable.

Without ethics, economics offers no guidance on where the benchmark should be placed. Consequently, we get no firm boundaries separating voluntary from coercive action. We are able to construct examples that give peculiar meanings to "coercive" and "voluntary" precisely because we can set the benchmark where we please.

F. A. Hayek offers a somewhat different definition of coercion than Heyne, but with the similarity that coercion is defined without recourse to ethics. For Hayek, "Coercion occurs when one man's actions are made to serve another man's will, not for his own, but for the other's purpose."¹⁸ Coercion does not negate choice, but it manipulates the alternatives so that the person being coerced does what the other wants. "Coercion is the control of the essential data of an individual's action by another. . . ."¹⁹

Although this definition of coercion is narrower than Heyne's, it still includes in it many actions that would normally be considered part of the market. Consider, for example, a worker who is choosing between occupation A and occupation B. The owner of firm A keeps raising the wage offer so that the worker finally goes to work for firm A, which is what the owner of the firm wanted. He has manipulated the essential data facing the worker to make the worker serve his (the owner's) purpose.

It might be objected that the worker is not coerced on Hayek's definition, because the worker is serving his own purpose in taking the job. This is true, but it is also true that *any* action serves the purpose of the actor. A man who hands over his wallet in exchange for his life is taking an action that serves a very definite purpose for him. It is impossible to conceive of an action that does not serve some purpose for the actor; if it did not serve any purpose, it would not be an action. Purposiveness is the defining characteristic of human action.²⁰

Hayek denies that submitting to terms of trade is normally coercive. "The decisive condition for mutually advantageous collaboration between people based on voluntary consent rather than coercion, is that there be many people who can serve one's needs, so that nobody has to be dependent on specific persons for the essential conditions of life or the possibility of development in some direction."²¹

If, however, lack of dependency on particular persons for what we need is made the basis for voluntary behavior, then the term "voluntary" can be stretched a long way. If customer C is told he will have his arm broken if he buys from firm A, and at the same time C can also buy from firm B, then we cannot say that C has been coerced.²²

Threats of this kind would certainly not be considered part of the market behavior, yet we cannot exclude them on Hayek's definition. Here again we see that we cannot delimit the market economy using a definition of coercion that ignores ethical considerations.

Economic Ownership of Property

The distinction between voluntary exchange and coercion that is drawn on purely economic grounds (i.e., in terms of the subjective preferences of those who participate in social interaction) gives us an inaccurate meaning of what we usually mean by coercion. Not so with economic ownership or property. Here we can discern both a meaningful and accurate definition using only economic terms.

Ownership, in its purely economic sense, means control over a resource. Whenever resources are scarce, control is important, because only by controlling resources are we able to achieve our ends.²³

Control over a resource may be private, or it may be joint (or common, or public). Private ownership is exclusive control by a single person; joint ownership is control by two or more persons. Control is ambiguous; it can mean either the physical operation of a good, or it can mean the decision to operate the good in a particular way. Secretaries own the paper they type on in the first sense. Whoever instructed a particular secretary to type owns the paper in the second sense.

Both senses admit of private and joint ownership. A crowd watching a movie exercises joint physical control; a board of directors of a corporation exercises joint control of decision.

Distinguishing between private and joint ownership can give the impression that the purely economic meaning of ownership is sufficient to distinguish between a market economy (in which ownership is private) and socialist economy (in which ownership is public). However, this is not true. Economic ownership is a relationship between individuals and goods, not a relationship between individuals and individuals. Economic ownership refers only to the actual control of goods, not to the sanction of such control.

Private ownership in the purely economic sense pertains to how a good is used, not to how the good is acquired. A thief who steals a car exercises private ownership over the car as much as a man who buys a car.

Because economic ownership ignores the means by which control over goods is acquired, it cannot distinguish between a market economy and a socialist economy. An economy ruled by a dictator who controlled all the land, labor, and capital goods would be a private economy in the economic sense. It would, in fact, be more privately owned than a market filled with joint stock companies.

Property Rights as Moral Claims

“Right, as a noun, and taken in the *abstract* sense, means justice, ethical correctness, or consonance with the rules of law or the prin-

ciples of morals.”²⁴ We see in the legal definition of a right that the term is defined in a moral sense. In this section we will see that, by taking a *particular view* of what is moral, we can then define the terms coercion and voluntary exchange so that their meanings correspond to normal usage. We can also see that a system of private property rights does characterize the market economy and distinguish it from a socialist economy.

The particular moral approach to defining the market economy outlined here is a natural rights approach. (The classical source of the natural rights doctrine is John Locke’s *Second Treatise of Government*. A modern statement is given by Tibor Machan in *Human Rights and Human Liberties*. The outline presented here is largely taken from Murray Rothbard’s “Justice and Property Rights” in *Property in a Humane Economy*, edited by Samuel Blumenfeld.)

The doctrine of natural rights holds that it is proper for each person to own himself. What it means to be human is to be rational, to exercise our faculty of choice. Since a person cannot be human without exercising his power of choice, i.e., without controlling his own actions, it is therefore proper that a person control his own actions. Control over one’s own actions is what we mean by self-ownership; that it is proper for a person to control his actions is what we mean by right of self-ownership.

To deny a person right of self-ownership is to give someone else moral claim over the person’s actions. To deny a person right of self-ownership is to morally condone slavery.

For a person to exercise his rational faculty, he must be able to gain control of resources. As long as resources are not scarce, or as long as there is no one else around to also exercise control over resources, the extension of self-ownership to ownership of goods presents no problems. But if resources are scarce, and there are others around who also want to control them, then we must find some rule for extending self-ownership to the ownership of goods. This rule must, of course, be applicable to everyone.

The most common solution to the “extension of self-ownership” problem is the homestead principle. The first person who discovers and appropriates a resource has moral claim to it, and can use the resource in any way that does not violate a previously established claim.

If we accept the doctrine of natural rights, we can sensibly distinguish coercion from voluntary exchange. Coercion is any action that violates a right, voluntary exchange is any exchange that respects rights.

If we return to our example of the customer who threatens to quit patronizing seller A and begin patronizing seller B, and thereby induces A to lower his price, we can clearly see why A has not been coerced. A has no moral claim over C’s patronage nor over B’s business. Even though A’s options (income) have been reduced, he has not been coerced, because his actions are not the result of rights violation.

Using the doctrine of natural rights, we can also define the market

economy in a way that clearly distinguishes it from socialism. The market economy is a social system based on the right of property. It is a social system that permits any act that does not violate the right to self-ownership or the right to control justly acquired property. It is also a social system that prohibits any violation of rights. In other words, a market economy is a system of “voluntary” exchanges, where voluntary means consent of the rightful owner.

How does our definition relate to the definition of the market economy as a social system based on private ownership of the means of production? Our definition suggests that private ownership does *not* refer to the economic sense of that term. It does not mean single as opposed to joint ownership. Rather it means private ownership in the sense that *each person* has control over himself and his property, as opposed to that control being vested in an official body called government. It means private in the sense of private citizen as opposed to government official.

Socialism is a social system that does not recognize right of self-ownership or right of people to appropriate resources from nature and to exchange. It restricts ownership of resources to a ruling elite.

How does our definition relate to the definition of socialism as public ownership of the means of production? Again, our definition suggests that public ownership is not being used in its economic sense of common or joint control of a resource. It is being used in the sense that contrasts private citizen with government official.

Not only does the doctrine of natural right enable us to distinguish voluntary exchange from coercion, and to distinguish the market economy from socialism, it also gives property rights many of those characteristics that modern economists working in this field have ascribed to them. The moral claims to control resources “serve to delimit the alternatives open to choice-making individuals in a society.”²⁵ They “help a man form those expectations which he can reasonably hold in his dealings with others,” and they “convey the right to benefit or harm oneself or others.”²⁶ If property rights are moral claims to control resources, then “property rights do not refer to relations between men and things but, rather, to the *sanctioned behavioral relations among men that arise from the existence of things* [viz., scarce resources] *and pertain to their use.*”²⁷ Finally, these moral claims are “a method of assigning to particular individuals the ‘authority’ to select, for specific goods, any use from a nonprohibited class of uses.”²⁸

To avoid misunderstanding, perhaps the argument of this section should be summarized. *If* we accept the doctrine of natural rights, *then* we can distinguish between a market economy and socialism. We can define a market economy as a system of voluntary exchanges, because we can distinguish between voluntary and coercive acts in such a way that these words conform to common usage. Finally, we can ascribe to property rights many of those properties that economists have attributed to ownership, something we cannot do if we stick to the purely economic meaning of ownership.

Non-Ethical Property Rights

Much of the literature on the economics of property rights leaves the distinct impression that rights have nothing to do with ethics. This impression is sometimes conveyed by discussing some aspect or other of property rights without ever defining the term. W. Craig Stubblebine, for example, talks about property rights delimiting people's choices, and Demsetz credits property rights with helping people form expectations. Neither author properly defines property rights, and since delimiting choice and forming expectations are not necessarily ethical ideas, we are left with the impression that property rights are not necessarily ethical.²⁹

The impression that property rights have nothing necessarily to do with ethics is reinforced by our thinking that rights are nothing more than legal titles assigned by the state. If we do not further reflect on how the state assigns titles, or reflect on the meaning of the state, we can use the term property rights without ever considering whether or not we are using an essentially moral term.

Those economists who more carefully define property rights use terms that are more suggestive of moral judgments. Erik Furubotn and Svetozar Pejovich, for example, define property rights as "sanctioned behavioral relations among men."³⁰ Armen Alchian defines property rights as the "authority" to use resources in particular ways.³¹ "Sanction" and "authority" are not necessarily moral terms, but they can be moral terms.

This is not to deny that sometimes the sanction is not moral, but coercive. The state often compels us to act in ways that we do not morally sanction. We act only out of fear of being coerced. Property titles can be established through the coercive power of the state.

However, property titles established this way provide no basis for distinguishing between a market economy and a socialist economy. If we look on property rights as merely what the state says they are, then the Soviet system is as much a system of property rights as is the United States. The workers of the Gulag are working under a system of property titles assigned by the state fully as much as the workers of Los Angeles are. If we do not have some underlying moral standard by which to judge the actions of the state, any system they establish must be a system of property rights.³²

REASONS FOR RECOGNIZING ECONOMICS' DEPENDENCE ON ETHICS

In addition to distinguishing between market, government, and socialism, there are several other reasons for recognizing that economics depends on ethical distinctions.

First, there is a close connection between the kinds of judgments philosophers make in dealing with ethics and the kinds of judgments that economists make in dealing with method. That is, the economist

must make methodological value judgments. Even if we accept Vincent Tarascio's claim that there is a difference between methodological and other kinds of value judgments,³³ there is also an obvious similarity. Methodological arguments prescribe the kinds of activities that economists should follow if they wish to advance their science. These arguments involve not only reasoning about the means to be employed, but also conceptions about what science is, or should be. This procedure parallels the philosopher prescribing the activities that men should follow if they wish to live the good life. Philosophers, of course, have a good deal more experience at this trade than economists, and it is reasonable to presume that they should have something to teach us on this score.

Second, the increased knowledge of ethics should improve the policy prescriptions of economists. Economic policies, like any other actions, can be judged by ethical standards. If economists recommend policy on economic grounds, but ignore the ethical side of those policies, they can endorse policies that promote harmful moral principles, principles that the economist himself might disagree with if he reflected on them.

For example, economists often recommend policies on the grounds of economic efficiency. As long as the efficient use of resources takes place within a social system that respects rights, this is a desirable aspect of economic activity. But what about advocating the draft as an efficient means of raising an army quickly? What about advocating that an employer withhold a worker's income as an efficient way of collecting taxes? Even if these policies are efficient, are they desirable?³⁴

Third, a knowledge of ethics may also improve the strictly theoretical part of economics. One of the noticeable imbalances of theoretical economics is that entrepreneurship is confined to the producers' side of the market. Ludwig von Mises, Joseph Schumpeter, and more recently Israel Kirzner have drawn our attention to the driving force of the entrepreneur, who, in an effort to capture profits, creates new products and new production techniques. Entrepreneurship is the active, creative part of human intelligence, but, strangely enough, this idea is applied only to the producer. What about the consumer? In our role as spenders of our hard-earned income, do we not also try to be alert and creative? Do we not try to formulate values that will lead us toward happy and fulfilling lives? Do we not modify our values and our consumption patterns in the light of our experiences and reflection?

Entrepreneurship on the consumers' side of the market leads directly into the territory of moral values. This was the territory Frank Knight was exploring in "Ethics and the Economic Interpretation."³⁵ Knight emphasized that we take neither ends nor means as given, that the kind of life we lead is important to us, that life is fundamentally an exploration in values, and that the economist should recognize the shifting, provisional nature of both ends and means in economics. Knight's essay may be looked at as an attempt to employ ethical

knowledge in order to redress the imbalance between the economics of the producer and the economics of the consumer.

Another interesting relationship between economics and ethics should be mentioned here. One of the functions that moral principles perform for us is delimiting our range of choice. Our minds simply cannot hold before us *all* the possible alternatives among which we could conceivably choose. We need some filtering device that screens out less desirable alternatives. Moral principles are one way we do this.³⁶

Another advantage of exploring the relationships between economics and ethics is that it would give economics a broader and more humane focus. It would help economists focus on the rich context within which economic choice is made. It would emphasize that economics is more than the study of maximizing, it is also the study of social order, which requires the acceptance of moral principles.³⁷

In sum, incorporating ethics into economics will make us more cognizant of the effects of our policy, will improve our theory, and will give economics a broader and more humane focus.

SUMMARY AND CONCLUDING REMARKS

This paper has presented three related arguments: 1) Economic definitions of "voluntary" and "coercive," and of "rights" or "ownership," do not enable us to distinguish between the market economy, government, and socialism in any reasonable way; 2) by using ethical standards to define these terms, we can sensibly distinguish between market, government, and socialism; 3) recognizing that economics is not independent of ethics can improve economic method, policy, and theory.

Two concluding implications about the significance of these arguments deserve brief mention. First, we have not surveyed all the definitions of market, government, and socialism that exist in economic literature. Even if we had, we would not foreclose the possibility of defining these terms on strictly economic grounds. Nevertheless, the definitions of market, government, and socialism we have analyzed are certainly common, and it is significant that these common definitions implicitly rely on ethics. Value judgments have not yet been exorcised from economic theory.

The second implication to which we wish to draw attention concerns *wertfreiheit* in economics. The use of value judgments to define those methods of acquiring resources that fall within the scope of market activity and those methods that fall within the scope of government activity does not require the economist to agree with those value judgments. That is, we can characterize the market economy as "acquisition and use of resources that respect natural rights" without endorsing the ethical correctness of natural rights. Indeed, a socialist

who defined the market this way could attack the market by attacking the moral precepts on which the market rests. Therefore, accepting the proposition that economic definitions depend upon ethical judgments does not involve the economist in taking a stand on moral issues. In this sense, the much-cherished “value-freedom of economic science” is left untouched by our central thesis.

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HOW THE JACKSONIANS FAVORED INDUSTRIALIZATION

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IN TRADITIONAL AMERICAN HISTORIOGRAPHY the Jacksonians headed a coalition of farmers, planters, and (since Arthur Schlesinger, Jr.) workingmen that fought attempts of business interests to use the federal government to promote industrial growth. By refusing to renew the charter of the Second Bank of the United States, Andrew Jackson curtailed credit for businessmen and threw the currency into disarray. Jackson and his successors also curtailed the federal government's role in financing infrastructure (then called internal improvements) needed for manufacturing and urban growth. They fought for lower tariffs and eventually succeeded in passing the 1846 and 1857 tariff acts substantially reducing protection for important branches of American manufacturing such as cotton textiles. Leaving the regulation of banking to the states promoted wildcat banking and hence an unsound currency that made business payments among regions more uncertain as to real value. Making the public domain more accessible to farmers robbed industry of labor. The consequence is that industrial growth was slowed until the triumph of the Republican Party during the Civil War changed federal policies from those attacking to those supporting business.

This view is badly overdrawn and positively misleading at many points. It confuses the pecuniary interests of some antebellum businessmen with policies conducive to industrial growth. In fact, the Jacksonians did very well in laying the foundation for sound, sustainable growth of the manufacturing sector; or at least, they did not harm that growth as earlier historians had alleged.¹ This new view is based on research of the past 30 years, which needs to be integrated. The researchers were dealing in specialized, isolated problems, often with new quantitative methods, which makes for good scholarship but bad synthesis.

BANKING

One prerequisite to industrialization is the development of a banking system that makes credit available in large amounts and issues a currency. Here, the indictment runs, the Jacksonians demolished the Second Bank of the United States and thereby deprived the American economy of a bank exercising some, but not all, of the functions of a modern central bank. As a consequence, wildcat banks mushroomed, currency was overissued, and the economy was subjected to output cycles of monetary origin. The Second Bank, it was argued, had checked excessive notes; once it was destroyed, banking excesses could and did flourish.

In the classic accounts of Bray Hammond and Arthur Schlesinger, Jr., these policies are treated almost exclusively in a political context.² These stories do bring out a central philosophical tenet of the Jacksonians: their extreme commitment to the tenets of *laissez faire* and their hostility to what we today call mixed public-private enterprises. But Hammond in particular emphasizes that the Jacksonians had much business support, in particular a restive Wall Street chafing under what it termed domination by State Street in Philadelphia where Nicholas Biddle of the Second Bank held sway. Other businessmen, in his account, resented state as well as federal restrictions on bank chartering and swelled the anti-Bank coalition. The Jacksonians had widely different opinions, also, on a proper monetary constitution. Some like Andrew Jackson himself and Sen. Thomas Hart Benton of Missouri wanted only gold and silver as means of payment and objected to all notes issued by banks as inflationary or involving forced redistribution of wealth from one to another group. These were perhaps the true agrarians. On the other hand, entrepreneurs wanted maximum possible access to bank credit and argued (when they did not ignore the point) that unregulated note issue by competitive, individual banks was desirable for two reasons. The United States was on the gold standard after all, so that banks overissuing notes (and by implication, deposits) would lose gold reserves as a consequence. If they ignored this lesson, they would fail and lose their stockholders' capital. The public also preferred notes to gold, so that notes were a costless method of supplying the public with currency and of economizing on imports of gold and silver for coinage.³ And since opinions differed so widely among Jacksonians, they adopted different rules in different states. In New England, capital abundance and a satisfactory self-regulating system of bank control (the Suffolk system) induced the Jacksonians to leave banking alone. In New York, entrepreneurial thirsts for credit led to free banking, while Louisiana planters restricted banking to short-term credit and some Western states even experimented with prohibitions of note issues.

But matters that loom large in political history often have surprisingly little impact on economic growth and development, and this is no exception. For example, was wildcat banking so destructive of the value of money as Bray Hammond and a predecessor, Ralph Catterall, had charged? A new economic historian, Hugh Rockoff, measured the extent of destruction by a cross-section study of dis-

counts of bank notes from par before 1860.⁴ First, he used economic theory to construct a model that an efficient market in bank notes, created by brokers (note-shavers) who brought up notes in cities remote from points of issue in order to redeem them at the issuing point, would create quotations measuring for each bank the percentage discount of its notes from par. This published quotation data would also measure the extent of overissue, by the volume of transactions and the identity of banks with serious discounts from par. This enabled quantitative testing. The greater the wildcatting, the greater would be the discounts and the volume of transactions as well as the number of banks where discounts exceeded costs plus normal profit on redemption.

After laborious and careful calculation, Rockoff found that the Jacksonian advocates of free banking were right: overissue of notes was impossible for the banking system as a whole under gold standard rules. For in the aggregate, the depreciation of all notes issued by all banks was less than 2 percent of their combined face value. This is a far cry indeed from the "orgies" of excessive note issues often mentioned in the traditional history of the era! Apparently the gold standard worked reasonably well in the entire absence of Nicholas Biddle's forcing of redemption during the 1820s as chronicled by Bray Hammond.

MACROECONOMIC PERFORMANCE

Of course, overissue of money by banks may not result in depreciation of notes of individual banks if all banks move together. In this case, the expansion of money supply generates automatically an expansion of the demand for money, as bank lending starts the familiar Keynesian sequence of rising investment and income. The traditional history asserts that the destruction of the Second Bank caused precisely this expansion of the money supply from 1832 to 1837, hence a boom. But the boom collapsed when prices had risen above the international level, causing the severe business contractions of 1837 and 1839. By implication, then, the preservation of the Second Bank would have avoided the slump by avoiding the preceding boom.

Here, consider the iconoclastic historian Peter Temin. In *The Jacksonian Economy*, Temin used his own research and that of Richard Timberlake, Douglas North, Hugh Rockoff, and others to conclude that the 1832-37 boom had nothing at all to do with the abolition of the Second Bank. Instead, it resulted from a wave of foreign investment in American securities that coincided with long-cycle peaks in the prices of American export goods, particularly cotton. Added to these igniting forces was an autonomous inflow of specie due to a substitution of bills of exchange on London for Mexican silver in satisfying the normal American and European deficits in the goods trade with China.

How did Temin reach this conclusion? His method was simple though powerful. If the forces igniting the boom were domestic monetary ones, we should have seen American banks, now freed of Second Bank supervision, diminishing their specie reserves relative to their notes and deposit liabilities as they overissued the latter two. But

such a fall in aggregate specie/money ratios never occurred; in fact, ratios of specie to money liabilities remained just about constant or improved right up to the peak of the boom in 1836 and early 1837. Hence money behavior was passive, not active as the traditional history was implied. And if banks kept historically adequate reserves throughout, the Second Bank would have made no difference at all since its primitive form of central banking operated only to curtail a decline, not to force a rise, in this key ratio during a boom. (In addition, the Second Bank had never operated to counter flows of specie, only to police note issues.)

So the absence of the Second Bank made no difference to events. But others might charge, and have charged, that in a broader sense, the Jacksonian economy stands convicted of gross instability. Did it matter to the farmer losing his markets or the worker losing his job whether unstable banking or unstable investment was the culprit?

Here, Peter Temin concludes that, in fact, the instability of the American economy was very small *in real terms*. It is true that prices and wages first soared and then plummeted, but not real output and employment. Using Robert Gallman's figures, Temin demonstrated that real output of the American economy grew at a normal, or even above-normal, pace from the mid-1830s to the mid-1840s. Since prices were flexible downwards, the 1837 and 1839 crises were short and were succeeded by strong rebounds, avoiding anything remotely like the Great Depression of the 1930s. Speculators of all classes took a bath, but growth went on. Concerning income distribution, workers improved their real incomes as prices fell faster than wages after 1837. In a phrase, *laissez faire* worked when coupled with flexible prices and wages. Thus, any monetary instability (and the demise of the Second Bank of the United States did *not* seem to increase this) had minimal consequences for mass welfare. More work is needed to assess real as well as nominal swings in the American gross national product (GNP) after 1840, but the unpublished Gallman annual estimates of real GNP would appear to back up this conclusion for the entire 1832-1860 period when the Jacksonians were generally in power in Washington.

PROTECTIVE TARIFFS

According to conventional thinking (see many textbooks on economic development), high protective tariffs are highly desirable in a developing country for encouraging industrialization. After failures during the 1830s, the Jacksonians finally succeeded in bringing tariff rates down substantially in the 1846 Walker tariff act and the 1857 act. But did this slow down industrialization? Not according to a seminal study of New England cotton textiles by Paul David, "Learning by Doing."⁵ In this and a later article, David found by econometric analysis that American cotton textiles did not need tariff protection to expand at just about the pace that it actually did with protection. Tariff protection is supposed to favor the establishment of industries that can compete in the long run by making it possible for infant firms to

cover costs and make a profit during the initial period after founding when costs of production are abnormally high relative to their long-run level. But, asks David, why wouldn't private capitalists see the long-run profitability of such industries and hence be willing to subsidize immediate losses during the initial learning, high-cost period?

David then tested the tariff-infant industry argument as follows. If learning by doing (and hence reduction of production costs) was associated with output, there would be some backing for the infant industry argument for tariffs. For companies would have to produce in order to reduce costs, and to produce they would have to sell. But if learning-by-doing was associated solely with the passage of time, there is no argument for tariffs. Private capitalists could expect costs to fall regardless of sales; therefore they would be willing to invest as long as the discounted present value of profits in the more distant future exceeded the discounted present value of losses immediately after firms were founded.

David then applied econometric tests of these competing hypotheses and found that time, not cumulated output, explained cost reductions. Accordingly, the high tariffs prevailing from 1816 to 1846 were presumptively unnecessary for growth of the New England textile industry. By inference, therefore, the Jacksonian tariff reductions of 1847 and 1857, for cotton cloth, were not harmful to continued expansion of cotton textiles.⁶ This conclusion is also supported by this writer's findings published in *New England Textiles of the 19th Century, Profits and Investment*. There was a very pronounced sag in profits per dollar of invested capital, for a sample of seven to eleven cotton textile companies with standardized accounting, during the 1850s. The decline also extended to a much larger sample showing dividends divided by market value of shares. Nevertheless, expansion of the industry did *not* decline during the 1850s, whether measured by number of spindles, yards of cloth, or pounds of output. By inference, therefore, protective tariffs resulted only in forced transfers from consumers and suppliers to factors of production in the industry; they did not appreciably stimulate industrialization.

More work is needed to test whether this negative verdict on tariffs also holds for other industries. But cotton and wool textiles were important in themselves, and Robert Fogel's study of railmaking, in *Railroads and American Economic Growth*, does not suggest that tariffs were an important factor in this branch of steel manufacturing. Albert Fishlow reached even stronger conclusions in this vein.⁷ So if tariffs were not stimulative in the leading iron-steel and textile industries, where did they help?

Moreover, there are dynamic as well as static-efficiency reasons for applauding the Jacksonian tariff cuts as even positively favoring efficient industrialization. First of all stands a fact: it is now established that industrialization was well under way prior to the Civil War. When reasonable assumptions are made on the division of Robert Gallman's estimates of gross fixed capital investment between manufacturing

and other industries, not even a post-Civil War speedup in industrial growth is implied.

Secondly, tariffs had negative as well as positive consequences even in industries where cost reduction depended on cumulated output rather than time. Tariff protection substitutes political log-rolling and other political activity for innovative activity by industrial managers. Time spent agitating for tariffs is time lost for the latter. The most promising product specializations are apt to be neglected, and the least promising favored, in tariff setting because the surplus to be obtained from forming political coalitions is greater for potentially less profitable than potentially more profitable firms. If, for example, the short-run price for firms in two output lines is standardized at one dollar per unit with tariff protection but the price without tariffs would be ninety-five cents for firm A but a very low sixty cents for firm B, firm B has much more of an incentive to shoulder the costs of forming a tariff-increasing coalition than does firm A.⁸ Moreover, it seems reasonable to infer that there is a high positive correlation between short-run and long-run costs when the correlation is among firms. If this holds, the industries investing in political action will tend to be those with the least, not the most, chance of eventually being able to do without tariff protection or even having a comparative advantage in world markets. This model accords well with the dreary experience of import-substitution policies among today's developing countries.

We should also remember that, by and large, American agriculture had a comparative advantage in world markets, prior to the 1860s or even later. Hence any counterfactual decision to force industrialization by maintaining or increasing pre-Jacksonian tariffs would have meant static efficiency losses. And this is not all. If elasticities of transoceanic migration of labor and capital were high enough, this would have imposed a serious negative feedback on manufacturing growth because fewer farmers and less capital would have reduced the internal market for manufacturing output produced here. Even neglecting the dynamic efficiency point just raised, perhaps by positing an unworldly Platonic philosopher-king model of tariff setting, a dynamic model by which lower tariffs meant greater manufacturing growth in the long run does not seem inherently unreasonable from our knowledge of labor migration patterns that we owe to Jeffrey Williamson and others.

INTERNAL IMPROVEMENTS

According to many economists and historians, state aid to transportation ("internal improvements," in the political terminology of the 1820s and 1830s) was very useful if not indispensable to agricultural and industrial growth. In their thinking, the private sector cannot raise the capital needed for ports, railroads, canals, and roads because of lumpy initial capital requirements and/or large initial losses before economic growth induced by the projects bails the latter out and

makes them privately profitable. In addition, the state can capture benefits conferred on other parties by the transportation projects, by means of taxation levied on those receiving the benefits, while private investors cannot. Hence, government financing of transportation infrastructure is necessary if development is to proceed at an optimal pace; for the former requires building ahead of demand. This argument was captured in a sentence by Walt Whitman Rostow in his *Stages of Economic Growth*: "you either build the line from Chicago to San Francisco or you do not: an incomplete railroad line is of limited use."⁹

This argument was countered by Albert Fishlow in *American Railroads and the Transformation of the Antebellum Economy*. The argument that extensive government aid to railroads at the national level was desirable must imply that railroads had to be built ahead of demand; otherwise, it would follow that demand would have been sufficient at the outset to yield a normal or above-normal profit to railroad owners without federal subsidies or other aid. But Fishlow found abundant evidence that, in fact, the opening of new farmland to settlers was *not* retarded by any failure of railroads to plunge into empty space before settlers arrived. For railroads and farmers alike could and did think ahead and exchange information with each other, so that settlers used market information to arrive in large numbers ahead of the actual construction of railroads in territories where they were planned.¹⁰ And the tremendous vigor of railroad construction prior to 1860 implies no retardation of construction in the antebellum years by reliance on private and *local* government funds. The use of the latter also bears on the familiar argument that private construction of transportation and other social infrastructure would be insufficient because, say, a railroad privately financed could not capture increases in value of the property of farmers, merchants, and other capitalists. In fact, however, towns and countries were competing for railroad lines; therefore they were willing to contribute to construction costs by grants of locally owned land, purchase of railroad securities, and the like. After detailed investigation, Fishlow found that few or no opportunities were missed by such competition among railroads and local governments for funds and lines respectively. Indeed, there were more cases of overbuilding than underbuilding; and significantly, several cases of socially unprofitable lines were found where state, not local, governments had used the Rostow argument and constructed with public funds railroads plunging into empty territories.

Of course, this conclusion does not apply to canals as a matter of fact; Carter Goodrich has documented the overwhelming importance of government financing and operation at the state level. But states were subject to balanced-budget rules and competed with each other for traffic, so that their activities fit without too much difficulty into a private-enterprise paradigm. And such state construction rested on a capital market imperfection that later eroded away under Jacksonian rules. In the era of canal building from the War of 1812 to the 1830s, securities markets were well established for governments (particularly

in England) but almost nonexistent for private companies, according to the conventional story. Hence governments could raise capital at a low cost while private companies could not; hence government operation was optimal. In addition, canals were much simpler to operate than were railroads because canals did not own the vehicles using them; thus bureaucratic management could be and was tolerably efficient.

Perhaps. Still, it is surprising how rapidly markets for private railroad securities did develop once the potential profitability of lines became clear. This suggests that markets were endogenous to the process rather than being an institutionally given datum. We should therefore look to technical features of canals, rather than characteristics of markets for securities, as the reason why state operation and financing of canals was favored. It is interesting in this context that public financing of roads, streets, and highways was preferred even during the era of *laissez faire* when many experiments were made with private as well as public ownership. Perhaps this explains the canals exception.

But in any case, the Jacksonians abhorred federal financing of transportation improvements and got their way. (The one exception—federal land grants to the Illinois Railroad during the 1850s—is explainable by political forces overriding economic doctrines: Southern senators and representatives wanted the Illinois Central line from Chicago to the Gulf of Mexico in order to tie the economic interests of Midwestern farmers closer to those of Southerners.) The benefits, in reducing fun and games with federal money and property of the type common in post-Civil War “mixed enterprises” of the Union Pacific and Central Pacific types, were clear enough on the level of political morality. What is new is that Fishlow’s research suggests that there was no loss in economic growth to counterweigh this political gain. Jacksonian *laissez faire* worked even in a domain where we might expect it not to have worked.

THE REPUBLICAN ASCENDANCY AFTER 1860

The conventional history also states that the long Republican ascendancy between 1860 and 1912 appreciably stimulated the growth of manufacturing. First of all, the Civil War was necessary to break the domination of farmers and Southern planters over the federal government. Then, Republicans could establish a sound currency through the national bank system, raise protective tariffs, stimulate profits by currency depreciation (the Greenback issues of the Civil War), and break constraints offered by slavery without costs to taxpayers by emancipating the slaves without compensation. As a result, so the story concludes, an agricultural America industrialized.

Concerning the Civil War, the Charles Beard interpretation of it being necessary to capitalist industrialization was first attacked by Thomas Cochran in an article provocatively titled, “Did the Civil War

Retard Industrialization?" "Old economic history" in its methods, the article nevertheless drew on the first findings of the new and showed that industrial production, railroad building and capital investment declined sharply during the conflict. Therefore, the Civil War did not create any immediate surge in output as twentieth century wars did. Nor was there any Keynesian surge in resource utilization during the conflict because the economy was fully employed prior to it.¹¹ Using more formal cliometric analysis, Claudia Goldin and Frank Lewis found that the conflict caused huge losses to the economy because of deaths in combat, material destruction, and the diversion of output from consumption and investment to war purposes.¹² By implication, therefore, the war must have retarded economic growth due to these losses alone. Induced immigration may have compensated for part of the losses of human capital due to combat deaths, but native American and immigrant workers would have to have been perfect substitutes for each other and the immigration mechanism to have worked without costs of emigration or other frictions, for each dead soldier to have been replaced by an immigrant worker of the same efficiency. And this seems highly unlikely indeed, even though a general equilibrium model is needed to satisfy Goldin and Lewis's critics.

But the direct costs of the war may have been more than offset by removal of political and/or legal barriers to industrialization. This was the Beard thesis in his very influential book, *The Rise of American Civilization*. According to Beard, a political alliance of Southern and Northern planters stood athwart the path of American industrialization and the interests of the emerging businessmen of the North prior to 1860. These businessmen cleverly forged an alliance with abolitionists, captured the new Republican party, and seized control of the American federal government during the Civil War. They passed legislation setting up high protective tariffs, federally chartered national banks, and subsidies to railroads. As a result, the United States industrialized even as the resulting social problems foretold the coming of the New Deal. Indeed, much American historiography has been in this teleological vein. All events since the landing of the Pilgrims are seen to work towards the apotheosis of Franklin and Eleanor Roosevelt or John F. Kennedy.

The first assault on the myth was purely cliometric: Robert Gallman's estimates of American gross national product and its components. If Beard has been right, his estimates should demonstrate a rise in the rate of growth of GNP after 1860 or at least 1865. But Gallman's estimates showed no such take-off into a higher growth rate. The American economy grew at just about the same pace after 1865 as it did between 1839 and 1860.¹³ Subsequent cliometric analyses using general equilibrium theory, such as that by Jeffrey Williamson, showed that this failure of growth to rise was not due to offsetting factors such as a slowdown in immigration of men and capital.

But these results from Gallman and Williamson are not conclusive because of the complexity of historical causation. So let us put another question on the board. Did the federal policy changes made

by the dominant Republican Party during and after the Civil War tend to accelerate growth? And by how much, if they did? If the impact was great enough, the Beardian interpretation of the Civil War as a second American revolution might be vindicated after all.

Six Republican policies of the Civil War period can be contrasted with those of their mainly Democratic predecessors. First, high protective tariffs broke with the downward trend in import duty rates starting with the Walker Act of 1846 and continued in the 1857 act. The Homestead Act and the Morrill Act gave free land to homesteaders and agricultural land grant colleges respectively. The Civil War was partly financed by inflationary greenback issues, but after the war Congress and the president decided to return to gold at par gradually (it took fourteen years, from 1865 to full resumption of specie payments in 1879). Banks were chartered by the federal government for the first time since Andrew Jackson broke the Second Bank of the United States; indeed, chartering was forced by limitation of the banknote-issue privilege to federally chartered national banks. (However, banks giving up note issues could continue to operate with state charters.) Slaves were emancipated without compensation to owners. Finally, transcontinental railroads were subsidized by land grants and indirect federal lending (railroads were loaned government bonds that they then could sell on financial markets for cash). What has the new economic history to say about the separate and combined growth-promoting power of each and of all together?

The verdict on subsidies to railroads is positive. The social cost was exceeded by social returns. On the other hand, Hugh Rockoff and others have shown that the pre-National Bank system of state-chartered banks served the financial community and ordinary people reasonably well. And Milton Friedman and Anna Schwartz, in *A Monetary History of the United States*, have shown that national banks issued only a fraction of the currency that they were entitled to issue, despite an apparent high profitability of such issues.¹⁴ Of course, such notes were uniformly safe to holders because they were backed by U.S. government bonds, unlike the state banknote issues that had included those of wildcat banks. But the Friedman and Schwartz finding implies a structural inefficiency in the note-issue system, whereas we have found that the pre-1860 banks operated with much greater efficiency than the traditional history of Catterall and even Bray Hammond had attributed.¹⁵ And Civil War legislation did nothing about the real weakness of the American banking system: the government's refusal to allow interstate branching of banks and thereby more efficient transfers of capital from capital-rich to capital-scarce regions. Unless new research explains away these points, we must turn thumbs down on the hypothesis that the new national bank system accelerated economic growth.

Robert Fogel and Stanley Engerman have shown that the South could have expanded output of agricultural staples profitably if slavery had been allowed to continue.¹⁶ Therefore, the traditional story of emancipation as being helpful to American growth (as con-

trasted with welfare) is weakened. The Robert Higgs and Ransom-Sutch histories of black progress and retardation between 1865 and World War I show that black real income per head did rise at about the same *relative* pace as did Southern white income per head, between about 1870 and 1914. (Since most blacks continued to live in the South, Southern white income is the appropriate yardstick.) But Richard Easterlin's estimates of regional GNP in the nineteenth century show a sudden, sharp decline in Southern economic growth, relative to either that of the North or the Southern pre-1860 rate, between 1860 and 1880. Thereafter the South kept pace with the North, but at a much lower level than before 1860. This was not due to migration of labor to the North or the West; per capita income figures show approximately the same Southern decline. And some reasons for this are plain enough in the Higgs and Ransom-Sutch studies referred to in the section on American slavery. Blacks took gains from emancipation primarily in the form of more leisure rather than greater real income and consumption; and this was good for welfare but not for growth. After Northern efforts to help blacks during the Reconstruction Era had foundered on government inefficiency and white Southern resistance, blacks were more or less gradually denied the franchise; and restrictive licensing and other legislation, by Robert Higg's account, created large to insuperable obstacles to black advancement and therefore to black motivations to excel.¹⁷ The Ransom-Sutch theory of debt peonage and therefore inefficient capital markets is badly flawed in its data and its microeconomic foundations, but the inefficiency of Southern rural capital markets was real enough.¹⁸ Emancipation without compensation also created much the same type of capital shortage in the South as did the destruction of German savings by hyperinflation after World War I.¹⁹

To sum up, emancipation as actually conducted probably slowed down Southern and American growth, however imperative it was from a moral standpoint, for the losses of the South were not offset by related gains of the North and the West. We now know enough to assert that it is perfectly absurd to date industrialization at starting after 1865 or even suddenly shooting forward. More research is needed on this, but Gallman data on total investment in fixed capital show the peak being reached (relative to GNP) before, not after, the Civil War. Manufacturing output did grow both absolutely and relative to agricultural output after 1865; but this seems to have been a continuation of a trend beginning in the 1840s or possibly even earlier, not a sudden, sharp break.

The Homestead Act of 1862 did provide free farms of up to 160 acres for settlers fulfilling easy conditions. If the federal government had set high prices or onerous financial terms for settlers prior to 1860, this would have meant a great deal. But Douglass North's *Growth and Welfare in the American Past* shows that as early as 1832, the minimum federal auction price for publicly owned land had dropped to \$1.25 an acre. This approximated only one day's wage for a semi-skilled or even many unskilled male workers. In 1841, the Pre-

Emption Act validated the claims of many squatters who had not paid a dime; in 1854 a Graduation Act lowered the price of unsold land below even the \$1.25 an acre figure set in 1832. And speculators did *not* charge excessive prices under the pre-1862 system, according to Douglas North. Given what we know about real income and its distribution, the Homestead Act could not have made such a difference in the pace of land settlement.²⁰ The Morrill Act, on the other hand, undoubtedly benefited the dissemination of agricultural information and agricultural education and research. But the modest size of the state colleges of agriculture founded as a result suggests that the positive impact was insignificant for at least a generation after 1865.

Greenback inflation was followed by a fourteen-year period of deflation. While *general* price deflation is certainly consonant with vigorous economic growth, no theorist or economic historian known to this author has suggested that it has ever increased growth. And as we have seen, wartime inflation did *not* cause any increase in business investment during the conflict; instead, Cochran's finding that business (including railroad) investment dropped sharply while prices were soaring stands unchallenged. Nor did Civil War inflation redistribute income from the poor to the rich who might have saved more, according to Armen Alchian and Reuben Kessel's article criticizing Wesley Mitchell's earlier finding that it did.²¹ Therefore, it is unlikely indeed that inflation and subsequent deflation accelerated growth.

Of five Republican policies, therefore, only one—land grants to railroads—had sizeable and unambiguous growth-promoting effects. What about the last: the change from low- to high-import duties? The growth effect of tariffs is a complex subject. In static terms, they result in a lower efficiency of resource allocation than would result from equal taxation of all goods to raise the same revenue. But since the time of John Stuart Mill, infant-industry arguments have been respectable, although that respectability has been diminishing.²² We can fairly summarize an argument among cliometricians that is perhaps just beginning that protective tariffs *may* have accelerated overall economic growth, but the case for this remains highly uncertain. Jeffrey Williamson has also hypothesized that the post-Civil War federal policy of reducing the government debt by running budget surpluses based on regressive taxation benefited growth. (This policy transferred income from persons with low to persons with high marginal propensities to save, so that overall savings and therefore investment rose.)²³ Since high tariff rates hit the less well off and also brought in more revenues than pre-1860 low tariff rates would have, this system of taxation was probably beneficial for growth. On the other hand, an alternative system of uniform excise tax on consumption goods regardless of origin at home or abroad would have done the same job without causing static inefficiency (diverting resources from more-efficient to less-efficient uses). And as we saw in the section on the Jacksonians, Paul David has struck a hard blow at the validity of infant-industry argument for nineteenth century manufacturing. On balance, the Republican change in tariff policy undoubt-

edly accelerated growth of manufacturing somewhat. But it harmed agricultural growth (agriculture, with very few exceptions such as sheep-farming, produced for the world market or did not need tariff protection, while tariffs reduced agricultural income and therefore saving and capital formation). Since agriculture remained important, the net impact on growth of all sectors combined remains doubtful.

We can now put all these points together. The growth-promoting effects of the Republican Party ascendancy after 1860 (between then and 1914, a Democrat was President in only 8 of 54 years) was minimal indeed. Only one (or possibly two) out of the six changes in policy had sizeable effects, and the sizeable impact was limited to the area west of Omaha, Nebraska. If we compare these small impacts with the sizeable economic costs of the Civil War, the latter would seem to have been a bad economic investment for the nation as a whole. This surmise is strengthened by the fact that even prior to 1860, the federal government was moving towards a land grant policy for railroads, as is seen by the large grants given to the Illinois Central Railroad in the 1850s. And in any case, subsidized transcontinental railroads benefited agriculture, not industry.²⁴

Therefore, the Beard argument should be rejected. Of course, the Civil War did promote equity by its emancipation of black slaves. But this was not the Beard argument, which was that it was required for industrialization. As for the welfare of capitalists, the Beard argument is on somewhat stronger grounds. But capitalists were by no means an oppressed group prior to 1860, and the classic argument of Paul Samuelson and Wolfgang Stolper suggests, when applied to known data, that capitalists had to share their gains with urban labor (both benefited at the expense of landowners and farmers).²⁵ And while Northern capitalists gained somewhat, Southern capitalists lost from emancipation of slaves without compensation. The size of the aggregate gain to all capitalists, South and North, would therefore appear to have been small or possibly even zero.

CONCLUSIONS AND IMPLICATIONS

This paper focused not on what the Jacksonians said but what the Jacksonians accomplished. In fact, it is concluded, their policies did *not* harm manufacturing growth and may even have promoted it. Therefore, the subjective motivations of the Jacksonians (and surely, these differed greatly among members of this movement) are irrelevant: whether they applauded or deplored industrialization and the concomitant rise of a powerful business class is not at issue.

And these effects of Jacksonian policies are not irrelevant to many of today's issues, particularly those affecting backward or developing countries. We should remember, in this context, that the Jacksonian movement led by Andrew Jackson, Thomas Benton, Martin van Buren, James Polk, and even such epigoni as James Buchanan, was the most uncompromising *laissez-faire* one in American history. Each day, as Bray Hammond reminds us in his magisterial *Banks and*

Politics in America, the front page of the leading Jacksonian newspaper in Washington edited by Francis Blair blazed with the motto, "The World Is Governed Too Much." And this in an era where all levels of government consumed less than 5 percent of gross national product! Their hostility to monopolies only echoed that of Adam Smith and David Ricardo then or—to commit an anachronism—of Milton Friedman today. Their hostility to the Second Bank of the United States prefigures a skepticism or hostility to government-business "cooperation" that has been a persistent theme in American political history and is echoed today both by libertarians and by the *Wall Street Journal* editorial page. Indeed, much political history could be rewritten to align liberals up to the time of Woodrow Wilson with today's libertarians and principled market conservatives, while the lines would appear to run from the Hamiltonians and the pre-1860 Whigs with today's advocates of government-business cooperation, "reindustrialization," and targeted federal assistance to specific firms and industries. Which, of course, differs somewhat from the alignment suggested by Arthur Schlesinger, Jr., in *The Age of Jackson*.

But this is political more than economic history and is irrelevant to our focus on what the Jacksonians accomplished. Another view might well be that government policies were far less influential in determining the growth path than the traditional history has alleged them to be. By this view, interventionist government policies of the post-1860 variety, did not help but did not do much harm either, given the basic laissez-faire structure of the economy.

But didn't setting the basic rules matter? By still another view, the Jacksonians were very crucial to growth because they finally set in concrete the basic laissez-faire thrust of government policy that had been dominant ever since the detailed setting of prices and regulation of transactions that Oscar Handlin has documented for seventeenth-century Massachusetts (see *Commonwealth Massachusetts*) were eroded away in the eighteenth century. By the Civil War, the set of policies and attitudes was so firm that post-Civil War Republican intervention had to be limited in scope. And American growth and welfare continued to flourish in a laissez-faire setting.

1. Sound and sustainable growth is defined as that in which the productivity of land, labor, and capital grows at the same, or a higher, rate in the manufacturing sector as it does in nonmanufacturing activities. This is obviously different from gains in output achieved merely by forcing productive factors into manufacturing by import prohibitions or other tax or coercive measures by the state.

2. Respectively, *Banks and Politics in America from the Revolution to the Civil War* and *The Age of Jackson*. This writer concentrates on Bray Hammond and Arthur Schlesinger, Jr., rather than on more recent work, because attention should always be given to the masters and not to the imitators. In addition, more recent work in this tradition has lacked in a synthetic view.

3. Such advocates of free banking resembled closely their contemporaries of the Banking School in English monetary controversies (see Jacob Viner, *Studies in the Theory of International Trade*, New York: Harper & Bros., 1937, ch. 5). Jacksonians also, in general, supported limitation of note denominations to \$10 or over so that workingmen

would be paid in hard money. Besides reasons of equity, this was sensible because notes were restricted in practical use to classes of the community with superior knowledge of banks and lower brokerage costs of converting notes into gold (because of their greater volume of transactions combined with the fixedness of costs of conversion).

4. Unpublished Ph.D. dissertation, summarized in Hugh Rockoff, "American Free Banking Before the Civil War: a Reexamination," *Journal of Economic History* 32: 417-420.

5. Paul David, "Learning by Doing and Tariff Protection," *Journal of Economic History* (September 1970), and "The 'Horndal Effect' in Lowell: a Short-Run Learning Curve," *Explorations in Economic History* 10 (Winter 1973): 131-151.

6. Tariffs on imported cloth were lower during this decade than before or after, because of the Walker Act of 1846 and the 1857 act (at the start of the Civil War, tariffs were increased repeatedly). In particular, the Walker Act abolished the minimum duty of six cents a yard on cotton cloth, which had been moderately protective when first enacted in 1816 but increasingly protective thereafter because of the pronounced fall in cloth prices up to the 1860s.

7. Albert Fishlow's definitive work on American railroads (*American Railroads and the Transformation of the Antebellum Economy*, Cambridge: Harvard University Press, 1965, pp. 132-145) shows almost no stimulus to American rail output from high tariffs, if not perverse effects. High duties of the 1830s and 1840s caused railroads to successfully press for rebates that wiped out protection in effect. The American industry began to compete successfully with English industries only during the 1850s, after import duties had been very substantially lowered by the 1846 act. See especially Fishlow on Abram Hewlett, p. 144.

8. A useful discussion along these lines is in Lance Davis and Douglas North, *Institutional Innovation and American Economic Growth* (Cambridge: Cambridge University Press, 1971). Davis and North distinguish between innovation coalitions and transfer coalitions, the latter being designed to remove wealth from one group and confer it on another group.

9. Walt Whitman Rostow, *Stages of Economic Growth* (Cambridge: Cambridge University Press, 1971), p. 25.

10. Fishlow, *American Railroads*, ch. 4.

11. The Cochran article is in *Mississippi Valley Historical Review* 48 (September 1961): 191-210. Also, see Gilchrist and Lewis (editors), *Economic Change in the Civil War Era* (Wilmington: Eleutherian Mills-Hagley Foundation, 1965) and Stanley Engerman, "The Economic Impact of the Civil War," *Explorations in Economic History* (Spring-Summer 1966) which adds much new data supporting Cochran's findings.

12. Claudia Goldin and Frank Lewis, "The Economic Cost of the Civil War," *Journal of Economic History* 35: (June 1975): 299-326. They estimated total direct and indirect costs of the Civil War to all regions at roughly \$16.7 billion (I add their North and South estimates for this figure). This was four times the 1860 United States GNP or slightly higher, according to either the Robert Gallman or Thomas Berry estimates of the latter (both Lewis-Goldin cost estimates and the Berry-Gallman GNP ones are in constant dollars).

13. Compound annual growth rates were 4 percent for the 1850-1860 decade and 4.4 percent for the twenty years between 1860 and 1880 (from Robert Gallman unpublished annual GNP estimates). The downward bias from including Civil War years in the latter is probably offset by the upward bias caused by exaggeration of GNP growth in the 1870s due to errors in the 1869 and 1879 data (the latter are commented on in detail in Milton Friedman and Anna Schwartz, *A Monetary History of the United States*, Princeton: Princeton University Press, 1963, pp. 36-41).

14. *Ibid.*, p. 23.

15. An intuitively appealing hypothesis explaining the high return on note issues (and therefore underissue from an economic efficiency standpoint) is price risks on the U.S. government long-term bonds that had to be deposited with the treasury as collateral against issued notes. By contrast, a free banking system of the Ludwig von Mises type would have permitted banks to issue notes against far less price-risky securities: short-term commercial paper, as well as gold reserves.

16. *Time on the Cross* (Boston: Little-Brown, 1974). Gavin Wright (*The Political Economy of the Cotton South*, New York: Norton, 1978, ch. 4) argued that to the con-

trary, sagging postwar demand for cotton in the world economy would have made slavery unprofitable. However, Wright's cliometric argument is based on misspecified equations making the erroneous assumption that a counterfactual slave economy after 1865 would have expanded cotton production more rapidly than it actually did. By contrast, the Fogel-Engerman argument is based on efficiency grounds.

17. Robert Higgs, *Competition and Coercion* (New York: Cambridge University Press, 1977) and Roger Ransom and Richard Sutch, *One Kind of Freedom* (New York: Cambridge University Press, 1977).

18. See Lance Davis, "The Investment Market, 1870-1914: The Evolution of a National Market," *Journal of Economic History* 25 (September 1965) for the reasons: the lack of nationwide branch banking and other government-imposed barriers to capital mobility among American regions.

19. However, the reason was different. Emancipation without compensation was in itself a zero-sum process or even a positive-sum one: the slave gained as much in human capital, at the least, as the master lost. However, Southern racism and the poverty of freed slaves meant that slaves did not gain as much borrowing power (one cannot pledge himself as collateral) as masters lost. Hence the borrowing capabilities of the South, for masters and slaves taken together, were seriously eroded.

20. See Douglas North, *Growth and Welfare in the American Past*, 2d ed. (Englewood Cliffs: Prentice-Hall, 1974), ch. 10.

21. Armen Alchian and Reuben Kessel, "Real Wages in the North during the Civil War: Mitchell's Data Reinterpreted," *Journal of Law and Economics* 1 (Oct. 1959).

22. See Paul David, "Learning by Doing." Particular insight on the infant-industry argument is given by Austrian economic theory that emphasizes the searching nature of entrepreneurial activity in a world characterized by uncertainty. This implies rather conclusively that the infants selected by government for protection would almost invariably be the wrong children *even if* the actual political process of selection was chaste and pure instead of being the grubby, inefficiency-promoting one that it is.

23. Jeffrey Williamson, "Watersheds and Turning Points: Conjectures on the Long-Term Impact of Civil War Financing," *Journal of Economic History* 34 (Sept. 1974). His model is dubious even on neo-Keynesian grounds since in the latter type of model, marginal and not average savings/income ratios call the tune. However, the new supply-side economics offers a more appealing rationale yielding the same results.

24. These railroads ran through territories where manufacturing was nil up to 1914. Of course, induced development of farming provided markets for American industrial products; but this argument is entirely spurious, for the farming and stock raising was in the belt of land stretching only three to five hundred miles west of existing railheads of roads that had never received federal land, bond, or other subsidies under pre-1860 Jacksonian policies (only one exception: the Chicago and Rock Island line, which never amounted to anything, according to Fishlow, *American Railroads*). It is inconceivable that these existing lines would not have built extensions into this area stretching from eastern Montana to Texas without federal subsidies, in view of the synchronous and rapid extension of farming and railroad lines prior to the Civil War described earlier.

25. An independent approach also supports this conclusion. A well-known finding of Simon Kuznets is that income inequality first increases and subsequently (but much later) decreases during the process of industrialization. So if Charles Beard and his followers were correct, we might expect income inequality to have been low prior to 1860 and to have increased sharply thereafter. However, what we know shows just the opposite. When the Alice Hansen Jones findings for 1774 (*The Wealth of a Nation to Be*, New York: Columbia University Press, 1980) are compared with those of Robert Gallman and Lee Soltow for the period, 1850-1914, we find that by far the greatest increase in wealth or income inequality occurred *prior* to 1860. Thereafter, the increase was slight or even may have leveled off or declined. (The abolition of slavery is adjusted for, in these calculations, by calculating inequality from 1774 to 1914 as it would have been if slavery had never existed but the actual slave and free populations had remained the same.)

ECONOMIC WARFARE IN DEFENSE OF LIBERTY¹

JULIANA GERAN PILON

The Heritage Foundation

Peace is very much more than the absence of war.

—Edward Teller

WHEN THE SIGNATORIES to Jefferson's message to George III declared life, liberty, and the pursuit of happiness to be unalienable, as they pledged their lives, their fortunes, and their sacred honor to the defense of that trinity of principles, they implicitly ranked liberty first. For while survival they deemed dispensable, and without fortune happiness is awkward to pursue, the one mistress our forefathers coveted above all was freedom, the right to order their lives as they saw fit. To that end they were willing to dump English merchandise into the ocean and even, as events were soon to prove, wage war. History has testified to the wisdom of that move—the economic success of this nation having surpassed even the most sanguine expectations of Marx's early critics. But the inspiration behind the Founders' revolutionary zeal appears to have been fueled at least as much by principle as by prudence, by self-respect perhaps even more than by utilitarian calculus. Not that the two must be in conflict—in fact, they usually are not; but it helps to distinguish between them, if only to gain a better perspective on what moves men to exceptional and even revolutionary action.

WAR AND COMMERCE—THE SPECIAL PROBLEM OF ECONOMIC WARFARE

Among the grievances of the idealistic colonists against the English king whom they accused of nothing less than tyranny was his "cutting off [their] trade with all parts of the world"—an interference insulting not only to the pride but to the pocketbook as well. Indeed, was that

alone not conclusive proof that he did not have their best interest at heart? Was that alone not tantamount to a declaration of war on his part? The connection between commerce and war, in this instance as in many others, has given rise to much speculation among political philosophers—nearly everyone agreeing about its significance, though views diverge as to its meaning. Like most human interaction, trade is an attempt to transcend self-sufficiency, to meet a need by appealing to assistance from someone else. War, of course, is the ultimate breakdown of social intercourse, the surrender of reason to passion when voluntary, civilized channels are no longer available.

Yet one famous author has it that commerce and war differ merely in degree:

War and commerce are but two different means of arriving at the same aim which is to possess what is desired. Trade is nothing but a homage paid to the strength of the possessor by him who aspires to the possession; it is an attempt to obtain by mutual agreement that which one does not hope any longer to obtain by violence. The idea of commerce would never occur to a man who would always be strongest. It is experience, proving to him that war, i.e., the use of his force against the force of others, is exposed to various resistances and various failures, which makes him have recourse to commerce, that is, to a means more subtle and better fitted to induce the interest of others to consent to what is his own interest.²

On the face of it, this seems right: would it not be desirable to just take what we want, to fulfill our wishes with no payment? A very little reflection, however, will soon reveal that most of mankind think otherwise: there is surely nothing intrinsically repulsive about satisfying someone else's wishes while also fulfilling one's own. There is no reason why happiness should increase in direct proportion to the amount of one's possessions, nor is it sensible to deny that exchange stimulates production and can even generate a certain *joi de vivre* unknown to the hermit no matter how self-sufficient he may be. The contrast is plain: while war is the result of aggression and cannot fail to cause pain, barter is mutually agreeable; while war is an expression of hatred, trade may foster camaraderie or at the very least it must imply consent.

These distinctions would seem to disappear, however, in the case of economic warfare, which knows none of the congeniality that may accompany commerce, even if such warfare actually dispenses with the bloodshed of military confrontation. Its impact varies from mild to devastating without a shot having been fired or even a nasty comment uttered. By way of definition, one can distinguish two kinds of economic warfare—differing in degree though not necessarily in intention: (1) in a narrower sense, the concept may refer to the practice of international economic measures that enhance a country's relative strength; and (2) more generally, it may refer to all the foreign economic policies that may have as their long-run objective the enlargement of a country's sphere of economic influence (and possibly

a consequent contraction of that of a political adversary).³ Neither of these practices is alien to ordinary economic life insofar as every country always seeks its own advantage; the difference, however, is that economic warfare presupposes a certain degree of antagonism. It involves policies whose intent is hostile at least in part, designed specifically to strengthen a country politically as a result or in the expectation of conflict. Filled as the pages of history may be with instances of bloody rivalry between territorial groups variously defined, economic warfare is nevertheless the exception rather than the rule: ordinarily, in international as in interpersonal activity men are, if not friendly, at least not ill disposed toward one another. Even the less altruistic, those not inclined to supererogation, do not usually set out deliberately to cause harm to others or seek to make the needy even needier. Yet this is just what appears to take place in economic warfare: the pursuit not only of goods but of relative power, symptomatic of discord.

Whatever its intention, however, whether retaliatory or frankly aggressive, economic warfare would appear to be morally unobjectionable insofar as it involves no taking, no forceful seizure of foreign property, no physical harm. For example: whatever the reasons for A's not buying B's goods, he certainly has the right to so abstain if he wishes. Or, no matter now unfriendly the reasons for persuading others not to sell to B, A is entitled to such freedom of speech (indeed, he may hurt himself more in the process and decide to stop—but if he continues, he fully deserves his loss). Whatever A's purpose in building up his strength, provided he does not use it to maim or coerce someone else, he may freely indulge in the exercise—he might, for instance, wish to help out someone else who is weaker. Economic warfare, therefore, unlike armed aggression, is not only often legitimate, it may even, at times, prove commendable. To be sure, many economists have been fond of pointing out—notably against the mercantilists—that the practice is more often than not counterproductive in its effects; but few would debate the fact that it is a far more civilized way to express antagonism than is unloading one's rifle into the body of the enemy.

But can one distinguish between justified and unjustified reasons for antagonism? No more than we could decide once and for all the nature of true beauty or perfect love. Among nations, as among individuals, hostility is based on motives as varied as are the grounds for envy, jealousy, and fear. But most people would hesitate to condemn a response to the threat of annihilation or enslavement. *Caeteris paribus*, if A intends to destroy B or to deny him the right of self-rule, which amounts to destroying his integrity, it is fair to say that B is entitled to do whatever he can to resist such danger to himself. Throughout history, therefore, men have acknowledged the right of a nation to use whatever means were at its disposal—even military, but certainly economic—to strengthen its ability to withstand foreign aggression. Rather more recent in origin is the belief that states may use

such means for humanitarian intervention as well, to assist people whose survival was being threatened but who were unable to defend themselves alone.

A current paradigm case that involves both defense and humanitarian considerations is the relationship of the United States with communist (or "nonmarket") countries. If their rhetoric is to be believed, they have been our avowed enemies from the outset; and their human rights record speaks through barbed-wire frontiers and fishing-boat escapes by millions. Considering these countries' economic performance, it would seem that the West would be well equipped to try to modify their aggressive stand by nonviolent means, by such measures as requiring them to pay their debts before giving them further credits unless they show greater tolerance, or at the very least by not offering them easy payment plans that our own citizens are asked to subsidize. This is not the place to speculate about the psychology of American (and, in general, Western) policymakers who have consistently failed to take advantage of capitalist technological superiority to gain moral and strategic concessions from our ideological opponents, preferring instead to assist them—sometimes at a remarkably high cost to ourselves. This has been the subject of other studies, notably Antony Sutton's three-volume *Western Technology and Soviet Economic Development* and, more recently, Carl Gershman's "Selling Them the Rope."⁴ Perhaps no single answer exists to the complex question as to why we have declined to use the leverage we undoubtedly have in order to modify the attitudes of our enemy. In recent years, however, Congress has shown uncommon resolve in attempting to introduce a provision of principle in our trade policy toward "nonmarket" countries. Known as the Jackson-Vanik Amendment to the 1974 Trade Act, this provision denies extending government credits and most-favored-nation status to any country that violates the human rights of its citizens by failing, in particular, to allow them to emigrate if they so wish. Undoubtedly humanitarian in intent, this amendment has implicit strategic significance as well, for it is hoped that liberalization in the communist block might lead to a decrease of international tension, that a greater degree of internal tolerance will be accompanied by at least some good will toward regimes such as our own that are opposed ideologically. In sum, the amendment is a statement in defense of liberty as such—and in this respect stands in the same noble tradition as Jefferson's Declaration of Independence penned 200 years earlier.

As a legal document, however, the Jackson-Vanik Amendment is surely unique. To cite Professor Naum Meiman who wrote from Moscow to the late Sen. Henry Jackson (D-Wash.),

[t]he Amendment is more than an important act of Congress. It is something altogether new, something unprecedented. For the first time in history the top legislature of a great country deemed it necessary to pass a law supporting one of the basic human rights, that of freedom of movement, on a global scale. This right was throughout history the main criterion, the main test, distinguishing the freeman from the slave and the serf.⁵

Professor Meiman himself had been unable to publish these words—they were transmitted in a letter personally handed to Rep. Patricia Schroeder (D-Colo.) on her visit to the Soviet Union in 1978. They speak eloquently to the significance of the Jackson-Vanik Amendment as part of this country's trade policy.

Justifying an essentially humanitarian law, however, requires serious conceptual consideration. To begin, then, the question arises: why should a nation have a statement of trade policy at all that proclaims the importance of respect for liberty? What is the philosophical basis for such a policy? I will address the question in two stages: first, by examining the issue theoretically, then by taking a look at some illustrious historical precedents arguing for the defense of the idea that the jealous love of freedom must be paramount in determining a nation's dealings with others—its commercial transactions in particular.

THE IDEAL OF LIBERTY AND ECONOMIC WARFARE— THE CONCEPTUAL SETTING

Assuming a *status quo* of voluntary interaction among sovereign trading partners, economic warfare might seem to be irrational from the point of view of mere profit: after all, if it is not economically advantageous for A to trade with B at price P, A will simply not enter into the transaction independently of "warfare" considerations. On the other hand, if it *is* so advantageous, not to enter into the transaction in the hope, for example, that B will be hurt too, has an air of irrationality about it, at least from a purely materialistic point of view. But mere profit is never all there is to human intercourse, and A may well be acting quite sensibly nonetheless. It has been assumed too often too easily that power—in a nation as in the individual—grows in direct proportion with wealth. As the United States failure in Vietnam indicates (to mention but one glaring case), success in the political arena is the result of complex, often extra-economic factors. As a result, there may be good reasons, both prudential and principled, for pursuing policies that override the goal of profitseeking at least in its more narrow sense.

Many good prudential reasons may be found for taking measures against an enemy, measures such as tariffs or denial of credits, which have the effect of reducing either exports to or imports from that country. One such reason is the expectation of gaining political support and even aid from other nations sympathetic with the plight of the beleaguered country. Another reason might be the heightened morale at home, which may result in increased productivity together with a greater sense of national unity and well-being (sometimes deemed well worth the prosperity it might replace). Above all, there may be hope that one's enemies will see fit to change their behavior so as to avoid embarrassment and ostracism. (This is particularly likely if one's enemies stand to lose more—at least in the short run—from eco-

conomic warfare in the sense that they are less self-sufficient and in need of vital necessities such as food.)

The effectiveness of economic warfare from a purely prudential point of view has been debated at length, with no consensus existing as to its wisdom. Foreign political support, for example, is sometimes a poor exchange for severe economic losses; heightened national unity tends to manifest itself all too frequently in uncivilized xenophobia; and ostracism may be weathered by the recalcitrant enemy longer than one might expect. But men set prudence aside sometimes, as did the American colonists who pledged their sacred honor and all their possessions to the defense of the ideal for which they had originally left their homes on the other shore of the Atlantic. And even the most hard-headed businessmen will concede that profit would be useless to them were their own safety in real danger or were their own autonomy to be robbed through slavery.

As in the individual, so it goes with the nation: security and self-rule are prized above all else, hence trade restrictions are undertaken not only for economic reasons but in the interest of principle. The justification, in the nation as in the individual, may be found in the concept of dignity and self-esteem: for nations, like the people that make it up, sometimes refuse to deal with those who threaten their integrity without some expression of protest, without some statement indicative of resistance and outrage. To question the prudence of such a move is, at bottom, to question people's resolve to maintain their own dignity or, as in the case of humanitarian intervention, their determination to defend the dignity of others. Is there really a need to justify such determination? It would seem that neither survival nor the right to conduct one's life unhindered by coercion requires elaborate argument. It has been argued, for example, that to coerce another involves one in self-contradiction;⁶ to wish to live uncoerced would require much less defense. To want to be completely enslaved, to want not to want, does not even make sense.

Complications arise, however, when nations rather than individuals are involved. In particular, a nation is composed of many different groups that pose different degrees of threat to another country. Conversely, economic measures against another nation affect various groups differently—sometimes hurting most those who are least at fault. No one seriously maintains, for example, that the Russian (or Chinese, or Romanian) *people* wish to wage war on capitalism; yet tariffs and other economic measures are less likely to affect the standard of living of their leaders—the authors of the hostile policies in question. It has been argued, therefore, that it is pointless to starve the captive subjects of a dictatorship to teach the dictators a lesson.

Another important related question of increasing relevance involves the existence of commercial entities such as the multinational corporations and supranational bodies such as the Council for Mutual Economic Assistance (Comecon or CMEA) that certainly complicate the analytic picture. The interests of a particular nation may, at times,

conflict with the interests of such corporations as Gulf or Boeing at least superficially (Angola provides a recent example); and Comecon serves the interest of the Soviet Union—at least as its leaders perceive it—to a larger degree than it does the interests of other members.

These complications notwithstanding, it is nevertheless useful to consider nations as a whole rather than either subgroups, international, or supranational bodies as the basic unit of research in the present context. For one thing, a major factor in trade today is the availability of government credits—hence national policies are ultimately of the utmost significance. The Jackson-Vanik Amendment in particular places limitations on U.S. government credits and guarantees for trade with communist countries—which means that it regards nation-states as traditionally understood to be the basic units at stake. Accordingly, this study will follow the same principle and overlook the complications arising from considerations of other relevant subgroups or combinations.

Another problem concerns the definition of threat to national security. When does a nation consider itself thus threatened? And what exactly should the threat be directed to? Is it survival alone, or are other values relevant as well? According to Joseph S. Nye, Jr.,

[m]ost national security policies in today's world are designed not merely to insure the physical survival of individuals within national boundaries, but to assure some minimal expected level of economic *welfare*, a certain political and social *autonomy* for the nation, and a degree of national political *status*. Indeed, some national security policies actually increase the risks to physical survival in order to insure greater certainty in the enjoyment of economic welfare, political status and national autonomy.⁷

Broadly understood in this fashion, therefore, in the present age a threat deemed worthy of retaliation involves considerably more than mere survival. Were we to use too broad a concept of national security, however, we would soon open a Pandora's box that would prove more confusing than helpful. For this reason it will be best to limit the concept of threat to national security as referring only to a challenge to liberty—the principle of self-sufficiency and self-governance, the principle for which the Declaration of Independence had originally been written.

The word "liberty," however, is left deliberately ambiguous: for not only is the statement of policy that underlies the Jackson-Vanik Amendment directed at the defense of this nation's liberty, it is also aimed at protecting the liberty of others. Justification would therefore appear to be more problematic. For it is one thing to fight for one's own dignity, one's own survival; quite another to do so on behalf of others. Are the two cases not very distinct? Is humanitarian intervention not an entirely different kind of situation?

It is one thing for an individual to be acting on his own behalf, or for a small group whose common goals are explicit and voluntarily undertaken, and quite another for a government to be taking

measures on behalf of its subjects. If the main function of government is the protection of its people, after all, is not all other action subordinate to that principal goal?

Indeed it is. And if humanitarian actions—or a government's activities intended to protect the rights of another people—in any way conflict with the protection of its own subjects, those actions are surely not justified. The more complex case arises when a government's humanitarian activities, while not endangering in any way the safety of its subjects, cannot be shown to benefit all subjects directly in any unambiguous, immediate fashion. The question then arises: should such actions be undertaken at all?

They should, I submit, when it can be shown that humanitarian actions are ultimately serving to preserve the security and the sanctity of a nation's subjects. International legal scholar Hersch Lauterpacht explains:

In the eyes of government there was often deemed to exist a conflict between the defense of human rights through external intervention. That conflict was, in the long run, more apparent than real. For, ultimately, peace is more endangered by tyrannical contempt for human rights than by attempts to assert, through intervention, the sanctity of human personality.⁸

This is to say that in the case of legitimate humanitarian intervention, what is at issue is liberty as such, the dignity of the human personality, which is often—indeed, usually—endangered when someone abuses the right to life and integrity of another. In essence, therefore, humanitarian intervention is ultimately based on—admittedly enlightened—self-interest even fairly narrowly understood, on security, and self-preservation. It certainly requires an appreciation of the ideal of liberty and self-rule. While the Jackson-Vanik Amendment itself as a legislative move is new and quite unique, the concept of humanitarian assistance in the interest of liberty and security has long historical roots.

LIBERTY BEFORE PROFIT—A HISTORICAL OVERVIEW

It should surprise no one to see liberty eloquently defended in ancient Greece, by an illustrious contemporary of Socrates known not only for his atomic theory (which was later revived during the Scientific Revolution) but also for his treatise on economics: his name is Democritus, and he taught that morality—unlike aesthetics—is absolute. Democritus was a strong defender of private property, on grounds of efficiency: he argued that the superior effects of private property on incentive, thrift, and pleasure justify its institution, for “income from communally held property gives less pleasure, and the expenditure less pain.”⁹ But efficiency was not his only, or even his main, concern. He believed, for example, that liberty and mutual aid help cement a society: “When the powerful champion the poor and render them service and kindness, then men are not left desolate but

become fellows and defend one another.”¹⁰ Not that the powerful or the rich ought to be *forced* to help the poor; Democritus speaks of kindness, of generosity, not of the welfare state. He holds self-interest to be a highly sophisticated matter, transcending narrow economic considerations. He evidently attaches a higher value to freedom than to mere material goods: “Poverty in a democracy is as much preferable to prosperity under a despot as is freedom to slavery.”¹¹ In the extant fragments Democritus does not go on to make the argument that in fact democracy tends to enhance prosperity while despotism breeds poverty; in any case that would obscure the main point, which is a defense of dignity regardless and even in defiance of material considerations. Democritus may well have been the first libertarian thinker, the first defender of private property and human rights in the tradition of Western economic thought, the tradition that culminated in the eighteenth century with Adam Smith.

Before turning to Smith, however, one must give due credit to a man whose reputation otherwise belongs in the area of legal thought: Hugo Grotius, who for the first time in the history of philosophy argued for international recognition of human rights, for nations coming to the defense of individuals whose right to liberty has been violated. In his book *De Jure Belli ac Pacis (The Law of War and Peace)* published in 1625, Grotius wrote that justice was to be defended out of an enlightened sense of self-interest, both on the personal and on the international level. For just as

the national who in his own country obeys its laws is not foolish, even though, out of regard for that law, he may be obliged to forgo certain things advantageous for himself,

so with nations;

for just as the national, who violates the law of his country in order to obtain an immediate advantage, breaks down that by which the advantages of himself and his posterity are for all future times assured, so the state which transgresses the laws of nature and of nations cuts away also the bulwarks which safeguard its own future peace.¹²

And in case this does not seem to envoke a sufficiently sophisticated egoism, Grotius makes it clear that

[e]ven if no advantage were to be contemplated from the keeping of the law, it would be a mark of wisdom, not of folly, to allow ourselves to be drawn toward that to which we feel our nature leads.¹³

For one thing, “justice brings peace of conscience, while injustice causes torments and anguish;” moreover, “justice is approved, and injustice condemned, by the common agreement of man,” and by God Himself, in Whom “injustice finds an enemy, justice a protector.”¹⁴ Consequentialist as all these arguments may seem, Grotius nevertheless holds that justice, as embodied in law, “is not

founded on expediency alone.”¹⁵ It rests on the laws of nature, which are “always the same;” indeed, justice “has its origin in the free will of man.”¹⁶ To repudiate it, therefore, is to violate the very principles of one’s own nature.

Grotius was of course in favor of self-defense as a primary value, even if this might involve resistance against a figure of authority. For, he writes, “I should hardly dare indiscriminately to condemn either individuals, or a minority which at length availed itself of the last resource of necessity.”¹⁷ Because ultimately it is the right of man to liberty that is basic, not “the good of the state” as the constitution of a communist country would have it, nor the interest of the sovereign. Neither is justice to be identified with the will of the strongest. Hence Grotius finds it perfectly legitimate for rulers to demand punishment on humanitarian grounds,

not only on account of injuries committed against themselves or their subjects, but also on account of injuries which do not directly affect them but excessively violate the law of nature or of nations in regard to any persons whatever.¹⁸

Any despot who violates the principle of liberty by atrocities against his subjects is thereby entitled to censure, for “the exercise of the right vested in human society is not precluded.”¹⁹ It is not expediency, again, that is at issue; it is justice. Personal dignity, human liberty, should be as important to nations as they must be to individuals.

It seems unlikely that Grotius failed to leave an impression on Adam Smith who encountered his writings at Glasgow College (a copy of Grotius’s work has been found signed by Smith who was then between the ages of fourteen and seventeen). And there is no doubt that Smith also read the works of his friend David Hume (to whom he served as literary executor after Hume’s death in 1776) and was in much agreement with them. Both of them shared a belief in individualism, and a commitment to private property. And even though Hume considered himself a utilitarian, he reached conclusions to which most natural law theorists could subscribe as well.

Though no systematic economist, Hume is entitled to a worthy place in the history of economic thought, for he is among the first to have discussed the subject of international trade. As his essays on commerce indicate, Hume is very much in favor of setting aside national prejudice for the benefit of both prosperity and harmony. In his piece entitled “Of Civil Liberty,” after deploring the paucity of literature on international trade (“Trade was never esteemed an affair of state till the last century; and there is scarcely any ancient writer on politics who has made mention of it”²⁰), he cites some common prejudices:

It is very usual, in nations ignorant of the nature of commerce, to prohibit the exportation of commodities, and to preserve among themselves whatever they think valuable and useful.²¹

Hume is in general distressed by the short-sighted policies of nations whose ill-founded jealousy prevents them from pursuing not only the interest of world peace but their own prosperity. Unfortunately, observes Hume, "nothing is more usual, among states which have made some advance in commerce, than to look on the progress of their neighbors with a suspicious eye, to consider all trading states as their rivals, and to suppose that it is impossible for them to flourish, but at their expense."²² Hume had in mind, of course, the well-known theory of the mercantilists, which held that an increase of wealth of any country is brought about by the loss of wealth to others. On the contrary, holds Hume, "the increase of riches and commerce in any one nation, instead of hurting, commonly promotes the riches and commerce of all its neighbors."²³ The word "commonly" does imply a recognition on his part that there may be exceptions—presumably in matters of defense. Hume certainly does not deny the possibility that a nation will occasionally use its riches to gain strategic advantage, and admits that defense is of paramount importance, commending, for example, Hiero the King of Syracuse for courageously keeping the integrity of his kingdom against foreign domination. Hiero is held up as a prime example of temperate wisdom in the best Greek tradition; for

the maxim of preserving the balance of power is founded so much on common sense and obvious reasoning, that it is impossible it could altogether have escaped antiquity, where we find, in other particulars, so many marks of deep penetration and discernment.²⁴

Hume sees no reason to offer special arguments on behalf of so "common sense" an ideal as the preservation of national sovereignty. In his own day, Hume finds solace in the behavior of his native land that has valiantly opposed its enemies,

has stood foremost, and she still maintains her station. Besides her advantages of riches and situation, her people are animated with such a national spirit, and are so fully sensible of the blessings of their government, that we may hope their vigour never will languish in so necessary and so just a cause.²⁵

A cause not only just but outright necessary; Hume endorsed his countrymen's zeal for national sovereignty even as he deplored its excesses. Far from repudiating economic warfare as such, he merely distinguished between "ill-founded jealousy," which maliciously or at least erroneously rejoices in the ill-fortune of other nations, on the one hand, and on the other hand a commendable self-esteem, which dictates a healthy desire for security and integrity in the best ancient tradition.

This point of view was fully shared by his good friend Adam Smith who was however just as wary of any barriers to free trade, on both the intra- and the international scale. His reasons were similar to Hume's: free trade, they both believed, benefits everyone and yields the greatest prosperity to all partners. Yet Smith too specified one ex-

ception to his principle of laissez faire: again, national defense. He was willing to support the Navigation Laws in spite of their deleterious effect on profit and efficiency. One effect of these laws, Smith told his countrymen, is to diminish the number of sellers; thus “we necessarily diminish that of buyers, and are thus likely not only to buy foreign goods dearer, but to sell our own cheaper, than if there was a more perfect freedom of trade.”²⁶ The reason he would nevertheless endorse such a seemingly irrational policy is well known:

As defence, however, is of much more importance than opulence, the Act of Navigation is, perhaps, the wisest of all the commercial regulations of England.²⁷

Clearly, it is not that defense is at least as important as opulence, nor that opulence should be sought in the interest of defense, but rather that material considerations ought to be set aside for a higher ideal, that of national sovereignty. No one can accuse Adam Smith of having advocated the pursuit of profit at any cost; on the contrary, that pursuit could only take place in an atmosphere free of threat, in a liberal society master of its own fate.

The year that saw the publication of *The Wealth of Nations* was also the year when the state of Virginia adopted what has been called the first form of a declaration of the rights of man. Authored by George Mason, it proclaimed that men are by nature free and have a right to life, liberty, property, and the pursuit of happiness. The idea of course, was to be echoed in the Declaration of Independence drafted shortly thereafter by Thomas Jefferson. That document became famous without, however, a crucial paragraph included in its first draft, a paragraph that complained that George III had

waged cruel War against human Nature itself, violating its most sacred Rights of Life and Liberty in the Persons of a distant People who never offended him, captivating and carrying them into Slavery in another Hemisphere, or to incur miserable Death, in their Transportation thither.²⁸

It was not until the Treaty of Ghent that the United States and Great Britain would obligate themselves “to use their best endeavors” to condemn slave trade as “irreconcilable with the principles of humanity and justice.”²⁹ Slavery was condemned on several other occasions internationally—at the Treaty of Paris of 1814, the Congress of Vienna a year later, the Berlin Conference on Africa in 1885, the Brussels Antislavery conference of 1890. State constitutions were slowly beginning to adopt antislavery provisions around the same time,³⁰ but the 1919 Treaty of St. Germain reflected the need to uphold once more the principle of liberty by placing on each signatory power an explicit international obligation for the abolition of slavery—reaffirmed in 1926 at the Geneva conference.

As late as 1956 an antislavery convention was held under the auspices of the United Nations, and it is fair to say that the Jackson-

Vanik Amendment is the most recent American legislative attempt in the tradition of repudiating the practice of denying people their right of free movement. To repeat Professor Meiman's words cited above, "this right was throughout history the main criterion, the main test, distinguishing the freeman from the slave and the serf." Nor is this, again, a matter simply of humanitarian concern. Whenever the rights of life and liberty are denied, the entire community of nations is threatened—admittedly in varying degrees, but nevertheless threatened. In his famous 1948 speech delivered at the opening of the United Nations Assembly in Paris, Secretary of State George Marshall warned that

[g]overnments which systematically disregard the rights of their own people are not likely to respect the rights of other nations and other people and are likely to seek their objectives by coercion and force in the international field.³¹

It is the repudiation of coercion that is at stake here, the defense of liberty as such.

To be sure, there are times when the threat to international peace of a particular country's violation of its citizens' liberty will be less evident, in which case it is fair to say that another country's interference on behalf of the beleaguered citizens is a case of "humanitarian intervention" more properly so-called. According to E. C. Stowell,

[h]umanitarian intervention may be defined as the reliance upon force for the justifiable purpose of protecting the inhabitants of another state from treatment which is so arbitrary and persistently abusive as to exceed the limits of that authority within which the sovereign is presumed to act with reason and justice.³²

The definition might be extended by including not only reliance on military force but also measures of economic warfare.

The legitimacy of this kind of intervention has been recognized by many, as far back as 1579 when the author of the *Vindicae Contra Tyrannos* defended it when undertaken "in behalf of neighboring peoples who are oppressed on account of adherence to the true religion or by any obvious tyranny."³³ In the twentieth century, Edwin M. Borchard reiterated this attitude eloquently. Noting that at the time of his writing—1929—individuals enjoyed only a minimum of rights under international law, Borchard remarked:

This view, it would seem, is confirmed by the fact that where a state under exceptional circumstances disregards certain rights of its own citizens, over whom presumably it has absolute sovereignty, the other states of the family of nations are authorized by international law to intervene on the grounds of humanity. When these 'human' rights are habitually violated, one or more states may intervene in the name of the society of nations and may take such measures as to substitute at least temporarily, if not permanently, its own sovereignty for that of the state thus controlled.³⁴

This point of view is fully endorsed by E. C. Stowell. But Stowell once again points out that humanitarian intervention is difficult to distinguish from genuine self-defense. He asks, rhetorically:

If, where such intolerable abuses do occur, it be excusable to violate at one and the same time the independence of a neighbor and the law of nations, can such a precedent of disrespect for law prove less dangerous to international security than the recognition of the right, when circumstances justify, to ignore that independence which is the ordinary rule of state life?³⁵

Perhaps the first recorded case of humanitarian intervention as such dates back to 480 B.C., when Celon Prince of Syracuse made it a condition of peace that the Carthaginians abandon their custom of sacrificing their children to Saturn. Often humanitarian intervention has involved the protection of religious minorities: one early case was the action by Russia's Catherine II who, together with the governments of Prussia and Great Britain, influenced the Catholic king of Poland who was persecuting his protestant and orthodox subjects. Several other instances on behalf of religious minorities may be found in the nineteenth century—such as the European intervention in 1829 to protect Christians who were being massacred by Turkey.

In the twentieth century, an attempt was made by the League of Nations in 1919 to proclaim the rights of life and integrity to minorities in the European community—an attempt whose feebleness, however, became evident a few years later when a Jew from Upper Silesia petitioned before the League on behalf of fellow Jews being persecuted by the Germans. The League, it was found, had no jurisdiction over Upper Silesia and the case was dropped. The year was 1933.

Not much greater is the authority and power of the United Nations today. Although its first article, which sets out the fundamental purposes of the United Nations, provides that one of those purposes is “to achieve international cooperation in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion,” there is a very real question as to the force of this lofty ideal, given that the United Nations has no real means of enforcing it. Members of the United Nations are presumably committed to promote, according to Article 55, “universal respect for, and observance of, human rights and fundamental freedoms,” which Article 56 entitles them to defend by taking “joint and separate action in cooperation with the Organization for the achievement of the Purposes set forth in Article 55.”³⁶ But it has been noted that the precise legal significance of this pledge by member states is anything but clear. They are bound merely to “promote,” “encourage,” and “assist in the realization of” human rights, rather than guaranteeing or protecting them. Besides, these “rights” are so hopelessly ill defined that their legal content is very questionable indeed.

Dennis J. Driscoll is among those who argue that “the issue was settled, finally, by the International Court of Justice in 1971 when the Court held, in the *Namibia Case*, that the [U.N.] Charter does indeed impose upon member states legal obligations with regard to human rights.”³⁷ Even if that issue were, indeed, “settled,” the question of enforcement is still very much open—which is why for all practical purposes it falls upon the United States to hold the banner of liberty in the West, not only for the sake of the oppressed but, indeed, in the interest of its own defense, and in the interest of international peace in general. This is especially true in connection with human rights violations in communist countries, violations that are based on ideology—an ideology that puts the triumph of the dictatorship of the proletariat before all other goals.

In his January 23, 1980, State of the Union address, former Pres. Jimmy Carter reemphasized that “our support for human rights in other countries is in our national interest as well as part of our national character.” Conversely, the national interest is, ultimately, the interest of the entire free world—at least as far as its security is concerned. The interrelation is intimate. Carter continued: “As we meet tonight, it has never been more clear that the state of our union depends on the state of the world. And tonight, as throughout our generation, freedom and peace in the world depend on the state of the American union.” The twin values—freedom and peace—are so intimately related that to separate them is to deny our dignity, what Carter has called “our national character.” It is for this reason that the Jackson-Vanik Amendment is so important a statement. In the words of Andrei Sakharov, the Soviet dissident who was exiled on the day before Carter’s speech,

legislative measures such as the Jackson-Vanik Amendment addressed to the defense of human rights and separate from other aspects of detente are extremely important and justified. That is an example of a moral approach to political problems, in accord with the moral principles of American democracy.³⁸

Sakharov also believes that freedom is inseparable from security. As he wrote to presidential candidate Jimmy Carter on October 11, 1976, “I am convinced that guaranteed political and civil rights for people the world over are also guarantees of international security.”³⁹

Whether the Jackson-Vanik Amendment has in practice achieved its goals is a question quite separate from the issue of its legitimacy as government policy. The general consensus is that it has done relatively little to enhance the human rights of people under communist domination in the Soviet bloc. This does not, however, automatically prove that such legislation is useless. It does argue for a more-sophisticated and finely tuned measure that could be—and should be—manipulated to produce the desired results. A practical discussion, however, must be left for another occasion.

1. Written on a grant from the Earhart Foundation as a visiting scholar at the Hoover Institution, Stanford University, 1979-81; updated at the Heritage Foundation, 1984.
2. Benjamin Constant, *De l'Esprit de Conquête et de l'Usurpation dans leurs rapports avec la Civilisation Européene*, part I, chap. 2, cited in Albert O. Hirschman, *National Power and the Structure of Foreign Trade* (Berkeley and Los Angeles: University of California Press, 1945), p. 15.
3. Yuan-Li Wu, *Economic Warfare* (New York: Prentice-Hall, 1952), p. 6, Cash Gershman, "Selling Them the Rope," *Commentary* (April 1979).
4. Antony C. Sutton, *Western Technology and Soviet Economic Development 1917-1930* (Stanford: Hoover Institution, 1968), is a classic. A fine unpublished study is Wayne A. Schroeder's "Soviet-American Technology Transfer and United States National Security," Ph.D. dissertation, University of Southern California, January 1981.
5. Speech by Henry M. Jackson to the National Leadership Assembly of the National Conference of Soviet Jewry, April 10, 1978, mimeographed.
6. See Roger Pilon, "A Theory of Rights: Toward Limited Government," Ph.D. dissertation, University of Chicago, 1979.
7. Joseph S. Nye, Jr., "Multinational Corporations in World Politics," *Foreign Affairs* 53 (October 1974), p. 154.
8. Hersch Lauterpacht, *International Law and Human Rights* (New York: F. A. Praeger, 1950), p. 32.
9. Henry William Spiegel, *The Growth of Economic Thought* (New Jersey: Prentice-Hall, 1971), p. 14.
10. *Ibid.*
11. *Ibid.*
12. Hugo Grotius, *The Law of War and Peace*, trans. Francis W. Kelsey (Indianapolis/New York: Bobbs-Merrill, 1925), p. 16.
13. *Ibid.*
14. *Ibid.*, p. 17.
15. *Ibid.*
16. *Ibid.*, p. 21.
17. *Ibid.*, p. 150.
18. *Ibid.*, p. 504.
19. *Ibid.*, p. 584.
20. David Hume, *Essays Literary, Moral and Political* (London/New York: George Routledge and Sons), p. 50.
21. *Ibid.*, p. 184.
22. *Ibid.*, p. 195.
23. *Ibid.*
24. *Ibid.*, p. 201.
25. *Ibid.*, pp. 201-202.
26. Adam Smith, *The Wealth of Nations*, ed. Robert Maynard Hutchins, Great Books of the Western World, vol. 35 (Chicago: Encyclopaedia Britannica, 1952).
27. *Ibid.*, p. 198.
28. Alessandra Luini del Russo, *International Protection of Human Rights* (Washington, D.C.: Lerner Law Book, 1971), p. 19.
29. *Ibid.*, p. 21.
30. The English Statute of 1838 on emancipation in the English Colonies (3 and 4 Gul. IV, 73), the French Constitution of 1848, the Thirteenth Amendment to the United States Constitution (1865), the Brazilian law of 1971, the Spanish Constitution of 1873, the Portuguese law of 1880, and the Chinese legislation of 1910. (*Ibid.*, p. 21)
31. Walter Laqueur and Barry Rubin, eds., *The Human Rights Reader* (New York/Scarborough, Ontario: New American Library, 1979), p. 51.
32. *Ibid.*, p. 172.
33. *Ibid.*, p. 173.
34. *Ibid.*, p. 174.
35. *Ibid.*
36. *Ibid.*, p. 43.
37. *Ibid.*
38. Andrei D. Sakharov, *Alarm & Hope* (New York: Vintage Books, 1978), p. 26.
39. *Ibid.*, p. 44.

CHOICE AND RATIONALITY

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WHAT I AM ABOUT TO PRESENT can perhaps best be seen as the second of a pair of sermons on a single text. The decisive reason why I do not propose on this occasion to preach both is that it would take far too long. The reasons why I will present the second rather than the first sermon are: first, that some of what I would have had to say in the first sermon is already available in print; and, second, that this second sermon is likely to be more excitingly controversial. However, I shall nonetheless briefly indicate the line taken in the first and today unpreached sermon. This exercise will serve as an equivalent for the “what-has-happened-so-far” paragraph at the start of the latest installment in a serial.

The text under discussion is taken from Peter Geach’s dissertation on *The Virtues*.

When we hear of some new attempt to explain reasoning or language or choice naturalistically, we ought to react as if we were told someone had squared the circle or proved $\sqrt{2}$ to be rational: only the mildest curiosity is in order—how well has the fallacy been concealed?¹

ON EXPLANATIONS

In explaining and justifying this text the first points to seize are: that every explanation is an answer to a question; and hence that, whenever more than one question can be asked, there must be room for more than one answering explanation. Such alternative explanations, therefore, will not necessarily be rivals for the same logical space.

(a) the primary contention that explanations are answers to questions can be somewhat frivolously enforced, yet enforced nonetheless effectively, by reference to a recent Andy Capp comic strip. The tried

and suffering Flo is shown protesting: "There was twelve light ales in the pantry this mornin'—now there's only ONE! 'ow d'yer explain THAT?" To which her incorrigible husband responds, with deadly predictability: "It was that dark in there I didn't see it." The cartoonist Smythe felt no call to spell out the ways in which the question intended—about the 11—differed from the question answered—about the one. Any such superfluous and heavy-footed spelling out should have taken notice also of the fractionally less obvious truth that the original challenge was, as so often, rather to justify the questionable than to explain the perplexing.

(b) The corollary of that primary contention—which is that explanations or, for that matter, justifications directed at different questions do not of necessity have to be competitors—had better be illustrated in a less-lighthearted and more-abstract way.

So consider next the speech act of asserting the familiar, colourless proposition p . There are certainly two, and indeed more than two, categorically different questions that can be asked about this pedestrian performance. One, in requesting an explanation why the performer believes that p is true, asks for a statement of that performer's warrant for so believing. It asks, that is to say, for his or her evidencing reasons for harboring the belief that p is true; for his or her justification for so doing. The other, in requesting an explanation why the same person chose this particular occasion to express the belief that p is true, asks what was the point and purpose of this particular speech act. It asks, that is to say, for his or her motivating reasons for so acting. The answer given is always in the first instance an explanation, though sometimes it may also constitute an attempt at justification.²

Now the relevant moral of all this, which would have been developed had I been preaching the first sermon, is that Geach's naturalist opponent refutes himself *if, but only if*, he presents his naturalistic explanations as necessarily precluding any alternative or additional explanation or justification in terms of evidencing or warranting reasons. Geach's naturalist refutes himself, that is, *if, but only if*, he states or suggests that his own specialist knowledge reveals or entails that there is no room at all for anything which in the ordinary and traditional understanding could be rated as knowledge.³ I myself would argue—and do—that naturalists do not have thus disastrously to refute themselves. Nevertheless, there is no escaping the fact that a great many of them have done, and still do—most notably nowadays the militants of the discipline persistently and significantly misdescribed as the sociology of knowledge.⁴

CHOICE AND CAUSATION

My first sermon, as that brief indication of its general line will have shown, concentrates on two of the three terms in Geach's warning. Geach was telling us, it will be remembered, how we ought to react to

hearing “of some new attempt to explain reasoning or language or choice naturalistically.” So far I have attended only to language and reasoning, and I have tried to bring out what Geach has in mind when he speaks of naturalistic explanation. The crux is that Geach assumes, at any rate when applied to “reasoning or language or choice,” that such an offering does not so much pretend to explain as to explain away. It is either made or mistaken to imply a total rejection of the meaningfulness of any language, of the actuality of human choice, and of the realized possibility of having and giving, and of knowing that you have and are giving, good evidencing reasons. Since the first and last of these rejections must make an incoherent nonsense of the whole project of rational inquiry—the very project of which they are offered as a fruit—it is indeed right for us in those cases at least “to react as if we were told someone had squared the circle or proved $\sqrt{2}$ to be rational.”

But now, nothing said so far even begins to establish either that the same applies to all attempts to show that there is no such thing as choice; or that there can be no question of discovering causally sufficient physiological conditions of all the speech acts and other on-goings that are in fact involved when someone is truly said to have come to recognize the excellent evidencing reasons for believing this or that. It is in effect these bolder conclusions that I shall attempt to establish in this present, second sermon.

I shall, that is, try to show three things. First, that choice—choice between at least two real alternatives either of which the agent possibly could take—must be a presupposition of any actual knowledge. For no creature incapable of making choices between alternative possibilities of belief could properly be said “to know something.” Second, choices, in this understanding, cannot be causally necessitated. For to say that there was necessitation in one particular sense would be to deny that there were any real alternatives to that particular commitment. Third, we all acquire the crucial and complementary notions both of practical necessitation and of being able to do other than we do in what is, surely, the only way in which such fundamental notions could be acquired. We acquire them from our everyday and utterly familiar experience both of making choices in action, and of bringing some things about while finding it utterly impossible to effect others.

Consider now one throwaway statement from a generally excellent book described by *Fortune* magazine as “A powerful indictment of the American criminal justice system.” This statement runs:

Stated another way, if causal theories explain why a criminal acts as he does, they also explain why he *must* act as he does, and therefore they make any reliance on deterrence seem futile or irrelevant.⁵

This, in what is here the appropriate sense of “cause,” is false. It is as essential as it is uncommon to distinguish two fundamentally different senses of the word “cause.” In one of these, the sense in which

we speak both of the causes of astronomical phenomena and of ourselves as agents causing movements of inanimate objects, causes truly do—*pace* Hume and the whole Humian tradition—bring about, and thus factually necessitate, their effects. Given the total cause, that is, nothing except a miraculous exercise of supernatural power can prevent the occurrence of whatever is in fact the due effect. In this first, physical or necessitating interpretation, complete causal theories do indeed explain why what does happen *must* happen.

Yet it is only in a second, quite different, personal or inclining sense that we can talk of the causes of human action; whether criminal or otherwise. If I give you good cause to celebrate—perhaps by sympathetically informing you of some massive misfortune afflicting your most-detested enemy—then I provide you with a possible motivating reason for celebration. But I do not thereby necessitate the occurrence of appropriate celebrations. You yourself remain not merely an agent but, as far as this goes, an altogether free agent.

Certain criminologists, seeking the supposed concealed causes of crime, once asked a convicted multiple bankrobber: “Why did you rob banks?” He replied, with the shattering directness of an Andy Capp: “Because that was where the money was.” Not yet corrupted by any supposedly rehabilitating Open University courses in sociology, he did not pretend that his criminal actions had been anything but his actions. As an agent he was not, and could not have been, inexorably necessitated. This has to be true since, from the mere fact that someone was in some respect an agent, it follows necessarily that they were in that respect able to do other than they did.

Once this basic distinction between the two causes is mastered it becomes obvious that we need a parallel distinction between two determinisms. Certainly, to say that some outcome is fully determined by physical causes does carry rigorous necessitarian implications. But, equally certainly, to say that someone’s actions are completely determined by causes of the other sort—earlier called motivating reasons—is, if anything, to presuppose the contrary. The “psychic determinism” to which Sigmund Freud appealed in the psychological area is thus not the local application of a universal determinism of the first, necessitating sort. Instead, the two appear to be flatly incompatible.⁶ It is, therefore, diametrically wrong to try to conscript what historians and other social scientists offer as explanations of human actions *qua* actions to serve as support for a necessitarian determinism.⁷ On the other hand, if a naturalistic explanation is to be construed as one that provides a complete account in terms of necessitating physical causes, then Geach must be dead right to dismiss the possibility of any such explanation for the phenomena of choice.

The conclusions of the previous discussion still leave room for both a question and an objection. The question is, “What is the link between choice, in this libertarian understanding, and rationality?” The objection is that, if this is what choice implies, then there neither is nor could be any such thing. A suggestion in answer to the question comes from the second volume of the Postscript to Sir Karl Popper’s *The*

Logic of Scientific Discovery. But in order to overcome the objection I shall—albeit, as Gilbert Ryle loved to say, not very shamefacedly—have to defy Popper’s warnings against plunging “into the morass of language philosophy.”⁸

Popper himself proceeds to quote an argument deployed by J. B. S. Haldane in *The Inequality of Man*:

I am not myself a materialist because if materialism is true, it seems to me that we cannot know that it is true. If my opinions are the result of the chemical processes going on in my brain, they are determined by the laws of chemistry, not those of logic.⁹

As it stands this argument is vitiated by a false antithesis. Suppose we elaborate and refine upon the illustration offered and the distinctions sketched earlier. Then we can now distinguish a third kind of question to be raised about all the ongoings involved in what would normally be described as the speech act of asserting the proposition p . This kind of question asks about the physical necessitating causes of some or all these events. If we discount for the moment the necessitarian implications of such physical causation, then there would seem to be no inconsistency in asking at one and the same time: both for the evidencing reasons which the person had for believing p ; and for the causes of all the various events which occurred in the course of that person’s expressing the belief that p is true. On that first, temporary, discounting assumption no incompatibility subsists between—as Haldane at that stage put it—determination by the laws of chemistry and determination by the laws of logic.

But, after noticing that Haldane himself later repudiated both this argument and the conclusion it was offered to support, Popper nevertheless urges that what Haldane really meant was something else:

This is precisely Haldane’s point. It is the assertion that, if ‘scientific’ determinism is true, we cannot in a rational manner, know that it is true; we believe it, or disbelieve it, but not because we freely judge the *arguments or reasons* in its favour to be sound, but because we happen to be so determined (so brainwashed) as to believe it, or even to believe that we judge it, and accept it, rationally.¹⁰

Now the heart of the matter becomes not whether our beliefs were caused by evidencing reasons, rather than by chemical processes in our brains; but whether we could by any means have believed other than we did. Unless we could we cannot take credit for having, as rational beings, judged that these beliefs and not others, are true. Popper proceeds to add an important, correct comment:

This somewhat strange argument does not, of course, refute the doctrine of ‘scientific’ determinism. Even if it is accepted as valid, the world may still be as described by ‘scientific’ determinism. But by pointing out that, if ‘scientific’ determinism is true, we cannot know it or rationally discuss it, Haldane has given a refutation of the idea from which ‘scientific’ determinism springs.

This seminal idea is, we assume, part of what Geach would call naturalism; and it is in this way refuted inasmuch as such a naturalist can be taken to claim to know that his scientifically grounded naturalism is true. If, however, Popper's argument is to go through, it has to be allowed that no computer or other device the workings of which are completely determined by necessitating causes can correctly be said to know that any of its operations are valid or that any of its output is true. I myself gladly accept this essential limitation upon the potentialities of all such artifacts. Yet to Popper it might seem uncomfortably like a finding of the despised "language philosophy."

Before plunging headlong into that forbidden morass we must in passing notice both that much if not all belief is immediately necessitated; and that this fact can be used to bring out one particular corollary of the previous contention. This is a corollary that cannot but be agreeable to anyone who has ever been to school with Popper.

That at least some beliefs are immediately inescapable is best seen by recalling Hume's doctrine of what Kemp Smith christened "natural beliefs"—the belief, for instance, that in perception we are directly aware of some mind-independent reality.¹¹ The congenial corollary is that the more beliefs we find to be, in certain circumstances, immediately inescapable, the more vital it becomes to try to withdraw from such possibly deceiving situations and to expose ourselves and these beliefs to the full force of all rational objections—that is, to criticism.

Such constant willingness to expose ourselves to serious and well-girded criticism is, beyond doubt, always within our power. It is also, as recently I have been arguing in many different places, the one "most-certain test" of the sincerity of professed personal commitments to the theoretical search for truth. I have also argued on the same occasions that such willingness is also the most-telling touchstone of the authenticity of our professed dedication to the stated objectives of whatever practical policies we may choose to favor.¹²

AGENCY AND NECESSITY

At the beginning of *The Open Universe* Popper announces his intention to present "my reasons for being an indeterminist." At once he adds: "I shall not include among these reasons the intuitive idea of free will: as a rational argument in favor of indeterminism it is useless."¹³ His warrant for saying that any such direct appeal to experience is useless is that he may be mistaken even about the nature of what the behaviorist would call one of his own behaviors. Insofar as this is a token of a Cartesian-type argument (contending that in any area where we may conceivably be mistaken, we can never truly know), its validity, if it were valid, would have to be recognized as putting an insuperable obstacle in the way of the achieving by any fallible being of any knowledge whatsoever.¹⁴

Even Popper's original disclaimer, referring as it does to "the in-

tuitive idea of free will," is importantly misleading. For the crucial question is not whether we ever act of our own free will, but whether we ever act at all. When we say of someone that they acted not of their own free will but under compulsion, still they did act. The case of the businessman, who received from the Godfather "an offer which he could not refuse," is thus vitally different from that of the errant mafioso, who was without warning gunned down from behind.

We may both truly and colloquially say of the former, offered the urgent choice of having either his signature or his brains on a document within 30 seconds, that he had no choice, and hence that he could not have done other than he did. (He signed away the whole family business to—if that is the correct phrase—the Organization.)

But of course these everyday idioms must not be misconstrued, as so often they are, at the foot of the letter. For in more fundamental senses the businessman who acted under compulsion did have a choice and could have acted other than he did, however understandably intolerable was the only alternative remaining open to him. In these same more fundamental senses, to have a choice, to be able to do otherwise, is essential to what it is to be an agent. In these same more fundamental senses, again, the errant mafioso actually did have no choice; and, because he did not *do* anything, he could not have *done* otherwise. For, in that moment of unexpected and sudden death, he ceased both to do and to be.¹⁵

The final part of my discussion is going to sketch an argument for saying that the two mutually exclusive notions of physical necessity and of being able to do otherwise are only understood, and only can be, by people who have had, and who throughout their lives continue to enjoy, experience of both realities. They—which is to say we—have enjoyed and are continuing to enjoy experience both of unalterable necessity and of effective agency. It is, therefore, just not accurate to maintain that the entire universe is subject at every point to ineluctable necessity. Were this claim true we should not be able even to understand it, much less to know it to be true.

By far the best place from which to start to establish our last contention is the splendid chapter "Of Power" in John Locke's *Essay Concerning Human Understanding*. This is a chapter the message of which was missed by Hume—as Popper says here, "one of the very greatest philosophers of all time."¹⁶ He missed it because he could not entertain any idea of necessity other than the logical, and because he had to defend his insight that causal propositions could not compass any necessity of that logical kind.¹⁷ Locke starts with a statement of what he proposes to prove:

Every one, I think, finds in himself a power to begin or forbear, continue or put an end to several actions in himself. From the consideration of the extent of this power. . . which every one finds in himself, arise the ideas of liberty and necessity.¹⁸

Locke's technique for enforcing this point about our familiarity

with our agent powers—our experience of them—is to contrast what we do know or may know about what we cannot do. Unfortunately, Locke, like Popper, wrongly assumes that the 64 thousand dollar question is not whether we are, and can know that we are, agents choosing this alternative when we could have chosen that, but whether we are, and can know that we are, free agents choosing between alternatives at least two of which we find tolerable. This fault we have simply to discount, making the necessary mental transposition as we go along:

We have instances enough, and often more than enough, in our own bodies. A man's heart beats, and the blood circulates, which 'tis not in his power by any thought or volition to stop; and therefore in respect to these motions, where rest depends not on his choice, nor would follow the determination of his mind, if it should prefer it, he is not a free agent. Convulsive motions agitate his legs, so that though he wills it never so much, he cannot by any power of his mind stop their motion (as in that odd disease called *Chorea Sancti Viti*,) but he is perpetually dancing. He is . . . in this . . . under as much necessity of moving, as a stone that falls, or a tennis ball struck with a racket. On the other side, a palsy or the stocks hinder his legs from obeying the determination of his mind, if it would thereby transfer his body to another place.¹⁹

What truly there is want of, we must repeat, is not *freedom* but *agency*; not the lack of any tolerable and uncoerced alternatives, but the lack of any alternatives at all. Against this straightforward appeal to experience Popper would argue that it is always conceivable that we are mistaken about what is or is not in fact subject to our wills: that some of us in the past have been afflicted by sudden paralyses; or that we any of us may now have suddenly acquired unprecedented powers. Certainly this is conceivable: we are none of us either infallible or all-knowing. But the great mistake is to assume that knowledge presupposes infallibility; that, where we may conceivably be mistaken, there it is impossible for us ever to know. The truth is that we need only to be in a position to know, and to be claiming to know something that is in fact true.

Locke also suggests, albeit it in less-satisfactory terminology, that where action is not, there necessity reigns; that the human behaviors that are not actions must be necessary. Thus he writes:

Wherever thought is wholly wanting, or the power to act or forbear according to the direction of thought, there necessity takes place" (II (xxi) 13). And, a page or two earlier, we read: "A tennis ball, whether in motion by a stroke of a racket, or lying still at rest, is not by anyone taken to be a free agent. . . because we conceive not a tennis ball to think, and consequently not to have any volition, or preference of motion to rest, or *vice versa*; and therefore. . . is not a free agent; but all its both motion and rest come under our idea of necessary, and are so call'd. . . So a man striking himself, or his friend, by a convulsive motion of his arm, which it is not in his power. . . to stop, or forbear; . . . every one pities him as acting by necessity and constraint."²⁰

Once again, of course, the reason why we should pity such persons is not that they would be acting under constraint, but that their behaviors would be completely necessitated, and therefore not actions at all. Especially to those familiar with Hume's criticisms of this chapter, in his discussions both "Of Liberty and Necessity" and "Of the Idea of Necessary Connection," what is most curious is Locke's actual failure to go on to emphasize that, notwithstanding that those behaviors which are actions cannot have been necessitated, since the agents must as such have been able to do other than they did, still the behaviors aforesaid may themselves necessitate. For actions may bring about effects, making one alternative contingently necessary and another contingently impossible.²¹

We know how Hume would have tried to dispose of this contention, had Locke developed it. We know because, though Locke did not, Hume did. Hume, like Popper, insisted upon the perennial conceivability of alternatives: it must always be conceivable that what does usually happen one day will not. And, again like Popper, Hume draws an invalid inference from this true premise. Hume's inference is that, since there cannot be logical necessities linking those events or sorts of events that happen to be causes with those events or sorts of events that happen to be their effects, therefore there cannot be and are not objective necessities and objective impossibilities in the non-linguistic world. But this is false, and our consideration of choice has shown how we can know it to be false. It is precisely and only from our altogether familiar experiences as agents making things happen, yet agents always limited in the scope of their agency, that we can and must derive two—if you like—metaphysical basics. For this is the source: both of our ideas of agency and of this kind of necessity; and our knowledge that the universe provides abundant application for both these ideas. If anyone doubts this, I invite them to devise completely nonostensive and mutually independent explanations of these terms—explanations that could benefit creatures not themselves able, and required, to make choices and to deal with often intransigently autonomous realities. It is the final challenge of the archetypically incredulous man from Missouri: "Show me!"²²

This whole paper has tried to explain and defend the Geach motto from which we began. We must not stop without reiterating that it has at best provided a refutation only of those imprudently aggressive forms of naturalism that promise to banish "reasoning or language or choice." But such claims in truth are not essential to naturalism. Consider, for instance, the consistently Aristotelian naturalism of Strato of Lampsacus, who was next but one to the philosopher himself as Director of the Lyceum. Neither he nor his followers seem to have suggested anything of the sort: they had—poor things—never heard of the sociology of belief. Nor did they feel bound to labor to explain human action in the same necessitarian terms as were found convenient in astronomy or meteorology.²³ If we are to accept Geach's motto, then we must interpret the words "explain. . . naturalistically"

as entailing discredit, denial, and explaining away. In that understanding, but in that understanding alone:

When we hear of some new attempt to explain reasoning or language or choice naturalistically, we ought to react as if we were told someone had squared the circle or proved $\sqrt{2}$ to be rational: only the mildest curiosity is in order—how well has the fallacy been concealed?

1. Peter Geach, *The Virtues* (Cambridge, Eng.: Cambridge University Press, 1977), p. 52.
2. For this rather obvious yet crucially important distinction between evidencing and motivating reasons see, for instance, "Is Pascal's Wager the Only Safe Bet?" in my *The Presumption of Atheism* (London: Pemberton/Elek; and New York: Barnes and Noble, 1976); or ch. 7, sec. 7 in *An Introduction to Western Philosophy* (Indianapolis: Bobbs Merrill; and London: Thames and Hudson, 1971).
3. Compare, for instance, the reckless claim once made by one who was in his day our leading Freudian psychoanalyst: "The analyst must above all be an analyst. That is to say he must know positively that all human emotional reactions, all human judgements, and even reason itself, are but the tools of the unconscious; and that such seemingly acute convictions which an intelligent person like this possesses are but the inevitable effect of causes which lie buried in the unconscious levels of his psyche." See Charles Berg, *Deep Analysis* (London: George Allen and Unwin, 1946), p. 190.
4. This is true: not only of the reckless Radical assailed in chapter 1 of *Sociology, Equality and Education* (London: Macmillan; and New York: Barnes and Noble, 1976); but also of the [more patient and hardworking yet no less incorrigibly perverse] scholars of the Edinburgh Science Studies Unit, with whom I have also tried to deal faithfully elsewhere. See "A Strong Programme for the Sociology of Belief," in *Inquiry* (Oslo) 1982.
5. James Q. Wilson, *Thinking about Crime* (New York: Random House, 1977), p. 58.
6. The situation is complicated by the rarely noticed fact that the development of the notions of unconscious motivation involved not one but two conceptual innovations: it is not only a matter of attributing motivations to persons who are themselves unaware that they are being so moved; but also of construing as expressions of such unconscious desires, purposes, and what have you, behaviors which are not actions, and hence not under the conscious volitional control of the patient—compulsive symptomatic tics and psychogenic paralyses, for instance. See *A Rational Animal* (Oxford: Oxford University Press, 1978) chaps. 8-9.
7. Compare, for instance, "Human Choice and Historical Inevitability," in the *Journal of Libertarian Studies* 5 (Fall 1981).
8. K. R. Popper, *The Open Universe: An Argument for Indeterminism* (London: Hutchinson; and Totowa, N.J.: Rowman and Littlefield, 1982), p. xxi.
9. *Ibid.*, p. 89.
10. *Ibid.*, pp. 92-93. I treated various versions of the argument which Haldane did actually use in an article, "A Rational Animal," in J. R. Smythies, ed., *Brain and Mind* (London: Routledge and Kegan Paul; and New York: Humanities Press, 1965). But I did not either at that time or for several years later appreciate the full force of the different argument which here Popper too generously attributes to Haldane.
11. See N. Kemp Smith, *The Philosophy of David Hume* (London: Macmillan, 1949), pp. 116 ff. and passim; and note that the name phrase chosen by Kemp Smith is not one of the several employed by Hume. On belief generally, see H. H. Price, *Belief* (London: Allen and Unwin, and New York: Humanities Press, 1969).
12. "Sincerity, Criticism, and Monitoring," in *Journal of the Philosophy of Education* (1979): 141-47, and, a revised version, in the *Proceedings of the IXth International Congress on the Unity of the Sciences* (New York: International Cultural Foundation, 1981), vol. I, pp. 1019-29; also particular applications in "Spend Less and Learn More," in D. Anderson, ed., *Pied Pipers of Education* (London: Social Affairs Unit, 1981) and in "The Spending Cure," in *Policy Review* (1982).

13. Popper, *The Open Universe*, p. 1.
14. Contemplate the devastation wrought by firing off both barrels in the first paragraph of Part IV of the *Discourse on the Method*: "...on the grounds that our senses sometimes deceive us, I wanted to suppose that there was not anything corresponding to what they make us imagine. And because some men make mistakes in reasoning...and fall into fallacies...I rejected as unsound all the reasonings which I had hitherto taken for demonstrations." I give my own reasons for rejecting this argument type in chapter 9 of *Flew, An Introduction to Western Philosophy*.
15. For a fuller development of these points see *A Rational Animal*, chaps. 3, 4, and 9.
16. Popper, *The Open Universe*, p. xix.
17. I first began to dispute with "the good David" on these issues in *Hume's Philosophy of Belief* (London: Routledge and Kegan Paul, and New York: Humanities Press, 1961), chaps. 6-8. But it is only much more recently that I have begun to feel confident that I do at last know my way around. Therefore see, rather: *A Rational Animal*, chap. 3 and passim; "Inconsistency within 'a reconciling project,'" in *Hume Studies* 4 (1978); "Of Another Idea of Necessary Connection," in *Philosophy* (1982); and a Commentary on *Hume and the Problem of Causation*, in *Philosophical Books* (1982).
18. John Locke, *Essay Concerning Human Understanding* II (xxi) 7.
19. *Ibid.*, II (xxi) 11.
20. *Ibid.*, II (xxi) 9.
21. See, for a filling of this gap, Max Black, "Making Something Happen," in S. Hook, ed., *Determinism and Freedom* (New York: New York University Press, 1958); reprinted as chapter 8 of Black's *Models and Metaphors* (Ithaca, N. Y.: Cornell University Press, 1962).
22. It has been suggested that the notions of practical necessity and practical impossibility might be derived from those of logical necessity and logical impossibility. This suggestion provides us with one more occasion to remind ourselves how misleading it is to represent logical necessity as just a very much stronger sort of practical necessity. When, for instance, people said that even God cannot do the logically impossible, they made it seem that there would be certain describable tasks which would be beyond the strength even of Omnipotence. But the less-exciting and less-impious truth comes out clearly if we transpose this piece of oldtime Material Mode of Speech theology into the Formal Mode. For it would be quite obviously absurd to try to give sense or coherence to an incoherent or nonsensical predicate by replacing its grammatical subject with the three-letter word "God." There is, therefore, no settable task which even God must find impossible; or, of course, necessary.
23. Why, by the way, are some of our own contemporaries so keen to insist that the most-complicated creatures known are subject to a total necessitation, while equally eager to maintain that the simplest particles discovered by microphysics are exempt from the rule of necessitating causality? Surely, if there is any indeterminism in the Universe, this is more likely to be found among the most complex rather than the least.

ON IMPROVING MANKIND BY POLITICAL MEANS

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Some writers have so confounded society with government, as to leave little or no distinction between them; whereas, they are not only different, but have different origins. Society is produced by our wants, and government by our wickedness; the former promotes our happiness positively by uniting our affections, the latter negatively by restraining our vices. . . . The first is a patron, the last is a punisher.

—*Thomas Paine, Common Sense*¹

CLEARLY, THERE ARE A NUMBER OF WAYS in which one might think that Thomas Paine's remarks restrict too narrowly the ends that laws can legitimately be framed to serve. I will be concerned with one of them. It has been said that the law may be used not only to restrain our vices but to increase our virtue as well: it can make better people of us and thereby positively promote—if not our happiness, necessarily, then—what might be called “the quality of life.” Perhaps the most familiar statement of this notion of the legislator as a moral educator is Aristotle's:

... we become just by the practice of just actions, self-controlled by exercising self-control, and courageous by performing acts of courage. This is corroborated by what happens in states. Lawgivers make the citizens good by inculcating habits in them, and this is the aim of every lawgiver; if he does not succeed in doing that, his legislation is a failure.²

In other words, the law makes us good by compelling us to act as a good person acts. More specifically, I assume that Aristotle is putting forward the following position:³ To be a good person is to possess certain virtues, such as courage. To each of these traits there corresponds a certain class of actions, such as courageous actions. The law instills

these traits by making us perform the acts that correspond to them. This it does, I assume, by declaring what must be done and offering, by specifying punishments for noncompliance, some extra incentive for doing as it says. In complying with such declarations we gradually form certain habits that either are virtues or are naturally transformed into virtues when we reach a certain level of maturity and enlightenment.

Needing a name for it, I will call this model of how virtues arise "the Aristotelian paradigm." Since the method of moral education it recommends is perhaps the most obvious way in which the state might accomplish this aim, I will call it "the political means of improving character" or "the political means" for short. In what follows, I will argue that the Aristotelian paradigm is an incorrect picture of how character is changed for the better. I will also try to show that, for the same reasons, the political means suffers from certain crippling deficiencies as a means of imparting precisely those virtues it seems most likely to impart. These deficiencies should at least inspire caution in legislators who contemplate using it. If I am right, it is in some contexts misleading to call it an instrument of moral education at all.

I will not claim that what I call the political means is the only way in which the law and the state could possibly make us better.⁴ Nor will I claim that it must not play a role in any program of moral education whatsoever. In this way, the case I will make will arrive at a less sweeping conclusion than the most familiar arguments against the political means, which always take the form of showing that the political means should never be used. We shall soon see that these arguments are inadequate, and the need to overcome the most obvious difficulties they encounter will take us directly to one of the most difficult questions of moral psychology: the question of how excellence of character is in fact instilled. Such arguments assume some answer to this question and, as we shall see, it is only by offering a true one that the political means can be plausibly criticized as a pedagogical method. I will offer an alternative answer in which something like the work the Aristotelian paradigm assigns to the state will be performed instead by what Paine called "society." As I do so, I will also offer reasons for rejecting a third alternative, which might be called "the Kantian paradigm," the notion that moral education is accomplished largely by means of the student's own purely autonomous insight. As far as specific policy recommendations are concerned, the case I will make will be unspectacular, but if I manage to shed light on the nature of moral education I think no one should complain.

SOME FAMILIAR ARGUMENTS

One objection to the political means is perhaps more obvious and more often heard than the others. A straightforward example of it

may be found in the writings of the American anarchist Albert J. Nock.⁵ According to Nock, to control human behavior by means of law is to control it "by force, by some form of outside compulsion." Thus it is incompatible with freedom. Freedom, however, is a necessary condition of "responsibility," because to be responsible, Nock believes, means "to rationalize, construct and adhere to a code of one's own." Responsibility, in turn, is a necessary condition of virtue. Thus the effort to create virtue by law destroys the very thing it is intended to bring about. The political means is therefore simply self-defeating.

This line of reasoning poses a number of problems, not the least of which arises from the remarkably narrow conception of responsibility it employs. If this is what responsibility is, it is surely practiced by very few of the people who actually exist in this world: most people do not live by a code they have constructed themselves, nor even by one they have thought about critically to any large extent. For the most part they accept the principles they live by as social conventions; that is, they accept them because they are accepted by others, who have accepted them for the same reason.⁶ This fact presents anyone who holds Nock's position with a dilemma. On the one hand, if this is what responsibility is, social convention is at least as incompatible with it as law is. Thus if Nock's reasoning shows anything about the law it shows that social convention as such prevents people from being responsible. Since such conventions are in large part the basis of human life as we know it, this would seem to mean that most people are not responsible and, presumably, that they have no moral worth. Since such a conclusion must surely seem too harsh even to most cynics, it is a good reason for abandoning this notion of responsibility. But this would destroy the argument as a critique of attempts to create virtue by making it legally obligatory. The argument therefore proves both too much and too little.

We encounter a problem similar to the one confronting Nock's remarks in what is surely the most famous critique of the idea that virtue can be created by enforcing it legally. This is the "fugitive and cloistered virtue" passage in John Milton's *Areopagitica*. In it, he says:

As therefore the state of man now is, what wisdom can there be to choose, what continence to forbear without the knowledge of evil? He that can apprehend and consider vice with all her baits and seeming pleasures, and yet abstain, and yet distinguish, and yet prefer that which is truly better, he is the true warfaring Christian. I cannot praise a fugitive and cloistered virtue, unexercised and unbreathed. . . . Assuredly we bring not innocence into the world, we bring impurity rather: that which purifies us is trial, and trial is by what is contrary.⁷

Like Nock's argument, Milton's assumes a moral theory: virtue requires a certain sort of knowledge, and this knowledge must include

acquaintance with models of bad thought and conduct. Thus, it is precisely by attempting to “banish all objects of lust”⁸ from the community that law defeats the purpose proposed by Aristotle, which is to make us more virtuous. Milton’s alternative is the one expressed in the form of a paradox by the “revised motto” of Mark Twain’s “The Man That Corrupted Hadleyburg”: “Lead us into temptation.”

Milton’s argument suffers from a rather serious shortcoming. He wants to say, not merely that the political means of promoting virtue is a bad one, but that at least in some circumstances there is a better one. “Impurity and remissness, for certain, are the bane of a commonwealth; but there the great art lies, to discern in what the law is to bid restraint and punishment, and in what things persuasion only is to work.”⁹ But why is persuasion ever any better than the law in this respect? To the extent that it works at all, it eliminates temptation from our lives and will presumably produce the same problem he believes to be generated by the law. Indeed, Milton’s argument settles on the one characteristic that *all* means to ethical improvement have in common, to the extent that they are successful.¹⁰ If it proves anything about the law it therefore proves the same thing about all of them. It gives no reason for preferring one successful method over another. Since neither Milton nor anyone else wants to oppose all of them, his argument is at best incomplete. Those who like it as far as it goes can only use it as a criticism of the political means if, at least, they find some feature of some alternative, such as convention, which compensates for the effect exposed by Milton, making it a superior method.¹¹

A little reflection will show that the remarks of Nock and Milton indicate a problem that confronts any attempt to criticize the political means of improving character. It is obvious that social conventions resemble laws in a number of ways. Any attempt to criticize the political means is in some danger of going too far and opposing reliance on social convention as well. Perhaps, as I have suggested, we can only avoid this danger by indicating some relevant difference between these two ways of controlling behavior. I will try to indicate such a difference in what follows, but first I will attempt to diminish the plausibility of the paradigm suggested by Aristotle’s remarks.

VIRTUOUS ACTION

First, it is not difficult to see at least that actions (including abstentions from action) that are done because the law requires them are different in kind from virtuous actions. Whether an action is virtuous or not depends partly on the reason for which it is done: to give something to someone in order to curry their favor is not to be generous. When a lawgiver gives us a law requiring some action that was previously not required by law, he gives us two new reasons for performing that action, and it is for these reasons that it will be perform-

ed more frequently than before. First, laws that require us to act in certain ways are widely seen as commands issued by a body of persons having the authority to do so, and thus those who see it this way will see the fact that the law requires something of them as by itself a reason for doing what it requires. Second, such laws bring with them penalties that make it less desirable to omit the required action than it was before.

It is easy to see that neither of these reasons by themselves can make what we do virtuous. Consider the first one. Suppose that I am a member of a mass movement, an admirer of its charismatic leader. One day our leader issues an order that all members of the movement must give all they have to those in need, and I immediately begin to do it. If this makes me a generous person, then by the same token if my leader cancels his order and forbids us to give to the needy then I immediately cease being a generous person. If he replaces the order with another commanding that we fight the enemies of the movement in spite of the danger involved, I become courageous: if he reverses himself again and commands extreme prudence I become something else. Obviously, virtues—and vices—do not change as easily as authoritative directives do. Such traits are what Aristotle called *hexeis*, relatively permanent dispositions to act in certain ways. Obedience can give one a disposition to act in the same ways, but the disposition is apparently different in kind from those that constitute one's character. Obedience to authority does not generate any virtues by itself.

This is if anything more obvious in the case of the second reason for doing as the laws enjoin. Giving things to people in order to avoid a penalty is no more generous than doing it in order to curry favor.

Separately, neither obedience nor fear of retribution are the sort of reason that virtue requires and they will be equally insufficient when they are combined, as they often are when one does something because the law requires it. What is perhaps more interesting is that what we have seen so far suggests that, in a limited way, Nock was right: virtue does seem to rest on a certain minimal sort of autonomy, if not on the extreme kind he describes. To have a trait like courage or generosity is to act on the basis of one's own notions about the right and the good. This would explain why virtue does not change as easily as the behavior of an obedient person: such notions are themselves relatively fixed characteristics of a person.¹² In acting obediently one acts on the basis of the directives of others, which change much more readily than one's own principles do.

The fact that virtuous conduct is quite different from actions that are done because the law requires them is not fatal to the Aristotelian paradigm. Aristotle himself, in fact, seems to recognize the difference between them.¹³ But if authoritative commands and the penalties attached to them can make us better persons by making us act as better persons act then they must, by making us act that way, teach us the notions about what is right and good that make us better people. By

considering an example, we can see that, in a way, such methods do teach us ideas of this sort, but we can also see that it does not appear to be true in the way that the Aristotelian paradigm requires.

Let us take an extreme case. Mary's son, Peter, is five years old and no more concerned with the welfare of others than most boys his age. She decides that he will not grow up to be a truly charitable person unless she guides him in that direction. She lays down a rule to the effect that he must give his best toy to any needy child he meets. She knows he is a good boy and generally does what she tells him to do, but to help make sure of it she hints that he will be punished if he disobeys. Eventually he forms a painful habit of doing what the rule says. Before long, though, something unforeseen happens: he conceives a powerful disliking for children who have something "wrong" with them. Children who are lame or blind or sick become more odious to him than broccoli or spinach. This odium is in a way quite rational in the present circumstances and is based on something he has learned: namely, that people with disabilities are bad. He has learned this because his mother *has made it true*. She has altered his situation in such a way that people with disabilities have become bad in the sense that they are now *bad for him*, like poison. Even if, due to a certain natural sympathy with the sufferings of others, he minds sacrificing his interests to theirs less than he would have without it, it remains true that they are destructive of his interests. Since all the most powerfully visible evidence he has on the matter leads to this conclusion, it would actually be irrational of him not to draw it. In a way, he has learned the principle she meant him to learn. She meant to teach him that he should act in a certain way and he has learned it. But she also wanted him to learn that others are worthy of respect and concern. This is shown by the fact that she wanted him to be a charitable person and not simply a compulsive giver. But somehow he has learned virtually the opposite of this.

In the Aristotelian paradigm, the formation of a virtue is the formation of a certain habit. We can see now that this is at best only part of the story of how such traits are formed. Mary has given Peter precisely that habit she would be giving him in teaching him to be charitable, but she has not taught him to be charitable. Peter consistently gives to those in need, but he does so with a resentful, teeth-gritting attitude which, as Aristotle tells us, is inconsistent with virtuous giving.¹⁴ What is missing from this sort of account is an explanation of how the moral educator is to impart to the student an understanding, in terms of notions of what is right or good, of the *point* of the activity in which he is being drilled. Any activity, in order to qualify as a form of education, must give the instructor a certain measure of control over how the student sees things after the activity is completed. I have described Mary as using educational resources—namely, authoritative commands and punishments—which are precisely the ones that the political means employs. As I have described the situation so far, the control that the instructor exercises over how the point is taken seems very poor.

The problem remains even if we alter my admittedly extreme example in ways that make it more realistic. We might suppose, for instance, that Mary attempts to impart a rule about giving that is more reasonable than the one I have her trying to instill. But any rule which requires giving to others would ensure that to some extent Peter's interests come into conflict with the interests of others, thus opening the possibility of his drawing the conclusions I have him drawing. Again, we might introduce into the example the familiar fact that moral education proceeds by precept as well as habituation—that authoritative commands and punishments are not the only means employed. That is, we might have Mary telling her son that the point of all this is that others have dignity and importance as well as oneself, and that their welfare thus merits our concern. But why would he believe this? It is true that her—to him—awesome parental authority helps to make her pronouncements credible, but all the *facts* she presents him with lead in another direction. So far, she does not seem to have an even minimally reliable method of influencing which way he will go. What is worse, nothing in all this suggests how he is even to understand what such precepts mean. Such assertions are not self-explanatory, and this one conflicts with all the palpable facts she has presented him with, since they point to the conclusion that others are dangerous to him and therefore to be avoided insofar as they need his concern.

Notice, finally, that the story I have told does not in any way assume that Peter possesses an ineradicable, natural instinct to be “selfish.” I have made two psychological assumptions about him, neither of which commits me to a controversial theory about human nature. First, I have assumed that he has certain desires—whatever their nature and wherever they come from—which run contrary to the rule he has learned. If this were not so, there would be no point in laying down the rule at all. Second, I have assumed that he really believes the rule he has learned. Due to the regard he has for his mother's authority, he may even be quite incapable of doubting the correctness of the rule. Consequently, he believes that he really ought to give his toys to needy children he meets. This is precisely why they have become so odious to him: whenever one of them appears, he thinks he really must do something that is painful to him, something that is peculiarly painful because he does not see the point of it. Though he believes the rule he must, so far, find it more or less meaningless and even, in a way, absurd.

RULES AND UNDERSTANDING

So far, my efforts to undermine the Aristotelian paradigm rather obviously have something in common with the arguments I considered earlier. I have tried to show that the educational efficacy of the law is limited to the extent that its resources are those singled out by the theory I have attributed to Aristotle. It is already obvious, however,

that the same resources are employed in the sort of instruction that occurs in the home, in which we make our initial acquaintance with social conventions. The problem I have posed for the law seems to afflict social convention as well. This is so despite the fact that I have applied a requirement of autonomous moral understanding that is considerably less drastic than the one applied by Nock. Later I will attempt to show that, in fact, such conventions make certain other resources available, in the home and elsewhere, which do meet my less drastic requirement while the political means does not. First, however, I will need to describe in somewhat more detail the problem I have posed.

Both law and social norms serve primarily to regulate our relations with others. Both contain rules which, like the one laid down by Mary in my example, propose that we promote the interests of others. Both also include rules that in various ways require us to refrain from doing things which damage the interests of others. It might be supposed that the difficulties encountered by Mary arise from the fact that she was teaching the first sort of rule, but in fact problems of the same kind are raised by the second sort as well. Rules that prevent us from harming others always either require that we forgo goods we could otherwise secure (by picking pockets, and so forth), or else they require us to give up some good we might otherwise keep (for instance, by refusing to pay our bills). On the whole, it costs us a great deal to observe such rules. In a way, they present other people as threats and obstacles to the pursuit of our own interests. Perhaps even a child can see that we are nonetheless all better off if we all obey rules of this sort. Yet it is rather more obvious that he can see that there is another situation in which he is still better off—namely, that in which everyone else obeys them and he does not. The rules are a help if others follow them and a hindrance if he does.

What is interesting, though, is the fact that, while this is in a way what the rules of morality are like, a moral person does not *see* them that way. If he believes in a rule prohibiting theft, he does not see it as an obstacle to his enriching himself by stealing the purse of the woman standing next to him at the subway station. To see a rule as an obstacle is, in itself, perfectly consistent with believing in the rightness of the rule. I can believe that I really ought to stop for all stop signs and yet be very irritated when one delays me in meeting an important appointment. Why does a moral person not see persons and the moral rules that protect them from harm in this light? The answer suggested by my remarks on the case of Peter is that he “respects” persons in a way that we do not normally “respect” stop signs. Yet the rules themselves do not support any positive attitude toward persons at all, while they do support a certain negative attitude—namely, seeing others as obstructions. On the other hand, while they do not *support* respect, they do *require* it. If we are to acquire any of the virtues expressed by following these rules—honesty, considerateness, and the like—we

must somehow acquire respect for others.¹⁵

It appears that any institution that instills the virtues which both the law and social convention can most plausibly be thought to give us must somehow teach us respect for others. What we need, then, is some insight into what this respect amounts to and how such institutions might teach it. To this end, it will help to draw a distinction—an informal one will be sufficient—between two kinds of rules, one of which I have thus far ignored.

So far, I have treated social norms that are examples of a class of rules that also includes the kind of laws the political means employs: these are rules which tell us what to do and what not to do. In all the examples I have cited, they also, in one way or another, determine the distribution of various goods which, of course, exist independently of the rules that distribute them. Such rules, which might be called “substantive rules,” can be contrasted with what I will call “ceremonial rules.”¹⁶ Ceremonial rules do not declare who shall have goods of this kind. Indeed, they do not even tell us what to do or not to do. They only specify *ways* in which we can engage in certain activities if we wish or need to. We are quite familiar with such rules in virtue of having observed them. We begin an encounter with others by saying “Hello” and asking how they are, we end it by saying “Good-bye.” We make requests and ask permissions; if granted them, we give thanks. If we do not do such things at the time or place which some substantive rule requires, we make apologies and give excuses. As these examples suggest, the activities these rules might be said to regulate would not exist if rules of this kind did not exist. When we say “Hello” we are engaging in an activity called a “salutation” and, if it were not for the rule which says that we can accomplish it by saying “Hello,” and other rules like it, there would be no such thing as a salutation. The same is true of making requests, giving thanks, and all other activities of this sort. Further, these activities are important to us only because of their expressive function and, although it is not always easy to say just what they express, it always has something to do with the agent’s appreciation of the person to whom they are done. The lesson of ceremonial observances seems to be that others must be approached gingerly and left with a benediction: we must not assume too much or handle them too roughly.

It is not difficult to see how a child can be brought to learn this lesson by being taught to follow ceremonial rules. Consider the following story. Young Paul wants to play with a pair of binoculars belonging to his uncle John. John has let him use them in the past and, thinking that John wouldn’t object to his having them now, Paul takes them. But his mother, Martha, makes it clear to him that this is not the way one goes about getting what someone else has already got: you must ask him for it first, and say “please.” Paul asks his uncle if he can please use the binoculars and is immediately told he has done it wrong: one says “may,” not “can.” If your request is granted, you say “thank you.” He soon masters these rules well enough. He cannot

doubt their correctness, since he has them on the infallible authority of his mother. He even possesses evidence of their correctness: somehow, people become angry and unpleasant if you take something they have, even if they have no objection to giving it to you, without first saying words like "may," "please," and "thank you." If you say the words, however, they are soothed and happy. There are many ways in which one must avoid jarring people's feelings, and this is one of them. He has learned his lesson.

Yet Paul is really in more or less the same position that Peter was in after Mary laid down her new rule: he has faith in certain principles but does not understand them. Why do people have such volatile feelings about such things in the first place, and why do these words have the apparently magic power to soothe these feelings? If Paul had the sophisticated intellectual resources of a social scientist or a philosopher there would be many answers he could give to these questions. For instance, he might suppose that people are proud of the things they possess because such things show that they have the power it takes to accumulate them. Thus, they hate to have things taken from them because it is a challenge to their power: they would rather give or lend things than have them taken, since giving or lending shows that they have the power to dispose of what they have according to their whims and without any hindrance. Alternatively, Paul might think that people simply want to keep in their possession as many things as possible, and that they insist on the practice of asking permission because it enables them to say "no," so that they can maintain the size of their hoard. Because he is only a child, however, Paul cannot indulge in such imaginative speculations. Fortunately, though, he does not need to. It is obvious to him that Martha and John understand the rules he has learned; for him, to understand them is simply to know how adults understand them.

This method of understanding rules, unlike the method in which one relies on one's own imagination, can only lead to one conclusion. These principles are related in definite ways to other ideas that adults use, including especially the notions of "yours" and "mine." The practices of asking, granting, and refusing permission are among those which mark the boundaries between what is yours and what is mine. Paul is aware that he need not seek permission to use something that already belongs to him; he also knows that he need not seek permission in order to come into possession of something which he is being given as a gift, or which he is taking in trade.

Sometimes, though, Paul wants to get to use, on his own initiative, something that is not his and for which he offers nothing in trade. The practices concerning permissions make it possible to accomplish this without simply taking what he wants. The use of this complicated apparatus makes sense to him when he realizes that it is one indication of the fact that, in the adult world, people are ordinarily seen as having a *right* to determine what happens to the things they possess: this is part of what it means to say that these things are *their* things. Asking permission is a practice that makes it possible for Paul to acquire

something possessed by someone else without violating that right, which he would be violating if he were to simply take it. If he understands this, he can understand the moves in the game he has been taught in the way that adults understand them. By saying "may" rather than "can" he signifies that he is asking that a right be transferred from someone else to him rather than asking for information. By saying "please" and "thank you" he expresses an appreciation for the fact that the thing he is asking for is not already his by right—that it comes to him, if it does, as a gift. The entire activity, then, expresses a respect for the boundaries between "mine" and "yours"—it expresses a respect for the rights of others.¹⁷ If he comes to see and to pursue the activity in this way, he has acquired in some degree the respect for others that I have said underlies decent relations between people.

The kind of training Paul has undergone is a more effective form of moral instruction than the sort to which Peter was subjected. It is possible, on the basis of what I have said, to explain this fact. The rule Peter learned was one of the substantive rules that regulate our relations with others. It was an example of the sort of substantive rule that governs the distribution of things which, independently of these rules, are regarded as good. Rules of this sort always require that we forgo or relinquish such goods. Consequently, they have a certain tendency to make us see others as threats or obstacles to the promotion of our interests. It was precisely what Peter could see in light of his rule that prevented him from grasping what respect is.

In a limited way, Paul's circumstances were like Peter's; they also involved a substantive rule requiring him to forgo or relinquish something antecedently regarded as good. This is the rule prohibiting one from simply taking things which do not belong to oneself. But of course it was not from this rule that Paul learned respect. He learned it from a ceremonial rule and not from a substantive one. Ceremonial rules in general are relatively costless to follow.¹⁸ It is not in itself against one's interest to ask permission (rather the contrary, in fact). This is true even if one knows in advance that the request will probably be refused. These rules make possible an activity which obviously expresses something, and which is quite mysterious to someone in Paul's position because he does not yet understand what it expresses. As such it *invites* him to try to understand it. We have seen that the practice he is confronted with, and others associated with it, provide him with the materials he needs to succeed. Once he understands it, he also understands substantive rules like the one that prohibits him from simply taking things that do not belong to him: once he comes to see others as having rights, he can appreciate rules that specify what rights others have, and that is what rules like this one do. We have also seen that to understand this practice is, in part, to understand what it is to regard others with respect; it is also clear from what I have said that to come to understand such respect under the influence of a certain sort of authority is, to some extent, to come to possess it.

CONCLUSION

It is time to stop and review the argument I have laid down so far, to see what it has come to. Early on, I said Nock's argument has certain undesirable consequences because of a rather extreme assumption he makes regarding the sort of autonomy required for virtue. These consequences can be avoided if one replaces this assumption with the much more reasonable one that one must act on principles which one understands. The political means however cannot reliably impart this kind of understanding because of the nature of the class of rules of which the relevant kinds of laws are instances: such rules, in general, place barriers in the way of achieving this sort of understanding. There are certain conventions, however, which do have the capacity to impart this sort of understanding. This capacity is sufficient to deliver us from the difficulties that I said were entailed by the assumptions behind Milton's familiar criticism of the political means. It shows that not all ways of promoting decent behavior are equal in this respect; there is one that has virtues which compensate to some extent for whatever limitations they might have in common.

What may we conclude concerning the relative merits of these two kinds of rules as instruments of moral education? It is perhaps important to notice the difference here between what follows and what does not. What follows is that, if they are considered separately, one of them has the character of an instrument of education and the other does not: one tends to lead to the required sort of understanding and the other is apt to block it. However, it is obvious that such instruments are not used separately in the world we live in. As far as what I have said is concerned, it is possible that substantive rules can acquire such a character when they work in the context of a whole system of educational means. It is possible that such rules could contribute something worthwhile to such a system, while other parts of the system overcome the bad effects which, as I have claimed, they are likely to produce. Indeed, we have good reason to believe that such a system is possible, because the one we use to raise our children seems to be precisely of this sort: their behavior is held in place by all sorts of substantive rules while other means of moral education do their work. This is how I have described the case of Paul earlier. It is part of the value of the practices having to do with making requests that they enable Paul to understand certain substantive rules such as the one which prohibits him from simply taking what he wants. Presumably, by helping him to grasp the point of such rules it also enables him to follow them with greater alacrity than before.

As I said at the outset, my argument does not imply that the political means ought never to be used.¹⁹ However, it does imply several other things which were not obvious in the beginning. First, even in the context of the sort of system I have just imagined, the political means has a rather peculiar status: if the system works, it is because the other means function as adequate *antidotes* to the political

means. They overcome its ill effects. This in turn suggests a second point. If a legislator is pressing for a new use of the political means, if he is trying to pass a new law to instill a virtue that will improve the way his subjects treat one another, it is not enough for him to claim that the actions enjoined by the proposed law are indeed those which would spring from the neglected virtue itself. The measure he proposes is apt to have effects that run counter to his own purpose and they will be overcome, if at all, by a complex system of beliefs and practices over which he has little control. He must claim the undesirable effects of this measure are not too weighty to be overcome by this system. This is a kind of claim which is obviously capable of being false. It would be false, for instance, if it were made of the rule that I have imagined Mary laying down for Peter. The difficulties involved in making such a claim may not be serious in the parent-child relationship, where it is possible to see all the important effects and easy to change the rule if it does not appear to be a good one. For legislators, who in most states control the behavior of millions of people they can never know, they are much more likely to be formidable. Whether they can be surmounted or not, they should not be ignored.

What I have said here also implies a third and more metaphysical point, one which concerns the relative positions of society and the state in the foundations of the moral life. The Aristotelian paradigm, as I have defined it, depicts the process by which virtue is taught as being fundamentally like the one in which a drill instructor teaches his soldiers to march. I have tried to show that part of the process of acquiring the other-regarding virtues which the law seems most likely to instill is more like learning a language than it is like learning to march or stand at attention, and that ceremonial rules provide the materials for this crucial aspect of moral education. They provide the expressive actions the meaning of which the student must grasp. This suggests that legislators in fact cannot originate such rules. It is impossible for the same reason that it is impossible for the law to originate a new language. The resources of the political means—authoritative commands and punishments—can make people do what the legislator wants them to do, but they cannot make them mean what the legislator wants them to mean by what they do.

To the extent that what people mean is not a product of individual fiat, it seems to arise from social conventions like those which govern the use of language. We do not need to have a theory showing precisely how such rules originate in order to know that they are not made by a specialized social organ which, like the state, imposes its rules on those outside it. They appear to arise somehow from voluntary relations among individuals. In a way, the position I have taken here can be seen as a variant of the theme, which appeared above, that virtue depends on freedom. But it is rather widely different from the variants I considered there. Specifically, I have avoided the assumption that virtue can only arise from purely autonomous individual insight. I

have avoided suggesting that the individual must devise his principles himself (by deriving them, perhaps, from the dictates of pure practical reason), or even that he must subject them to critical examination. However, I have supposed that he must *understand* them, and I have tried to show that here the individual relies on the social background of his actions. On this point, Aristotle, with his insistence that man is a social being (*zoon politikon*), seems closer to the truth than an extreme individualist like Kant.²⁰

1. In Merrill Jensen, ed., *Tracts of the American Revolution* (Indianapolis: Bobbs-Merrill, 1977), pp. 402-403.
2. Aristotle, *Nicomachean Ethics*, trans. Martin Ostwald (Indianapolis: Bobbs-Merrill, 1962), 110362-5.
3. This is not an essay in Aristotle scholarship, and I do not insist that this is Aristotle's position. It seems attractive enough to be worth discussing on its own merits, even if he did not hold it.
4. For examples of other possible ways, see Aristotle's *Politics* 7, chaps. 13-15 and 17. I have argued elsewhere that the criminal law produces an effect of this kind by removing opportunities for vengeful thoughts and feelings on the part of the victims of crime. But this happens by means of a process that bears no resemblance to what I am now calling the political means. See "Punishment, Revenge, and the Minimal Functions of the State," in *Understanding Human Emotions*, ed. Fred D. Miller, Jr., and Thomas W. Attig (Bowling Green, Ohio: Applied Philosophy Program, 1979).
5. All quotations in this paragraph are from his short essay, "On Doing the Right Thing," reprinted as an appendix to his *Our Enemy the State* (New York: Free Life Editions, 1973), pp. 93-99.
6. For a more complete account of what social conventions are and how they work, see my "Some Advantages of Social Control: An Individualist Defense," in *Public Choice* 36 (1981): 3-16.
7. *Areopagitica*, in *John Milton: Complete Poems and Major Prose*, ed. Merrit Y. Hughes (New York: Odyssey, 1957), p. 728.
8. *Ibid.*, p. 733.
9. *Ibid.*
10. It is worth noticing that, in Mark Twain's story, convention has precisely the effects Milton says the law has. It creates a sort of virtue which is not genuine and is easily corruptible, simply because it works too well in eliminating temptation. The virtue of Hadleyburg is exemplary only because it has never been subjected to a trial, but this means it is only apparent virtue, because it will fail any genuine trial it meets.
11. Perhaps I should point out in passing that the issue dealt with in these remarks of Nock and Milton is distinct from that of "the enforcement of morals" as it is presented in the writings of J. F. Stephen and Patrick Devlin, although the two issues are connected in a way. Someone who believes in the enforcement of morals could conceivably agree with Nock and Milton that the law actually makes us worse—he might think for instance that, if we obey the strictures of morality because it is the law, we are doing it for *reasons* which are vicious rather than virtuous. Yet he might think that immoral *acts* are so horrible as such that it is worthwhile to debase people somewhat in order to reduce the frequency with which such acts are done. Where victimless crimes are concerned, this may be an uncomfortable position to hold, but it is not contradictory. It is possible to hold that "morals" should always be enforced while admitting that this would not improve anyone's character.
12. See my "Character and Thought," *American Philosophical Quarterly* (July 1978), where I argue at length that both virtues and vices rest on such notions. I also attempt to show that beliefs about the right and the good are in fact more difficult to change than other beliefs are.
13. See *Nicomachean Ethics* 1144a13-18 and 1105a18-1105b18.
14. *Nicomachean Ethics* 1120a30-31.

15. In addition, respect seems essential to the value we place upon having these rules observed by others in their conduct toward us. It is obvious that both laws and social norms serve to protect the conditions of our well-being—our property, our health, our “territories,” and so forth—against destructive acts on the part of others. It has been pointed out, though, that damage of this kind is not the only evil we perceive in the offenses thus discouraged. Adam Smith remarked that “what chiefly enrages us against the man who injures or insults us, is the little account which he seems to make of us. . . .” We read offenses against us as expressive acts in which the offender shows that “he seems to imagine, that other people may be sacrificed at any time, to his convenience or his humour.” Adam Smith, *The Theory of Moral Sentiments* (Indianapolis: Liberty Press, 1969), p. 181. A large part of the value of living in a community in which our rights are observed is the fact that it seems to show that our rights are *respected*. It may be possible for the social and political apparatus to secure such observance solely through fear of the penalties it imposes, but order obtained in this way, even if it were perfect, would be hollow and flat.

16. This distinction is a reformulation of one made by Emile Durkheim. See chapter 2 of Erving Goffman’s *Interaction Ritual* (Garden City, N.Y.: Doubleday, 1967). The account of ceremonial norms in this paragraph is largely drawn from Goffman. See also his *Relations in Public* (New York: Harper, 1971), chaps. 2 and 4.

17. Paul can come to this conclusion because it explains a coherent system of practices of which this activity is a part. His reaching this conclusion is an instance of what Gilbert Harman calls an inference to the best explanation.

18. Of course, this generalization has exceptions, but since the activities these rules make possible are important only because of their expressive function, the exceptions can only be cases in which the meaning of the act is one that one finds unpleasant to express. An obvious case of this is the activity of apologizing, in which we express a conviction that we have wronged the person to whom the activity is directed. Also, in some cultures, there are conventions for greeting religious and political leaders by performing intrinsically self-abasing gestures, like banging one’s forehead on the ground. In addition, there may be some conventions that some people find abasing while others do not. It is conceivable, for instance, that some people find it unpleasant to say thank you because it includes an acknowledgment that people other than themselves have rights. If this sort of unpleasantness were a common feature of ceremonial observances then, naturally, the account of moral education I am offering would be no good. However, I doubt that, in our culture at least, they are very common.

19. It seems obvious that such a position could only be a sensible one if applied to adults. It may turn out that it can only be adequately supported by an argument that is not pedagogical, like mine, but *moral*. It can perhaps only be supported by defending a principle like the one which H. L. Mencken called “Mencken’s Law”: “When A annoys or injures B on the pretense of saving or improving X, A is a scoundrel.” *Newspaper Days: 1899–1906* (New York: Knopf, 1941), pref. This is the sort of argument John Locke gives throughout the *First Letter Concerning Toleration*.

20. This paper was improved by comments from acquaintances, colleagues, and students too numerous to thank by name, but I should mention that Charles King, John Kekes, Gilbert Harman, Amelie Rorty, Michael Stocker, Morton Winston, and James D. Wallace were good enough to provide comments in writing. An earlier version was presented at the April 1980 Liberty Fund Conference on Virtue and Political Freedom. A fellowship from the Mellon Foundation made writing it much easier than it would have been otherwise.

CONSTRAINING THE CHOICE SET: LESSONS FROM THE SOFTWARE REVOLUTION

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For Law, in its true Notion, is not so much the Limitation as the direction of a free and intelligent Agent to his proper Interest, and prescribes no farther than is for the general Good of those under that Law. Could they be happier without it, the Law, as an useless thing would of it self vanish; and that ill deserves the Name of Confinement which hedges us in only from Bogs and Precipices.

—John Locke, *Second Treatise of Government*

THE EXISTENCE OF MANMADE CONSTRAINTS on the choice set in social processes is too well known to belabor. Constitutions constrain the will of majorities; rights hamper the ability of even supermajorities to effect transactions; common morality attempts to limit our consumption decision. One frequent judgment about some of these constraints is that they are inefficient.¹ One interpretation of a state of affairs where our theory tells us an activity is inefficient, but the activity persists in spite of our valiant efforts at education, is that we really do not understand the activity. The problem of interpreting a divergence between what our theory entails and what we observe “out there” is a general one in studies of society.²

I shall explore the possibility that these constraints actually contribute to efficiency by examining a related self-imposed constraint: the “voluntary straight jacket”³ accepted by those computer programmers participating in the “software revolution” or “structured programming.” Using the phrase in which the case that moral constraints contribute to efficiency was originally made, the thesis to be defended below is that such constraints are employed to compensate for a “weakness” in human nature. The confines imposed in the software revolution are particularly interesting, because the normative issues

are of an unusually simple sort: what is the lowest-cost method to attain the goal of creation of a correct program? This is a vital simplification to the argument; we need only deal with efficiency issues.⁴

One excellent reason for thinking that social institutions constraining choice exist ultimately for efficiency reasons is that David Hume said so. With Hume's argument, we can explain why sometimes we accept moral constraints by employing the same reasoning used to explain why sometimes we wear shoes: in a wide range of circumstances such artifacts reduce the costs of human activity. As Hume expressed the thesis, such institutions/artifacts exist to circumvent various human failings. We wear shoes because our skin is tender; we adopt laws to help us consider the full consequences of our actions at the moments that we perform them.⁵

When we operate within the Humean worldview, we accept the thesis that human nature has persistent characteristics that make it difficult for individual members of society to work together toward sometimes common, sometimes conflicting goals. In particular, one characteristic of ours is that as members of a species we have little concern for others as well as a rather small concern for our future self.

First, let us be clear that my interests are entirely positive. I am uninterested in prescribing behavior; rather, I consider the prescriptions that are in fact made. What devices are adopted to compensate for the social damage brought about by unconstrained individual choices? It can be shown that "moral information" which restricts the part of space individuals consider in their production decisions can enhance productivity.⁶ The guidance provided by moral constraints, which would serve no purpose if offered to fully informed individuals, can serve considerable purpose if offered to ignorant ones.

There seem to be two difficulties many have had with Hume's theory of social evolution. The first problem is the slow process by which such institutions as property rights, language, and the like evolve. Even if his thesis is true, what would the relevance be of a process which takes millenia to work itself to equilibrium for those whose life span is measured in a few decades? Second, isn't the evolutionary thesis vacuous; that is, doesn't "what survives is efficient" depend upon the artful definition of "efficiency" as "survival"? To deal with the first objection, we can show that while it is true that property rights and language change only incrementally over the life of an individual, structured programming is a creature of the last two generations of computers. Even "old-fashioned," unstructured FORTRAN dates from only 1957. To come to grips with the second objection, we can show that efficiency can be given a simple enough characterization so that we can generate implications about what sort of institutions can be expected to survive.

In particular, what I shall demonstrate is that the software revolution has created imperatives requiring its adherents to renounce certain types of programming constructs, constructs that make it easier to trade future difficulties for present solutions. As Hume suggested,

positive time preference gets us into a good many difficulties. The software revolution is an evolution of institutions to get out of these tangles.

THE DOCTRINE OF THE REVOLUTION

Documentation of the claim that the structured programming revolution emphasizes the role of constraints upon behavior is completely trivial. Here is what the great theoretician E. W. Dijkstra wrote on the subject. The emphasis on constraint is clearly detailed:

I now suggest that we confine ourselves to the design and implementation of intellectually manageable programs. If someone fears that this restriction is so severe that we cannot live with it, I can reassure him: the class of intellectually manageable programs is still sufficiently rich to contain many very realistic programs for any problems capable of algorithmic solution. . . .

Argument one is that, as the programmer only needs to consider intellectually manageable programs, the alternatives he is choosing from are much, much easier to cope with.

Argument two is that, as soon as we have decided to restrict ourselves to the subset of the intellectually manageable programs, we have achieved, once and for all, a drastic reduction of the solution space to be considered. And this argument is distinct from argument one.⁷

Earlier, Dijkstra had warned against one particular programming construct, the jump from one location to another, basing his concern on human frailty:

Our intellectual powers are rather geared to master static relations and . . . our powers to visualize processes evolving in time are relatively poorly developed. For that reason we should do (as wise programmers aware of our limitations) our utmost to shorten the conceptual gap between the static program and the dynamic process, to make the correspondence between the program (spread out in text space) and the process (spread out in time) as trivial as possible.⁸

COMPUTER SCIENCE DISCOVERS MARGINAL COST

The Humean thesis that moral information contributes to efficiency requires, naturally enough, that we say what efficiency is. The usual definition, the minimum cost required to perform a specific task, is perfectly adequate for our purpose. Needless to say, a programming language will be used to serve many purposes and there are many resources whose cost must be considered. There is the machine time to create and run the program, the human time required to create and run the program, and so on. Machine time costs are not limited to electricity requirements; when one of my simulation experiments takes five machine hours to run, those five hours cannot be used for anything else. Other cost considerations stem from the fact that

mistakes are made in programs as well as the fact that some programs are designed to serve many purposes over decades. In either event a program will be modified, either corrected or extended, in its service life.

What will come as a surprise to economists is that the simple point made in the previous paragraph is news. Indeed, many computer scientists measured the efficiency of a program or a language implementation by the single dimension of machine time. How long does it take for the machine to run a given algorithm? For an economist it is obvious that the number of operations required for the computer to perform the algorithm is an egregiously simple-minded criterion of efficiency. Computer time is simply one input in a multidimensional minimization problem. Nonetheless, as recently as 1974, a mathematician of the stature of Donald Knuth found it necessary to point out to his peers the role of *marginal* considerations in efficiency calculations:

There is no doubt that the "grail" of efficiency leads to abuse. Programmers waste enormous amounts of time thinking about, or worrying about, the speed of noncritical parts of their programs, and these attempts at efficiency actually have a strong negative impact when debugging and maintenance are considered. We *should* forget about small efficiencies, say about 97% of the time: premature optimization is the root of all evil.¹⁰

Knuth's "profiler," a programmer that can detect bottlenecks in programs, has had a considerable impact in thinking about language design precisely because it allows programmers to determine what parts of the code are worth further expenditure of their resources.¹¹

The obvious implication of all this is that for certain problems one mix of factors will be optimal and for other problems quite a different mix of factors will be the lowest-cost method of production. Programs designed for decade-long use will put a far greater stress on the consideration of maintenance than programs designed to last a weekend.

TECHNICAL ILLUSTRATIONS

One important trade-off that confronts a language designer is the range of tasks which the language allows. By simply eliminating the possibility of performing certain activities on the machine, the difficulty with which other tasks can be performed can be decreased considerably. By the definition of efficiency then a language which cannot perform a task will not be an efficient tool for this task. Historically, languages exist with varying degrees of restriction: some languages place no restrictions whatever on use of the machine while others put very stiff restrictions indeed.

It is useful to distinguish two methods by which a computer can be controlled. The first is by means of a language which allows the pro-

grammer to coerce directly the physical machinery. To this end the language requires that the programmer specify what part of the machine is to be used for each and every operation. The most widely employed language of this type is an assembly language where there is a one-to-one correspondence between the language used by the machine itself and the language used by the programmer to issue commands. Obviously, assembly language places no constraints in the way of using the machine.¹² The second type is a language, called a high-level language, which to a greater or lesser degree conceals the hardware details from the programmer. The programmer says what is to be done, abstractly from the hardware details of how it is done. Because the machine must be addressed in its own tongue for the message to register, a high-level language must be translated (compiled, interpreted) to a lower-level language suitable for machine operation.

Machine language generated mechanically from a high-level language will generally require more computer resources (space, time) than a program originally composed in assembly language. Mechanical translation from a high-level language A to the lower level language B will, other things being equal, not result in as "tight" a piece of code as would composition in B because the translation is basically a line-by-line affair. Originally composing in assembly language can take advantage of hardware specifics.¹³

The fundamental discipline that structured programming seeks to impose upon choices is to prevent the writing of programs which are difficult to read and thus to fix or extend. There are actually good reasons such programs are written: it is easier to write poorly than it is to write lucidly. This is as true in a programming language as it is in English. As far as we know, machines do not care about style, but a poorly written program often conceals a poorly thought-through algorithm. Moreover, even a correct program which is difficult to read is often enormously difficult to modify to serve other purposes. Here, we encounter the same facet of human nature upon which Hume founds government and property: without some restraint on our self-interest we simply do not care enough for others or our future selves to act out of social concern. For the issue at hand, we simply cannot be trusted to write lucid programs without some sort of restriction on our interested actions. Since for many programming projects the costs of software maintenance (extension and correction of existing programs) dwarf the costs of program construction, it is to the interest of society for this barrier to the "quick and dirty" to arise.¹⁴

The first stage of the revolution was the creation of high-level programming languages for program composition. At the time of the early high-level languages (FORTRAN, and its spinoffs such as BASIC in its early years, as well as APL), computer scientists did not fully appreciate the importance of readability.¹⁵ Consequently, many programming constructs were allowed, if not encouraged, which mask the intent of the programmer.

I have talked in generalities about language constraints. Let us con-

sider a specific problem in numerical calculation formulated in three distinct high-level languages. The only background information required for the argument is the unfortunate fact that a computer cannot do exact mathematics. A “real” number in mathematics must be represented with an infinite number of digits to the right of the decimal place. Computers, located in time and space, are only capable of representing a finite number of digits. For some purposes, an approximate answer is fine; for others, an exact answer is an absolute necessity. This means if the answer is not exact, we prefer not to have any answer. Consequently, many programming languages allow the user to specify two types of computations: integer (exact-precision) arithmetic for a very limited range of numbers and real (limited-precision) arithmetic over a very much wider range of numbers.

What is an example of such a severe approach to computational rigor? In many general-purpose languages the index of an array is an important operation that can only be performed with a number declared to be exact-precision.¹⁶ When we want the *k*th variable in a series, we will not settle for approximately the *k*th since “approximately the *k*th” may denote the “*k*-1st” or the “*k* + 1st”.¹⁷ Unfortunately, there is a problem of getting the two sorts of computations confused. There are three obvious ways of dealing with the problem: a) Don’t allow more than one type of arithmetic; b) Make it impossible to confuse the two; c) Trust the programmer to know what he is doing.

Suppose that one wanted to use a computer to divide 1 by 2 and print the result. A long-winded version of a BASIC program to perform this otherwise intractable mathematical feat is presented below as are terse FORTRAN and Pascal programs to do the same.

BASIC	FORTRAN	Pascal
10 i = 1	i = 1	program main(output);
20 j = 2	j = 2	var i,j,c: real;
30 c = i/j	c = i/j	begin
40 print c	write(5,1),c	i = 1;
50 end	1 format(1x,f9.2)	j = 2;
	end	c = i/j;
		writeln(c)
		end.

In the Pascal program one must first say what type of entity will be later considered. Here we specify that the variables divided are the computer realization of the (limited-precision) real numbers. The result, subject to computer precision, is 0.5. Presumably, the FORTRAN program is designed to perform the same computation. However, by naming the variables *i* and *j*, we have *implicitly* asked for integer (exact-precision) numbers. When an integer is divided by another integer, FORTRAN computes a number which is truncated towards zero. The result that will be printed out is therefore 0.00. This

confusion of real arithmetic and integer arithmetic has been the bane of many a FORTRAN program.¹⁸ BASIC will correctly compute 0.5.

The FORTRAN program is harder to read than the Pascal program, even though it is shorter, because the programmer's intention is not made clear in the written commands. It is hard to know that the programmer did not want integer division whereas in the Pascal version this is abundantly clear.¹⁹

The route taken in Pascal requires that the programmer explicitly specify what variables are of what type, integer or real. Indeed, Pascal has a special symbol for integer division; FORTRAN uses the same symbol for both types of division. The route taken in BASIC is to abandon integer arithmetic.²⁰ Pascal programs are thus harder to write while BASIC programs cannot handle a range of problems with which either FORTRAN or Pascal programs can deal routinely.

Ultimately, the solution of ending confusion by giving up computation ability will not be satisfactory. A language cannot be efficient with respect to a problem if it cannot solve it. Thus, the great excitement generated by languages such as Ada and Modula-2 arises from their promise to deliver the same computing capability as assembly-language programming with the safety of Pascal.

LANGUAGES AS CONSTITUTIONAL RESTRICTIONS ON CHOICE SPACE

A familiar statement in constitutional theory is that an ideal constitution should be designed to serve a race of devils; angels are quite capable of taking care of themselves without laws of any sort. Just as disputes in political theory often center on the model of man assumed as background, so too controversies among proponents of different programming languages ask: what are the characteristics of the person for whom this language is designed? Here is a statement from proponents of one of the more liberal of the modern languages, C:

Rather than try to deal with all of reality in every line of code, programming languages, explicitly or implicitly, construct models of reality and present them to the programmer.²¹

Questions of how much to trust programmers to do the right thing and how much to make it difficult to do the wrong thing are fundamental to the question of language design:

Another model implicit in a language environment is that of the programmer. Much of the C model relies on the programmer always being right, so the task of the language is to make it easy to say what is necessary. C encourages telling the truth about strange constructions. . . . The converse model, which is the basis of Pascal and Ada, is that the programmer is often wrong, so the language should make it hard to say anything incorrect. In Pascal (and presumably Ada) it is harder to say strange things and therefore perhaps harder to make mistakes.²²

A programming language provides vocabulary and a grammar in which it is possible to decide whether any particular collection of symbols is well-formed (meaningful) within that language. Distinct languages differ on the basis of what is a well-formed expression, but the fact that languages might use different symbols for the same mathematical operation is only a triviality. If one symbolic pattern performs the same syntactical function as another, a mechanical translation can turn one language into another.²³ One issue is what the language allows the program to do with the machine resources. The language provides a framework inside which instructions can be issued. Certain instructions are constitutional (of course they may be stupid), but others are not; that is, they are not well-formed expressions within the language.

The consensus among computer scientists is that the safety of a language is almost exclusively determined by its readability. There is no mechanical method of proving most programs correct, so clarity of expression is a watchword:

In fact, program clarity is enormously important, and to demonstrate (prove?) a program's correctness is ultimately a matter of convincing a person that the program is trustworthy. How can we approach this goal? After all, complicated tasks usually do inherently require complex algorithms, and this implies a myriad of details. And the details are the jungle in which the devil hides.²⁴

Besides a mathematical inclination, an exceptional good mastery of one's native tongue is the most vital asset of a competent programmer.²⁵

The most damning slur exchanged in the polemics among adherents of varied programming languages is the "write-only" epithet. A write-only language, allowing a great deal of computation to be accomplished in a relatively few symbols, by its very terseness hides the intent of the programmer, both from others who read the program and possibly even from the creator when he later reads the program to modify it. The highest praise possible for a computer language these days is that it is readable.

Ada enforces a strict programming discipline with the intention of making programs more readable. . . .²⁶

But bare Fortran is a poor language indeed for programming or for describing programs. So we have written all of our programs in a simple extension of Fortran called "Ratfor" It is easy to read, write, and understand.²⁷

The lack of correspondence between textual and computational. . . structure [resulting from GOTO statements] is extremely detrimental to the clarity of the program and makes the task of verification much more difficult. The presence of goto's [sic] in a Pascal program is often an indication that the programmer has not yet learned "to think" in Pascal (as this is a necessary construct in other programming languages).²⁸

It's bad practice to bury "magic numbers" [numerical constants]. . . in a program; they convey little information to someone who might have to read the program later, and they are hard to change in a systematic way. Fortunately, C provides a way to avoid such magic numbers.²⁹

There are not all that many computer scientists who seem willing to defend poorly written programs, so the emphasis on program clarity is not at all controversial.³⁰ Computer science turns nasty when a further characterization of a desirable language is offered: the language must be "manageable." One characteristic of "manageable" is that the language is small, in some objective sense.³¹ "Small" of course means there are few operations which are built into the language. One subjective characteristic of manageability is that an individual can hold the whole of the language's rules in his head when he writes a program. Thus, it almost follows from this artful definition that manageable languages have a single creator. The importance of such one-man languages can hardly be overestimated because they include APL, LISP, C, Pascal, Modula-2, among others.³² Needless to say, some languages are the products of committees, examples include ALGOL 68, PL/I, and Ada. These are, in fact, very large, very complicated languages which are very difficult to understand as wholes. Hence the controversy: if you do not fully understand the language you are using, how can you be certain the program you are writing is correct?³³ Even if the program is correct, in terms of the official syntax of the language, because a big language may be very difficult to implement, what reason is there to believe the compiler will be correct?

The implication of the above is simple: there will be no tendency for a unique programming language to emerge. One language that can do everything will be too big and too complicated for any one individual to remember. Thus, we obtain Adam Smith's theorem about gains from specialization with regard to programming languages. One language will process numbers; another will process letters and an individual who needs to do both will use a separate programming tool for each task.

CONCLUSION

A full-dress social institution, complete with manuals of decorum and inspiration, now exists.³⁴ The software revolution provides evidence that social evolution can move remarkably rapidly when there are strong enough incentives to do so. The economic cost of software failure is too obvious to belabor.

Languages that enforce discipline are triumphing over languages that allow the programmer "to do his own thing."³⁵ As Odysseus's ropes restrain him from the Siren, so too Programmer can escape the charms of the quick-and-dirty with the constitutional fortifications which have evolved in the last two decades. Human nature seems not to have changed much since David Hume wrote. Institutions still arise to curb our natural inclinations, to direct our self-interest so our actions more nearly serve the common good.

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1. For a recent discussion of A. K. Sen's thesis that rights and efficiency are in collision, see *Utilitarianism and Beyond*, ed. Amartya Sen and Bernard Williams (Cambridge: Cambridge University Press, 1982).
2. Examples are provided in David Levy, "Rational Choice and Morality," *History of Political Economy* 14 (1982): 1-36 and "Towards a NeoAristotelian Theory of Politics," *Public Choice* 42 (1984): 39-54.
3. The phrase is attributed to Marvin Minsky to describe Pascal, what is generally agreed to be the breakthrough language of the revolution. Jerry Pournelle, "The Debate Goes On . . .," *Byte* 8 (August 1983): 315. Other languages, especially some unofficial versions of Algol, embodied the same design philosophy, but Pascal has become a de facto academic standard.
4. The simplification is this: perhaps some critical constraints exist because people (or whales or trees) have rights. I believe that rights can be reduced to efficiency considerations, but there is no reason to consider the possibility that structured programming exists because machines have rights. The argument that rights encapsulate efficiency considerations is sketched in my review of *Utilitarianism and Beyond*, eds. A. K. Sen and Bernard Williams, in *History of Political Economy* 16 (Winter 1984).
5. David Hume, *A Treatise of Human Nature* (Oxford: Oxford University Press, 1888), p. 480: "'tis certain, that self-love, when it acts at its liberty, instead of engaging us to honest actions, is the source of all injustice and violence; nor can a man ever correct those vices, without correcting and restraining the *natural* movements of that appetite." *Ibid.*, p. 537: "Here then is the origin of civil government and society. Men are not able radically to cure, either in themselves or others, that narrowness of soul, which makes them prefer the present to the remote. They cannot change their natures. All they can do is to change their situation, and render the observance of justice the immediate interest of some particular persons, and its violation their more remote." This is the central insight upon which the argument below is based: human institutions of all sort arise to reduce the costs of attaining goals desired by many members of society.

The point is made in the modern economics literature by R. H. Strotz, "Myopia and Inconsistency in Dynamic Utility Maximizing," *Review of Economic Studies* 23 (1956): 165-80.

6. The demonstration that moral information can function as an element of a metaproduction function is provided in David Levy, "Utility-Enhancing Consumption Constraints," presented at the Southern Economic Association, November 1984; and David Levy, "David Hume's Invisible Hand in the *Wealth of Nations*," *Hume Studies* (1985), forthcoming. The former deals with convex production surfaces, the latter considers nonconvexity. Gilbert Harman has asked: how do these constraints differ from any other constraint? As I see it, there are two distinguishing characteristics of moral constraints: 1) they are "soft"; that is, they can be violated; nonetheless, 2) if violated, the individual who does so feels guilty. These conditions are of course not independent: if moral constraints were "hard," guilt would be redundant.
7. Edsger W. Dijkstra, "The Humble Programmer," in *Classics in Software Engineering*, ed. Edward Nash Yourdon (New York: Yourdon Press, 1979), p. 121.
8. Edsger W. Dijkstra, "Go To Statements Considered Harmful," in *Classics in Software Engineering*, pp. 29-30. The fame of this particular letter is hard to overstate; e.g., the Pascal compiler for the IBM Personal Computer has an option which "causes each GOTO statement in the listing to be flagged with a 'considered harmful' warning." *Pascal Compiler*, IBM Personal Computer Language Series, 1981, p. 4-14. Of course, this is a sly joke, but a joke among friends.
9. Dijkstra, "The Humble Programmer," p. 116: "To put it quite bluntly: as long as there were no machines, programming was no problem at all; when we had a few weak computers, programming became a mild problem, and now we have gigantic computers, programming has become an equally gigantic problem."
10. Donald Knuth, "Structured Programming with go to Statements," in *Classics in Software Engineering*, p. 269.
11. E.g., Brian W. Kernighan and P. J. Plauger, *Software Tools* (Reading, Mass.: Addison-Wesley, 1976), pp. 315-16.

12. A textbook example of such (MIXAL) is found in Donald E. Knuth, *Fundamental Algorithms*, 2d ed., vol. 1 of Knuth, *The Art of Computer Programming* (Reading, Mass.: Addison-Wesley), pp. 141–60. Knuth, “Structured Programming with go to Statements,” in *Classics in Software Engineering*, p. 275: “Programs in MIXAL are like programs in machine language, devoid of structure; or, more precisely, it is difficult for our eyes to perceive the program structure. . . . It is clearly better to write programs in a language that reveals the control structure, even if we are intimately conscious of the hardware at each step.”

13. For examples of how translation from a high-level language to assembly-language produces swollen code, see Christopher L. Morgan and Mitchell Waite, *8086/8088 16-Bit Microprocessor Primer* (Peterborough, N.H.: Byte/McGraw-Hill, 1982), pp. 70–72.

14. Daniel McCracken, “Revolution in Programming: An Overview,” in *Classics in Software Engineering*, p. 176: “Large projects in the past have had reported coding rates in the range of two or three statements per man-day. Since it would be difficult to spend more than ten minutes writing three statements, it’s clear that a lot of time was being wasted, presumably debugging and recoding modules that didn’t interface properly with other modules. . . . The discipline imposed by using only the three basic program structures. . . improves the performance of even the best programmers. Perhaps more important, it can greatly enhance the effectiveness of the rest of us, who are not geniuses and who sometimes program in rather sloppy ways if left to our own devices.” See also, Yourdon, “Introduction,” *Classics in Software Engineering*, p. 100, “quick-and-dirty patches done in the middle of the night have a way of becoming permanent, much to the dismay of the next generation of maintenance programmers.”

15. The relatively new BASIC which is provided on microcomputers is a far different language than the very early version which still can be found on mainframe computers. There are very modern versions of BASIC available today which bear a close resemblance to other structured languages.

16. Some special purpose languages, e.g., Edison, only allow exact precision numbers. Per Brinch Hansen, *Programming a Personal Computer* (Englewood Cliffs, N.J.: Prentice-Hall, 1982).

17. FORTRAN 77 is an example of a very important language which allows approximate precision numbers to serve as indices to arrays. This is one of the major changes which was made in FORTRAN vis-à-vis the 1966 standard of the language.

18. In his Alan Turing Lecture, C. A. R. Hoare defends languages such as Pascal which require the programmer to specify which type of number is to be employed for each operation, citing the fact that a Mariner space probe was lost because of the confusion of integer and real arithmetic in a FORTRAN program. See “The Emperor’s Old Clothes,” in *Writings of the Revolution*, ed. Edward Yourdon (New York: Yourdon Press, 1982), p. 190.

Peter Watts points out that because this is such a very well-known problem with FORTRAN, some compilers catch such abuses. However, the FORTRAN 10 compiler on Brookings’ DEC 10 and the FORTRAN 5 on George Mason’s CDC 720 gave the answer reported in the text with nary a word of warning.

19. The programmer’s intent can be inferred from the “format” statement where a real-valued number is requested. Unfortunately, many FORTRAN programs, as a matter of style, separate format statements from “executable” statements.

20. Again, this is old-fashioned BASIC. Newer BASICS do allow exact-precision arithmetic.

21. Stephen C. Johnson and Brian W. Kernighan, “The C Language and Models for Systems Programming,” *Byte* 8 (August 1983): 48.

22. *Ibid.*, p. 60.

23. This is precisely what “preprocessors” do. Why bother? One programming construct may be far more readable than another even when they are mathematically equivalent. Preprocessors are especially popular with FORTRAN 66 programmers: they allow the creation of relatively readable programs while maintaining FORTRAN 66’s virtues (it is a small, widely available language).

24. Niklaus Wirth, *Programming in Modula-2*, 2d ed., corrected (New York: Springer-Verlag, 1983), p. 86.

25. Edsger W. Dijkstra, *Selected Writings on Computing: A Personal Perspective* (New York: Springer-Verlag, 1982), p. 130.

26. Narain Gehani, *Ada: An Advanced Introduction* (Englewood Cliffs, N.J.: Prentice-Hall, 1983), p. xiii. J. G. P. Barnes, *Programming in Ada* (London: Addison-Wesley, 1982), p. 7: "Some of the key issues in Ada are [1] Readability—it is recognised that professional programs are read much more often than they are written. It is important therefore to avoid an over terse notation such as APL which although allowing a program to be written down quickly, makes it almost impossible to be read except perhaps by the original author soon after it was written."
27. Kernighan and Plauger, *Software Tools*, p. 4. My impression is that Ratfor is the most popular of all the FORTRAN preprocessors mentioned in note 23.
28. Kathleen Jensen and Niklaus Wirth, *Pascal User Manual and Report*, 2d ed. (New York: Springer-Verlag, 1975) pp. 32–33.
29. Brian W. Kernighan and Dennis M. Ritchie, *The C Programming Language* (Englewood Cliffs, N.J.: Prentice-Hall, 1978), p. 12.
30. One should acknowledge the programming equivalent of the "Real men don't..." jokes, i.e., "Real programmers don't document their code: if it was hard to write, it should be hard to read."
31. Hansen, *Programming a Personal Computer*, p. 4: "To determine whether or not a programming language is small, you need only look at the language report and the compiler."
32. The creators of the first three are Kenneth Iverson, John McCarthy, and Dennis Ritchie. Both Pascal and Modula-2 were created by Niklaus Wirth. The UNIX operating system is also a one-man affair.
33. The polemics of Dijkstra against PL/I and Hoare against Ada are especially worthy of note.
34. E.g., B. W. Kernighan and P. J. Plauger, *The Elements of Programming Style* (New York: John Wiley, 1974); E. W. Dijkstra, *A Discipline of Programming* (Englewood Cliffs, N.J.: Prentice-Hall, 1976).
35. Pournelle, "The Debate Goes On," p. 324: "Pascal has been the real success story in microcomputing. Last year more books [counting titles] were published about Pascal than about BASIC."

Discussion Notes

THE RANDIAN ARGUMENT RECONSIDERED: A REPLY TO CHARLES KING

CRITICAL DISCUSSIONS of the ideas of the philosopher/novelist Ayn Rand are often most interesting, especially in what they say about the critic and about Rand's relation to today's philosophical orthodoxy. In "Life and the Theory of Value," J. Charles King continues the criticism of Rand's ethics undertaken by Robert Nozick in his article, "On the Randian Argument."¹ Nozick's critique was examined in an article by Douglas Den Uyl and Douglas Rasmussen, to which further reference shall be made later.² Ethical egoism is one of the pillars of Rand's philosophy; it is from this base that she unfolds her social and political ideas.³ Insofar as Rand holds that a consistent view of the free society cannot be advocated on any base but her own, a criticism of her ethical position has far-reaching implications for those who support Rand's political as well as ethical views.

The purpose of this article is to examine King's criticisms in the light of Rand's work and to discover toward what kind of an answer, if any, Rand's philosophy would point. Rand might not have given her unconditional support to the view of ethics that develops; the purpose here, however, is not so much to defend Rand as to use her work to illuminate and defend ethical egoism.

ULTIMATE VALUES AND ENDS IN THEMSELVES

King begins his criticism by distinguishing between an "ultimate value" and an "end in itself." Where Rand states that "it is only an ultimate goal, an end in itself, that makes the existence of values possible," King argues that she conflates two separate concepts.⁴ In par-

ticular, he argues that, since an “end in itself is something that is desired for its own sake, not merely as a means to something else. . . any system of values must contain at least one end in itself.” This is true because the idea of means makes no sense without the idea of ends.⁵

On the other hand, a system of values need not contain an ultimate value, according to King. “If there is in any system of values an ultimate value, then that value will be an end in itself. But there may be in a system of values no ultimate value whatever, while there are any number of ends in themselves.”⁶

This observation is important because it is taken to open the possibility for a number of primary, competing ends. “A code of values may admit of any number of ends in themselves and may not be organized so that one particular value plays the role that Rand assigned to ultimate value.”⁷

It may here be useful to introduce Rand’s definition of the term “value” in order to be clear about what it is that is being discussed. For Rand, a value is “that which one acts to gain and/or keep”—it is the object of action of a living being, whether intentional or not.⁸ An ultimate value is the final object of the action of a living being.

It is thus King’s contention, if he is arguing on the basis of Rand’s definition, that the question, “Why act to gain X?” for certain objects of action has no meaning—these values are primary; they are ends in themselves.

It seems questionable that more than one such value could exist for the same person, at least. King himself recognizes the fact that values are ranked, so that choices between alternative courses of action can be made; the logical question is, “With respect to what?” For a ranking to exist, there must also exist a standard; this implies maximization or minimization of some single parameter. Hence, it is not clear how King escapes from the idea of an ultimate value.

A candidate for the position of ultimate value need not specify all other values by a process of deduction. For instance, the “ultimate value” for a ranked system containing what King might refer to as multiple ends in themselves, insofar as he maintains that desire is all that is necessary to account for value, could be formulated as the maximization of the fulfillment of desires. It is certainly the case that many men treat this *as if* it were the ultimate value. This may be the “default setting” for human beings at the preconceptual stage; once man starts to think, it becomes his guiding principle if his final answer to “Why?” is “Because I want to.”

Here one recognizes the need for actions and desires to be justified; that is, to be made acceptable to reason according to some criterion. Without such justification, neither ethics nor morality could exist at all.⁹ Following Hume, a desire-based morality recognizes no means of obtaining an “ought” from an “is.” This is why it seeks to explain purposeful actions using a few primary desires, or the fact of desire, which, being the only kind of being with an “ought” component,

becomes the irreducible foundation for an ethical system.

Rand's view, however, is different. An eudaemonist ethics maintains that only certain types of desire should be acted upon, i.e., valued. Furthermore, the criteria by which these desires are created or chosen lie within the reason, and make no reference to desire *per se*. Desire, in other words, may originate in a source outside desire.

It is possible to value that not all one's desires be fulfilled. If a desire is considered unethical, for example, one may devalue it—act so as not to gain the desired object. The things one acts to gain or keep may be determined by reason, regardless of other desires.

Not all desires, then, must be valued in Rand's sense. It is equally true that not all values must be desired, unless one wishes to assign the term "desire" to the goal-directed behavior of plants, for example. *Moral* values, however, must be desired, and furthermore justified or approved by the reason, in order to be considered such. A sleepwalker does not act on moral values; he is not held responsible for what he does in that state.¹⁰

The status of an ultimate value such as Rand's will be examined after the following section, which lays the groundwork for an objective standard of value.

THE THEORY OF VALUE

King takes Rand and her followers to task for connecting the alternative of existence and nonexistence to the possibility of goal-directed behavior. "Den Uyl and Rasmussen are simply mistaken in supposing that alternatives could not make a difference to an entity that did not face the difference between existing and not existing," he states.

Simply imagine that one suddenly finds, through whatever means, that one has been made immortal. One cannot be destroyed no matter what. Perhaps one's body has been impregnated with a chemical from a strange planet that renders one's tissues impervious to disruption of their structure from any force existing in the universe. There is no reason in supposing this hypothesis of indestructibility that we would lose all interest in what is going on around us. Even if we knew that we were ourselves indestructible, we might still like to eat (to be sure, on the hypothesis that even if we didn't eat, we would still survive, but we might, after all, simply enjoy the taste of a good steak); we might still enjoy the pleasures of the bottle; we might still enjoy the association of friends; we might still be interested in philosophical problems and so on ad infinitum. The mere removal of the possibility of destruction would not remove a whole range of the interests or desires of ordinary human life. Thus, it would be quite possible for one who is totally indestructible, nevertheless, to have a very rich system of values.¹¹

King goes on to maintain, "What a being must have to have value is, rather, the capacity for desire or preference or caring."¹² The

capacity for desire, then, is to be sufficient to explain why man has a code of values.

Note that this is not sufficient to answer Rand's question. Rand asks not why man *has* a code of values, but why man *needs* a code of values.¹³ If "life is a process of self-sustaining and self-generated action," then the fact that action is self-generated is sufficient to account for the *existence* of values; the fact that life is self-sustaining accounts for the *function* of values.

Since life is a process of self-sustaining and self-generated action, a living being must act to gain or keep certain things to sustain itself. To be a living thing, it is necessary to have values. Since only living beings face the fundamental alternative between life and death, the reason for which a living being *has* values is to sustain its life.¹⁴ As Den Uyl and Rasmussen point out:

Death, a living thing not being, does not require any actions for its maintenance. Death is not a positive way of being. Rather, it is a negation—the absence of being a living thing. It has no required actions; it has no needs. Death cannot be an ultimate value, then, simply because it does not require any actions and cannot be the reason or cause of goal-directed behavior.¹⁵

This argument, however, is not complete. The Randian argument hinges not on valuation being a necessary condition for life, but on life being a necessary condition of valuation. This is what King attempts to deny with his "indestructible man" argument.

What *are* the necessary conditions for valuation? If we take Rand's definition of value, that it is something one acts to gain and/or keep, then at least the action of the valuer must be self-generated. It is the one who *values* who acts to gain or keep a value; this action cannot come from outside.

Rasmussen and Den Uyl point out three other implications of valuation: that there is an alternative present, that the agent's actions could achieve or fail to achieve the value, and that the alternative must make a difference to the agent. The last point is especially important: "If the result of failing to achieve some end were ultimately no different than the result of achieving that same end, there would be no significance to either achieving it or not achieving it. Hence no *alternative* would be faced by the entity."¹⁶

King's example of the "indestructible man" is actually an attempt to show that a being whose action was self-generated but *not* self-sustaining (i.e., a nonliving being) could have values. This is the case because the fundamental alternative that living beings face, existence or nonexistence, lies in the fact that life is self-sustaining. King attempts to show that a being that does not face this fundamental alternative could still have values.

The unconditional nature of this being must be clarified. Its existence is not necessary because nothing can interfere with its self-sustenance. If this were true, it would still be self-sustaining, it would

still need values, and its existence would *still be contingent upon the achievement of those values*. In other words, it would still face the fundamental alternative of existence or nonexistence, even if nothing can interfere with the achievement of its values.

No, the being must continue even without sustaining itself. It must continue even if the being does not value continuing, if it tries to commit suicide, for example. Perhaps a suggestive parallel is the Christian idea of the immortal soul, which, when consigned to hell, suffers eternal torment amid the flames. It is this type of being that King claims can possess values.

This, however, is simply not the case. If the *whole* process of action of the being is not self-sustaining, but unconditional, then the alternative can make no difference to the entity. On the other hand, if the achievement of the goal makes a difference to the entity, then *some* part of its existence was contingent on the achievement. This part of its existence may be viewed as self-sustaining and constitutes the life of the being.

What King has done in his example of the “indestructible man” is to exclude from the domain of life choices about any consideration of physical survival. This man has no more control over the survival of his body than a normal man over the survival of the atoms in his cells. However, merely because this has ceased being part of his domain of choice does not entail the cessation of his life as a contingent process. Rand would be the first to insist that a being’s life consists in more than its physical survival.

Now it is true that an ethics constructed for such a being would be quite different than one for normal men. Since its capacity for choice could not be destroyed, the holding of its life as an ultimate value would consist in preserving the capability for choice; i.e., keeping interested in things, choosing long-term goals, and avoiding boredom, indifference, or despair, which would entail an end to alternatives and thus to life. The fact that its physical survival would be guaranteed would result in its having an ethics far more subjective in appearance than that of a human being. For this type of being, whose very survival depends solely on an act of choice, Robert Nozick’s condition of “not having achieved all values” might be ethically relevant. Normally, however, such a condition does not require action in order to be maintained.¹⁷

But arguing over the ethics of immortal beings is not the main point here. What is important is that “man’s life *qua* man” is more than just physical survival. Since valuation implies an alternative, it implies *some* contingency in the being of the valuer, which implies self-sustenance. Life is therefore a necessary condition for valuation.

The demonstration that life is the ultimate value has not yet been accomplished, however. The argument for man’s life as his ultimate value begins with the recognition that beings whose action is self-sustaining, living beings, face the alternative of continuing to exist as self-sustaining or of failing to do so. Being alive *means* having one’s existence as the fundamental object of one’s action—life is the

ultimate value for beings that are alive. Ceasing to be alive, on the other hand, means no longer having any values at all, as has been seen above. A living being must both *act to* sustain its life and succeed in doing so if its action is to be called self-sustaining.

Acting with the goal of sustaining one's life is, therefore, a necessary but not necessarily sufficient condition for a successful life. If a being's life is made up of all of the self-generated, self-sustaining actions that it takes, then each action taken implies that a portion of that being's life is conditional upon that action. Every alternative a being faces thus exists only in so far as its life is contingent.

Since all evaluation must be made in terms of some contingent goal, then it may be said that all alternatives open to a living being are evaluated (subjectively) with respect to the fundamental alternative of life or death.

An ultimate value for a living being, then, is something that that being cannot help but to act to gain and/or keep, even if its action does not in fact attain that goal. The action of a living being is judged according to whether it does in fact reach that goal. Insofar as man is concerned, choice is involved in valuation, so that a man's actions are judged by whether he has chosen to take the proper means toward achieving his ultimate goal.

The status of Rand's ultimate value for man now becomes evident: by whatever standard a man consciously judges what is good, all of these standards in fact ultimately reduce to "man's life," the objective ultimate value for man. This does not mean that man will always follow the objectively proper course of action—his perceptions of the proper means to achieve this end may be mistaken or mutually contradictory. A code of morality is not simply given to man; he must use his reason to discover it. Even should a man know *what* constitutes the morally proper course of action, he may not understand the reason *why*; he may thus be open to violating his moral principles in various circumstances. He is still, however, acting in pursuit of "man's life," though not in the right manner. In addition, even if man adopts the proper means, success in reaching his ultimate goal is not guaranteed to him. What is meant here is merely that, in any choice, man chooses what to him at that moment appears to be the means to achieving "man's life."

One may therefore conclude with Den Uyl and Rasmussen:

Given that life is a necessary condition for valuation, there is no other way we can value something without (implicitly at least) valuing that which makes valuation possible. Paradoxically perhaps, we could value not living any longer, but in making such a value we must nevertheless value life. . . . Therefore, we cannot "suppose" death or anything else (other than life) as the ultimate value, for the very activity of "holding something as a value," let alone as an ultimate one, depends on life being an ultimate value in the sense of "ultimate" discussed earlier. Thus there is an inconsistency in the request "prove that life is valuable." The very meaning of "valuable" presupposes the value of life.¹⁸

The argument also sheds light on King's contention that "even were this argument acceptable, it would only succeed in showing that life was always a value as a *means*, not that life was an end in itself or certainly not an ultimate end. . . to the extent that one valued having placed a value on (a) thing, then one valued life as a means, since it was the condition that enabled one to place a value on the thing at all."¹⁹ This argument is in fact much too narrow; it ignores the fact that the achievement of a value is *part* of the life of an organism. "Man is a being of self-made soul." The reason that life is a necessary condition for valuation is because a life is what results when values are pursued by action. Thus life is not a means for valuing, but the *end* of valuation.

King's criticism of the rational life as the natural end for man depends heavily on his earlier arguments. If it is true that man has an objectively proper end, then it is no longer true that "if reason is to be confined as (*sic*) merely gathering knowledge of what is, then it cannot set goals."²⁰ King deliberately places reason outside the possible sources of desire. Yet, if "ought" is understandable, and can be derived from "is," then the concept of a rational desire is perfectly acceptable.

THE MORAL LIFE

The preceding section may leave the impression that, since a life is in fact what results when values are pursued by action, then the act of pursuing values suffices to gain and/or keep life as the ultimate value. If this were the case, it would be impossible to derive any ethical significance from the fact that life is an ultimate value.

This impression occurs if one confuses subjective and objective points of view. A person may be pursuing some value and actually achieving some portion of his life, but only at the expense of a more objectively important part that he has neglected. In other words, the content of man's choice affects his prospects for survival.

Different alternatives that man faces, then, have different moral weights. That which determines whether man's life has in fact been achieved is his nature as man.

Now what does it mean for "man's life *qua* man" to be the ultimate value for man? This concept is explained in depth in Rand's essay, "The Objectivist Ethics." Nevertheless, a brief statement of its meaning might take on the form: a successful life lived by one's own effort, according to courses of action determined by one's reason, and the awareness of the significance of that fact.

This statement is intended to incorporate and clarify the meaning of Rand's cardinal virtues. Man must sustain his own life (be productive), he must use his reason in order to do so, as his values cannot be attained automatically, and he must understand and accept the reasons for which he follows such a code, holding his life as his own highest value.²¹ In addition, a fully successful human life includes the

attainment of the specific values that are pursued; this is what is meant by a "successful life" in the above statement.

Rand examines other virtues in her article; these establish some further universal moral precepts. They do not, however, serve as principles from which one is to deduce a complete moral code indicating what to do under every circumstance. For instance, the actual goals to be chosen by the individual as constitutive of his life are not determinable by deduction from the above principle.

On what basis, then, are these choices made? This involves what David Norton refers to as finding one's *daimon*, the one self out of the many possible selves that is related to the actual self by the relation of potentiality. Specifically, one's possible alternatives are determined by what abilities or talents one has. The weighing of possible alternatives, with a view toward becoming an excellent human being, toward doing "that which I, alone, can do," is for each individual to determine himself.²²

The pursuit of these goals, however, is guided by the moral principles given by man's natural end. Let us take as an example King's rich golfer, who spends his life in the "elusive quest for par." It may be useful to place this example next to one of an Olympic athlete who gives his all for a gold medal. Someone with a feeling for Rand's work would suspect that her approval would lie with the latter, but probably not with the former.

If this is the case, it is probably not because of the sport chosen, for there is no reason why golf is intrinsically less moral a sport than any other. The difference must lie in the way the activity is approached. In the case of the Olympic athlete, Rand would probably maintain that his activity is productive, while she would not for the golfer.

The difference between the productive golfer and the unproductive golfer may be illuminated by a few questions: Does he spend time trying to *perfect* his game? Does he subscribe to golf magazines? Is he fascinated by new improvements in equipment? Does he seek after others who might teach him to improve? Are his friends also impassioned golfers? In short, does he play the game with the idea of perfecting it, or because he has nothing else to do with his time? Is he engaging in productive, rational activity, or does he seek to escape living? Golf becomes the life of the man who sets it as his goal. Avoiding choices, avoiding life becomes the goal of the rich and idle golfer.

King's example, then, at least if interpreted in a certain way, shows the importance and meaning of the virtue of productiveness. Here again it is important not to confuse life with physical survival. A person may and must remain productive even after he has made his first million.

The example can also be used to illustrate the virtues of rationality and pride. Rationality is a condition for productiveness. If our golfer can't be bothered paying attention when he plays, if he does not seek to learn how to improve, then he is not facing the game with the requisite rationality. If after having played well, he attributes this fact to luck, or confesses that his wife is the one who gets after him to play,

then he is not showing the requisite pride in his achievement.

These virtues are not merely the means to an end. The virtues *constitute* part of the end; they are the human element in man's goal directed action. They flow from man's nature and indicate what is meant by "man's life *qua man*."

Another moral principle mentioned in King's article is that of rights. The principle of human rights follows from the fact that each man is a self-sustaining being, and that his survival as human must ultimately come through his own effort. This is the meaning of Rand's statement that each man is an end in himself. The condition necessary to man's proper survival in society is that this self-sustaining action not be interfered with by other men. This principle deserves a great deal of elaboration; it may be the case that Rand's treatment of it was too superficial. Nevertheless, man's right to control his own life does seem to be a legitimate conclusion from this view of man; what becomes problematic is how to define interference.

From the criticisms raised by J. Charles King in his article it becomes evident that it is quite easy to misunderstand the philosophy of Ayn Rand. On the other hand, when one begins to consider the criticisms in the light of Rand's writings, one appreciates her achievement in condensing and rendering readable such a complex system. Rand's egoistic philosophy, properly understood, is not a code for those who seek pleasure or physical survival at any price, rather it is a guide for those who seek to live successfully and properly as human beings, without neglecting any aspects of their nature.

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1. See J. Charles King, "Life and the Theory of Value: The Randian Argument Reconsidered," in Douglas J. Den Uyl and Douglas B. Rasmussen, eds., *The Philosophical Thought of Ayn Rand* (Chicago: University of Illinois Press, 1984), pp. 102-121. And see Robert Nozick, "On the Randian Argument," *Personalist* 52 (Spring 1971): 282-304.

2. Douglas Den Uyl and Douglas Rasmussen, "Nozick on the Randian Argument," *Personalist* 59 (April 1978): 184-205.

3. Rand refers to her position as one of ethical egoism. Her use of this term is somewhat problematic, as she thus lends herself to being misinterpreted as a Hobbesian; the label "eudaemonism" applied to her philosophy would make the distinction clear. Nevertheless, in light of the fact that the arguments of the post-Kantian philosophers against whom Rand sets herself are directed as much against eudaemonism as against other varieties of egoism, Rand's use of the term "egoism" might be justified as a forceful and unabashed rejection of altruistic ethics. In this article, "egoism" will be used to refer to Rand's ethical position.

4. King, "Life and the Theory of Value," pp. 107-108.

5. *Ibid.*
6. *Ibid.*
7. *Ibid.*
8. Ayn Rand, "The Objectivist Ethics," in *The Virtue of Selfishness* (New York: Signet Books, 1964), p. 15.
9. See especially Henry Veatch, *For an Ontology of Morals* (Evanston: Northwestern University Press, 1971).
10. While it appears that such a system condemns man to a life of unfulfilled desires, it does so less than might appear. Eudaemonist philosophers often maintain that the adoption of rational rules of conduct leads to a state in which immoral desires no longer arise. If this is true, the amount of desires unfulfilled by an egoist might be less than under some other systems. On the other hand, the principle based on the satisfaction of desire easily lends itself to the Buddhist solution: desire nothing, and you will not go unsatisfied. In any case, the eudaemonist maintains that man can lead a happy and proper life even if all his desires have not been fulfilled, and that whim is not an ethical primary.
11. King, "Life and the Theory of Value," p. 109.
12. *Ibid.*, p. 110.
13. Rand, "The Objectivist Ethics," p. 13.
14. *Ibid.*, pp. 15-16.
15. Den Uyl and Rasmussen, "Nozick on the Randian Argument," p. 191.
16. *Ibid.*, pp. 189-90.
17. *Ibid.*, p. 192: "These premises can be best examined if we will but consider Nozick's example of cancer being the necessary condition for the existence of the value 'being cured of cancer.' Strictly speaking, cancer is a necessary condition for the *state* or *condition* of 'being cured of cancer,' but it is *not* a necessary condition for the existence of the *value* 'being cured of cancer.' According to Rand, values do not exist without valuers, and 'being cured of cancer' is a value only in relation to a living being which values that state or condition. As Nozick understands premise (2) of this three-step argument, cancer would have to be a value if one valued being cured of cancer. Here, Nozick views values in a manner Rand would call intrinsic. Rand, however, could view premise (2) as not requiring that cancer be a value, because something is a value only in relation to someone's ability to value, and cancer is not a necessary condition for that."
18. *Ibid.*, p. 191.
19. King, "Life and the Theory of Value," p. 111.
20. *Ibid.*, p. 114.
21. See Rand, "The Objectivist Ethics," p. 25 ff.
22. David L. Norton, *Personal Destinies* (New Jersey: Princeton University Press, 1976).

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IS “FLOURISHING” A TRUE ALTERNATIVE ETHICS?

IN AN ARTICLE IN *Philosophy and Public Affairs* entitled “Human Flourishing, Ethics, and Liberty,”¹ Gilbert Harman sets about to answer the question, “What kind of ethics do we get if we begin with a conception of human flourishing and attempt to derive the rest of ethics from that conception?” His answer is that it must be either a form of utilitarianism or else an ethics centered in “imitation of excellence,” which is no ethics at all, since we cannot identify the excellence to be imitated without an antecedent idea of excellence, which has to be smuggled in from somewhere else.

I want to show that an ethics of “flourishing” logically cannot be reduced to either of the forms indicated by Harman; and to go further, it also does not reduce to a variant of Kantian deontology. Rather it stands as an independent ethical theory, genuinely alternative to the prevailing utilitarianisms and Kantianisms. Its hallmark is the primacy it gives to moral character: ideally it is our own developed character that tells us what to do, not abstractly formulated laws or rules, and not other people, or convention.

But first, what is an ethics of flourishing? I will offer a thumbnail characterization that combines Harman’s observations with a few of my own.

It is characteristic of this approach to take the basic form of evaluation to occur when something is assessed with respect to the way in which it fulfills its function. . . . A bread knife has a certain purpose: it is used to slice bread. A ‘good’ bread knife is one that is easy to use to slice bread smoothly. A ‘bad’ bread knife has ‘defects’ of one or another sort that make it not well suited for this purpose. . . . Bodily organs are also associated with functions. A heart is something that functions to pump a creature’s blood through its circulatory system. . . . A ‘good’ heart is one that functions well, pumping blood with just the right pressure through the circulatory system. . . . A similar sort of evaluation applies to whole organisms. Associated with a particular type of plant or animal is what might be called a condition of health or ‘flourishing.’ We evaluate organisms with respect to this condition. A ‘good specimen’ of an oak tree is an oak tree that is flourishing, not one that is stunted or diseased. . . . An oak tree ‘needs’ the necessary conditions of its flourishing. It ‘needs’ a good root system, adequate water and nutrients, light, air, and so forth. . . . People may or may not flourish in this sense. They may or may not be healthy and happy. Of course, happiness is connected not only with the satisfaction of bodily needs but also with the satisfaction

of a person's incidental desires and interests... Flourishing in this sense would seem to involve happiness, virtue, and accomplishment.

The "flourishing" of artifacts, organs, and animals is non-moral for they have no choice in the matter; human flourishing fulfills the moral condition of choice, for the will of the individual must be enlisted if flourishing is to occur. Functional evaluation of artifacts, organs, and animals is secondary to and derivative from human flourishing, because human flourishing is the agency by which value is realized in the world. For this reason a "good" murder weapon or implement of torture does not imply (morally) good murder or torture; implication can run only in the reverse direction.

Persons are *responsible* for flourishing, because flourishing realizes value in the world; flourishing is not a selfish enterprise because the value realized is objective, that is, potentially of worth to others, not to the flourisher alone, and is intended to be so by the motive of flourishing. At bottom we want to be of worth to others (think of persons you love), and are not sufficiently fulfilled to be said to "flourish" in the absence of this condition.

The standard of flourishing affords a criterion for criticism of persons' wants and desires. We often desire things that would, if realized, be detrimental to our flourishing, and indeed the very desires are detrimental for they displace other desires that would contribute to our flourishing. Flourishing requires of us that we desire the right things.

Because human goods are many and diverse, and the functional analysis of utilities is derived from human goods, utilities are not confined by an ethics of flourishing to a single "proper" use. There may be other "good" uses for a breadknife—the wine press, for example, suggested the printing press. To suppose that each utility has but one "proper" purpose would entail the extinction of the human ingenuity that is inseparable from human flourishing.

Harman notes, "Finally, we can assess societies with reference to the extent of human flourishing within them... A 'good' society is one in which people flourish in the sense of leading desirable lives. That is what a society 'ought' to be like. Otherwise it is 'not much' of a society, not a 'real' society; something is 'wrong' with it."

Yes, something is wrong with it; it is imperfect, or even in a particular case "bad." But not *unreal*; the notion that what is less-than-perfect is less-than-real is not characteristic of the ethics of flourishing per se, but only of such an ethics as it figures in the metaphysics of Platonic realism or the metaphysics of Absolute Idealism. Flourishing can be separated from both of these metaphysical schools, and should be.

Turning from description to assessment, Harman first suggests that flourishing seems to be a form of moral relativism,

since what counts as 'flourishing' seems inevitably relative to one or another set of values. People with different values have different conceptions of 'flourishing,' of the 'good life.' For some, the good life in-

cludes the discriminating enjoyment of good meat and wine, others hold that no life can count as good if it involves the exploitation of animals raised for food. Some say the good life involves at its core the pursuit of an individual project of excellence; some say it involves service to others. Some people would stress the importance of elaborate social rituals of politeness; for others such rituals are trivialities of no importance at all to the good life. People put different weights on the joys of combat and competition as against the benefits of cooperation and shared undertakings. They disagree on the relative importance of knowledge and culture as compared with pleasure and simple happiness. And so on.

In response I would ask, What does it mean to be, not simply a human being, but an individual human being? And in answer I would say, first, that it means that one's flourishing should not be construed as consisting in the flourishing within oneself of all human capacities, but rather only some of them. *Omnis determinatio est negatio* (“All determination is negation”—Spinoza). Secondly, individuality means varieties of value and varieties of flourishing; that some give precedence to knowledge and culture and others to pleasure and simple happiness, or some to competition and others to cooperation, does nothing to suggest that flourishing itself is relative. Everyone is responsible for living the kind of life that will realize his or her distinctive kind of worth: this is the universal, nonrelative standard. Accordingly, there are universal conditions and personal conditions of flourishing, and we must not confuse the two.

When Henry David Thoreau moved to the woods for two years he was contending by example that everyone needs effective solitude (for which physical solitude is neither necessary nor sufficient) for the purpose of self-discovery; he was not contending that everyone should live in the woods for two years. Vegetarianism may be a personal condition of flourishing, but (even if it could be formulated coherently) cannot be a universal condition. The same is true of elaborate rituals of politeness: for some ways of life or vocations—say international diplomacy—they may be utilities, for other ways not. The test is, is it a necessary condition, or short of this, an aid, to flourishing, or an obstruction, or neither; and then, is it so universally, or just for some persons? There is no relativism in this, but simply the application of a universal principle to differing occasions.

Concerning Harman's suggestion (he does not claim demonstration) that the ethics of flourishing reduces to utilitarianism, he identifies the familiar four forms of that doctrine (act, actual rule, ideal rule, and virtue utilitarianism) but does not choose among them. And we need not be concerned with the distinctions, for it is a generic trait of utilitarianism that renders it incommensurable with the ethics of flourishing, namely utilitarianism's destruction of individual autonomy. To see this, let us estimate the number of persons, including ourselves, who are on average affected by each of our moral acts. Sometimes it will be only one other person—say our spouse or child; more often it will be a small number such as a family or group of co-workers; occasionally it will be an entire profession or class; and not

infrequently we must at least play our part in moral decisionmaking that affects an entire community or populace. It seems not unreasonable, then, to conjecture that on average perhaps 10 people are affected by our moral acts.

If we are to act for the greatest happiness (or utility, or flourishing, or whatever) of the greatest number, then on occasions of moral choice we on average have a tenth of a say in determining our own conduct while others determine our conduct by nine-tenths. And this is a description not of autonomy but of heteronomy. The fact that we choose to be utilitarians does not show that autonomy is preserved, but that it is voluntarily relinquished; we do not manifest self-responsibility by declining in perpetuity to exercise it. Jean-Paul Sartre was correct in identifying "bad faith" as chosen.

There can be no doubt, I think, of the requirement of autonomy in the ethics of flourishing, for it is to be found in all of the advocates of such an ethics from Aristotle to Friedrich Wilhelm Nietzsche to Ralph Waldo Emerson and Thoreau. To qualify as "flourishing" it is not enough that a life contain "happiness, virtue, and accomplishment"; it must also be self-directed on the ground that each life contains its own inherent principle of normativity that (morally) demands enactment. The psychological correlate is that self-directed activities are intrinsically satisfying, because more self-engaging and self-fulfilling than imposed activities can be.

What Harman terms the "imitation of excellence" is likewise antithetical to an ethics of flourishing, for imitation is a dependent relation that is antithetical to individual autonomy. The life that flourishes lives originally, not in the sense of producing absolute novelty in the world, but in the sense that its character and initiative originate with the person whose life it is and express that life; and not in the sense of having no precedent or tradition, but in the sense of choosing its precedents and tradition. Such a life cannot be imitated for it is itself not an imitation. To be sure an ethics of flourishing must, to be appropriate to human beings, give a central place to learning from others, but what is fundamentally to be learned from those who are flourishing is how to live originally. Secondly, we require to learn from others the techniques for making our way on our chosen path (e.g., if I autonomously choose to become an engineer, I don't re-invent engineering but learn from that tradition). But it is we who choose what we shall learn from chosen others.

With respect to those who are flourishing, we are indeed "doing what they do," but in a sense so general that it applies to lives whose courses need bear no resemblance in detail. With respect to this process I think the word "imitation" is misleading enough to be judged misapplied, and I suggest, instead, the word "emulation." It seems clear that Harman means imitation, not emulation, when he says, "The right thing to do in any particular case would therefore be the same as what someone who flourishes would do in that case. So, what one ought to do in any particular case is exactly what someone who flourishes would do in that case."

I believe that what “someone who flourishes” would say about the matter has been said by Thoreau: “I would not have anyone adopt *my* mode of living on any account; for, besides that before he has fairly learned it I may have found out another for myself, I desire that there be as many different persons in the world as possible; but I would have each one be very careful to find out and pursue *his own* way, and not his father’s or his mother’s or his neighbor’s instead.”²

Substituting emulation for imitation will clear up the incidental difficulties that Harman identifies. One of them is that “if one is not already an excellent person who is flourishing, one’s situation may well be of a sort which a flourishing person could never be in. For example, one may have done someone a wrong and the question is what one should do now. It may be that a flourishing person could not have done that sort of wrong to anyone.” But as every advocate of flourishing has agreed, no one is born “flourishing”; “flourishing” is a developmental outcome, an attainment.³ And this means that a flourishing person whom we emulate has in all likelihood made mistakes in the past similar to those we (in Harman’s example) have just made. Emulation affords latitude to include the past of the flourishing person (“How is flourishing arrived at?” is clearly a key question to it), while imitation does not.

I said earlier that the ethics of flourishing holds that each human life contains within it its own principle of normativity that (morally) must be enacted. Thus the ethics of flourishing begins with this responsibility. Kant’s ethics likewise begins with responsibility; but there the resemblance ends. For no version of the ethics of flourishing that I am aware of attempts a derivation to show that our fundamental moral responsibility is synthetic a priori knowledge. Instead, the argument is that each person is innately invested with potential worth, and the responsibility for actualizing our worth is the inherent demand of potential worth for actualization (goodness *ought* to exist). The ultimate justification of an ethics of flourishing, then, is consequentialist: more human values will be actualized this way than any other. But the claim is that the consequence is such that it can only come from flourishing (the self that you have the potentiality to become through flourishing you cannot become in any other way). Hence there can be no prospect of nullifying individual responsibility by discovering other means to the end (as justice might be eliminated within utilitarianism by discovering means to greater general happiness that do not include provision of justice).

I do not for a moment deny that the ethics of flourishing contains internal problems that need to be worked upon by good minds. But I believe it to be a viable alternative moral perspective, not reducible to one or another of the more familiar perspectives, and have sought to show this against suggestions to the contrary by Gilbert Harman.

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Review Essays & Reviews

Mill on Liberty: A Defence. By John Gray.
London: Routledge & Kegan Paul. 1983.

Hayek on Liberty. By John Gray.
Oxford: Basil Blackwell. 1984.

John Gray has provided us with the most thorough, carefully sustained, and insightful analysis of John Stuart Mill's *On Liberty* to date. As the title *Mill on Liberty: A Defence* indicates, Gray's work provides a defense of Mill's views against the entire spectrum of the critical secondary literature. As a result of Gray's careful restatement, Mill is seen as expressing a coherent doctrine of social freedom and individual rights. Gray goes even further and reveals how the moral right to liberty is part of a utilitarian theory of justice.

Gray begins by elucidating a broader conception of utilitarianism and then locates Mill as advocating a powerful species of indirect utilitarianism. The distinguishing features of indirect utilitarianism are the denial that we pursue happiness directly and that utility in conjunction with expediency serves to evaluate entire systems. Gray further distinguishes between Doctrine of Liberty and the Principle of Liberty. The Doctrine of Liberty defines a system of moral rights within which the right to liberty is accorded priority. Gray then goes on to argue forcefully that Mill's conception of liberty is the same as or derivative from the notion of *autonomy* that flows from Jean-Jacques Rousseau to Immanuel Kant through Wilhelm von Humboldt. Thus, the principle of liberty allows interference with liberty only to prevent harm, where harm comprises the fundamental human interest in autonomy and security. This approach sheds a great deal of light on Mill's concept of man, individuality, and the higher pleasures as they are discussed in *Utilitarianism*. Moreover, there is a firm distinction in Mill between the Principle of Liberty and the principle of state noninterference in social affairs.

Gray astutely recognizes that the consistent theory of liberty as autonomy that he has extricated from Mill may conflict with Mill's Aristotelian-empiricist account of knowledge, mind, and action. To this reader, this merely reveals that Mill was a better social philosopher than he was a metaphysician

or epistemologist. What will most impress the general reader is Gray's grasp of both Mill's writings and Gray's capacity to relate social philosophy to the other dimensions of philosophy. There is a hint in this book that the defense of liberty is becoming not only more sophisticated but that it is gradually dissociating itself from quasi-Aristotelian essentialism and empiricism. This trend becomes more than a hint in Gray's subsequent book, *Hayek on Liberty*.

For those who know and respect F. A. Hayek's work in economics and social theory, Gray has provided a concise but illuminating grounding of that work in a general philosophical framework. Now that positivism and neo-positivism have begun to lose their hold on the intellectual world, we are in a better position to see and to appreciate the unique philosophical structure that informs Hayek's social, political, and economic insights. What emerges from Gray's book is an image of Hayek as one of the profound philosophers of the 20th century.

Hayek's metaphysics and epistemology are distinctive versions of post-Kantian critical philosophy. That is, Hayek both denies that we can know things as they are in themselves and he asserts that order is imposed on experience by the creative activity of the mind. Knowledge is ultimately grounded in action and is therefore best understood as the attempt to explicate the rules and norms inherent in our social activity. Here there are illuminating parallels to Ludwig Wittgenstein, Michael Polanyi, and Michael Oakeshott. Unlike Kant, however, Hayek sees the mind as evolving so that it is in principle impossible to give a definitive analysis of the structure of thought and action. This philosophical framework explains both Hayek's refinement of the Austrian School of Economics by insisting upon how the agent confers value (Copernican?) on objects rather than finding it, and it explains as well why total social planning is impossible.

In a brilliantly clear exposition, Gray outlines for us Hayek's conception of a spontaneous social order. First, social institutions arise out of human action and not design. One of the consequences of this view is that in public policy the whole notion of social technology and aggregative econometric theories (e.g., John Maynard Keynes and Milton Friedman) are misconceived. Second, practical or tacit knowledge is primary (à la David Hume). That is, successful practice always precedes theory. Hence all social criticism is immanent criticism. Third, Hayek envisages a natural selection among competitive traditions. This implies that social theorizing is a kind of explication, not the exploration of a hypothesis.

Here we can see Hayek's classical liberalism combining with conservative insights such as the necessity of a sphere of convention for the operation of liberty and the internalized moral traditions necessary for a market economy. Hayek thus rejects abstract individualism and uncritical rationalism. Here Hayek would part company with Gary Becker by recognizing how inherited social rules shape individual choices.

Gray describes Hayek's conception of law with the helpful phrase, "common law Rechtsstaat." The historically given pattern of entitlements isn't challenged by a rectificatory principle such as Robert Nozick's. Hayek rejects natural rights in favor of a procedural view of justice. In Hayek's system the Kantian test of universalizability seems to yield a maxim according equal freedom to all. (It strikes this reader as a theory closer to Rousseau than to Kant.)

Among the most helpful aspects of this book are the comparisons of Hayek to other related thinkers. In a chapter comparing Hayek to John Stuart Mill and Karl Popper, Gray makes two important observations. First, Hayek's conception of equal liberty is more favorable to liberty than Mill's precisely because the controversial notion of 'harm' itself invokes a sphere of protected liberty. Second, Hayek would reject Popper's notion of piecemeal social engineering, because it is permeated by a monistic interventionism which rests on a false dichotomy of facts and norms. Hayek's version of critical philosophy thus extends to ethics as well as epistemology.

In a concluding assessment, Gray shows how Hayek's idea of spontaneous order is compatible with liberty when it is seen that rule or order emerges from *voluntary* transactions operating within a stable legal framework. There is thus no conflict in Hayek between libertarian and traditionalist commitments when it is seen that individuality is the fruit of tradition.

Perhaps the most exciting idea in this book is Gray's suggestion that Hayek's work initiates a new research programme in social theory to replace conceptual analysis and cost-benefit research. It combines explication of previous practice and critical evaluation of the trial-and-error evolution of social practices.

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The Case for Animal Rights. By Tom Regan. Berkeley and Los Angeles: University of California Press. 1983.

Tom Regan's *Case for Animal Rights* is a long, ambitious, and systematic work. It is written with admirable lucidity, and its argument is sustained and cumulative: one always knows just where one is in the development of the author's main thesis, and what his detailed reasons are for each move.

It is inevitable that a book such as this, in attempting to appeal to both philosophers and the general public, falls between two stools. To the general public it will be difficult to follow—not because the author doesn't state his points clearly or illustrate them with illuminating examples, but because a philosopher's habit of mind is necessarily abstract, and the multiplication of philosophical arguments on page after page is likely soon to overwhelm the general reader. To philosophers, on the other hand, much of the material, especially in the earlier chapters, is already familiar; but to make the case complete it is necessary to go into ethical egoism, various brands of utilitarianism, intrinsic value, justice, and other matters familiar to readers of ethics books. Even for philosophers, however, it is worth reading every page, partly because the author introduces numerous innovations even in traditional theories, and partly because the thrust of the work concerns man's treatment of animals. Entire sections of chapters of otherwise familiar content are devoted to this subject, one to which all too few philosophers have condescended to devote their attention.

Especially in the early chapters, much of the argument is devoted to a refutation of views that the majority of readers will already believe to be obviously false. As a lifelong animal lover, I was prepared to be bored by arguments attempting to show that people shouldn't be cruel to animals (though it turned out that this wasn't quite the thesis of the book). Arguments against the Cartesian view that animals are automata without consciousness seemed, in the circumstances, superfluous. Yet Regan's extended discussion of René Descartes's view showed more systematically than any previous reading *why* Descartes's view of animals was mistaken.

It was gratifying to see the "indirect duty" views of ethical thinkers from Immanuel Kant to John Rawls so cogently attacked, and to be told why feelings of kindness or cruelty (as well as other mental states or attitudes) cannot be the basis of an ethical position on man's relation to animals. Most mind-blowing of all was Regan's attack on Peter Singer's utilitarian basis for his theory about animals, which awakened me from my dogmatic slumbers on that issue. I had sensed certain difficulties in the utilitarian treatment of this issue and had felt a need to base the case not on utility but on rights—and this turned out to be precisely the endeavor to which the present book was dedicated.

According to Regan, the commonly held utilitarian argument against

mistreatment of animals (for example, causing them pain) will not suffice. Not to herd animals into crowded pens, not to let them see the light of day, not to slaughter them carelessly by inflicting pain, are all to the good; but even if all such practices were instantly abolished, Regan's main objection would still remain: that animals are used to serve the ends of others (the ends of commercial growers, of meat-eaters, of hunters, of laboratory experimenters, etc.). When it is established that a creature is conscious, that it can experience pain and pleasure, that it has desires and expectations, memories, and beliefs, then the creature is what Regan calls the *subject of a life*. Once a creature has this status, its life may not be taken away, or injury inflicted on it, without violating respect for that life—and it is respect that is the basis for the attribution of (human and animal) *rights*. The lives of animals have *inherent value*, and are no more ours to use as we wish than are the lives of human beings; both are alike in being creatures with consciousness and feeling—they are all subjects-of-a-life. Using them as a means toward others' ends constitutes a violation of their rights.

There are many accessory principles that Regan develops Rawls-like in the course of his argument, largely to meet objections: the harm principle, the freedom principle, the worse-off principle, the miniride principle, and others. Essential to Regan's argument are distinctions such as that between moral agents and moral patients, between intrinsic value and inherent value, and analyses of concepts such as justice, rights, utility, cruelty, and kindness. Indeed, there is an entire theory of normative ethics embodied in this work, which would make it worth reading even if one had no interest in its special application to animals. In order to make my remarks of finite length, however—even if I were to describe in detail the argument of the book, that would be no substitute for reading it—I shall confine my remarks largely to the topic indicated by the book's title, the special application of his ethical theory to the concept of animal rights.

REGAN'S HARM AND LIBERTY PRINCIPLES

I am not at all sure how Regan's various principles, that is, the harm principle and the liberty principle, would mesh when applied to actual cases. But reflections on this topic would require me to spin out so many test-case examples that I shall confine my criticisms in this section to a few specific points:

1. Having presented the traditional problem of how bodily occurrences can causally affect mental ones and vice versa, and having exhibited the weaknesses of Descartes and the Occasionalists on the subject, Regan then consoles himself with the somewhat blithe assertion that "an evolutionary approach" solves the problem. I quite fail to see not only how it solves it, but how it ameliorates its force in the slightest degree. A sensation of dizziness impels me to leave a smoke-filled room; how does this conscious state cause my body to move out of the room? That the same problem is encountered also at "lower" levels of the evolutionary scale only extends it; it does not solve it.

2. When Regan is attacking Donald O. Hebb (p. 42) on animal beliefs, he attacks the assertion that what the animal believes is that a certain English sentence is true; and of course he has an easy time with this, since animals cannot formulate or understand (as a rule) complete English sentences. Neither for that matter can the Portuguese who confronts a signpost written in

English. But if the animal believes something, it is surely not an English sentence, but rather the *proposition* that is expressed by that sentence and could be expressed by sentences in other languages. This is a rather old-fashioned way of speaking—propositions have been pretty much banned from the philosophical lexicon—but there was good reason for speaking of propositions rather than sentences, as the present example illustrates. Though the matter is too complex to discuss here, I would contend that beliefs—some beliefs at any rate—are nonlinguistic. This fact, if it is a fact, removes at least one barrier to the view that animals cannot have beliefs.

It is, however, a matter of extreme difficulty to infer from an animal's behavior whether it has a belief. When a dog digs for a bone it has buried, does it *believe* that the bone is there? (Regan is surely right in saying that the dog has the *concept* of a bone, even though it is not the chemist's concept.) Does the fact that the dog wags its tail when its master's car approaches (without yet being able to see who is in it) entitle us to conclude that the dog believes its master is in the car? We would say a child has the belief, but does the dog? Master if just acts as if it does?

How rich a mental life can we safely attribute to dogs? They certainly have *inclinations*, and quite surely they have expectations. They are able to *recognize* objects and other creatures (largely through smell), but there are severe limits to this: they respond to Lassie's bark on television but not to her visage on the screen; they do not recognize two-dimensional representations of three-dimensional objects. Do they make *decisions*? (The dog ran around in the yard; is it correct to say that the dog *decided* to run around in the yard?) Do they weigh alternatives and then choose among them?

One is inclined to say no, this is anthropomorphizing the dog's mental life too much. Still, the matter is disputable. When my dog is told to "come here" in a friendly tone of voice by two persons equally familiar to him sitting approximately equidistant from him in opposite directions, he always invents a flea and scratches for a few seconds before going toward the one guest or the other. If a person did this sort of thing, we would say he was "making up his mind" about which person to approach. I would give anything to know exactly *what* mental process is going on in the dog, but I cannot exclude the possibility that the dog is inventing a delaying tactic while trying to decide what to do. It certainly seems like a pretty good explanation of the dog's behavior. Thus it may be that a dog's mental life is even richer than Regan claims.

But how can one be sure? The highly complex behavior of wolves, such as accepting a hands-up gesture by human beings as signalling that the struggle is over and peace has been declared, are so impressive that we are inclined to believe the wolf has a very complex mental life. Yet we are told that most of this behavior is "genetically programmed." I do not that either Regan or anyone else is in a position to make any claims on this point.

3. Regan strikes at the heart of utilitarianism when he attacks its *aggregative* concept of the good and (since the right act, according to utilitarians, is the one producing the highest net aggregate of good) of the right. His criticisms, rightly in my opinion, include rule-utilitarianism as well as act-utilitarianism. One does not have to go so far as to insist on the total collapse of rule-utilitarianism into act-utilitarianism to see that in all the crucial cases in which rule-utilitarianism is presented as an alternative preferable to act-utilitarianism, it fails. Thus, according to act-utilitarianism, it would be moral-

ly permissible to condemn an innocent man if the good effects on society more than counterbalanced the pain and distress to him (at least more than any alternative course of action.) Rule-utilitarianism was devised to take care of such counterintuitive results. But rule-utilitarianism no more succeeds in this than its predecessor, for any such rule as "Never knowingly convict an innocent person" would have to be qualified to read that if some great benefit to society were to occur as the result of the unjust conviction the rule would have to be revised to accommodate such cases. ("In this case *and* all cases relevantly similar to it, the rule would have to be revised to read . . ." etc.) I believe with Regan that such an outcome gives the *coup de grâce* to both forms of utilitarianism, and for the same basic reason, that utilitarianism is concerned with the aggregate rather than the individual: the lone individual is easily outnumbered, and what is required to protect the individual is *rights*.

Nevertheless, it seems to me that Regan mischaracterizes utilitarianism in at least two respects:

(a) The utilitarian theory of intrinsic value is incompletely presented. Regan skips from the classical hedonistic version of Jeremy Bentham and John Stuart Mill to the preference-utilitarianism of contemporary philosophers such as Peter Singer. But there is another theory of intrinsic value that he never mentions, and that might have made a difference to his allegation that "according to utilitarianism individuals are only receptacles into which value is poured." This is the view that there are other things besides pleasure (and satisfaction, happiness, and their cognates) that are intrinsically good, such as apprehension of beauty (not just pleasure taken in beauty), knowledge, and moral virtues, and that correspondingly there are other things that are intrinsically bad, e.g., envy and malice. This view has been held by some philosophers who professed utilitarianism (e.g., G. E. Moore) and by others who criticized it (C. D. Broad, Sir David Ross, C. A. Campbell). When Hastings Rashdall first introduced this brand of utilitarianism in his *Theory of Good and Evil* (1907), he called it "ideal utilitarianism," but Regan uses that name for a quite different theory. In any case, I wish that he had considered this pluralistic theory of intrinsic value, for a careful selection of traits of men and animals as intrinsically good might have made a difference to his own theory, as well as some of his criticisms of utilitarianism.

(b) When considering preference-utilitarianism, Regan presents it as advocating a thesis that it need not advocate. In considering racism, for example, he says that if a store or factory has racist policies, and if racists outnumber nonracists sufficiently so that their aggregate interests outweigh those of the nonracists, then utilitarianism would in these circumstances advocate racism. But this follows only if one takes into consideration only what the interests and preferences of the racists at the present moment actually *are*. If, instead, one considers what they might be or *could* come to be, if one considers how much happiness utilitarian-style there would be if racist policies and interests were to change, then one would come out with a quite different result. Since utilitarianism is committed to considering the long future and not merely the present, and since people's preferences and interests do change with time, an alternative that utilitarians ought to consider is what the consequences would be if we had some success dealing with racist prejudices. Attitudes and preferences aren't as easy to change as acts are, but they can in time be changed: even a person whose present interests lie largely in the pleasures of alcoholism may come in time, via Alcoholics Anonymous, for example, to

have a new set of preferences in which alcohol no longer figures as an interest at all. (To make the discussion more complete, however, one would have to go into the multiple and overlapping ambiguities of the term "interest"—e.g., "X is one of my interests" vs. "X is to my interest"—which cannot be done here.)

REGAN'S ETHICAL THEORY

I shall now raise some points about the distinctive feature of Regan's ethical theory, the ethics of man's relation to other animals. I shall do this more in the form of questions than outright criticisms.

1. What degree of sentience or awareness must a creature possess in order to be the subject-of-a-life, and thus be entitled to the respect due all such creatures? Regan includes all mammals, specifically mammals a year or more old. But most animal life is non-mammalian. Does it include reptiles? Birds? Fish? Insects? He confesses to not knowing this, and for good reason: (a) there are endless gradations in nature and it is difficult or impossible to draw precise boundary lines; and (b) we cannot make safe inferences from animal behavior to animal consciousness. (Human beings are, after all, mammals; perhaps some "lower" forms of life have experiences and ways of communicating that we don't understand.) He does condemn activities such as clubbing baby seals, but such condemnations may be the result of his advice to "err on the side of caution."

The hesitation is understandable and doubtless justified; still, if it is true it is very unfortunate, for where one draws the line is a matter that has enormous practical implications. If only mammals are included, then presumably it's all right to raise chickens for market (if they are given a comfortable life, etc.) but not cattle. And if fowl are included, what about fish? (Do insects feel pain or only exhibit avoidance-behavior?) My own preferred form of protein is fish; yet nothing in the book tells me whether one is acting immorally by catching and eating fish. Nor does he mention eggs. Since these are the product of chickens, and chickens are often (but not always) grown under crowded conditions on wire netting, presumably the eggs (at least the eggs hatched by those chickens) would be verboten also. But chickens surely lack the complexity of consciousness possessed by mammals, and perhaps they do not fulfill the requirement of being subjects-of-a-life at all. Who can say? Regan at any rate does not say. But it makes an enormous practical difference to what according to Regan's view we should be permitted to eat. Should we eschew the meat of all animals, or only that of mammals? Should we be eggless vegetarians or are eggs all right? Since eggs are a complete protein, like animal flesh, it would make an enormous difference to our nutritional intake. But we are left to draw our own conclusions about this.

2. Regan is both careful and wise in criticizing aspects of utilitarian theory that depend on complex and dubious empirical assumptions. I am not sure that he is equally careful in the case of those empirical assumptions that tend to favor his view. I am not as sure as he is that medical experimentation and human disease-control could get along nicely without the use of experimental animals. (But this wouldn't matter to him: then, he would say, so much the worse for human disease-control.) I am also less confident than he is that

human health can be achieved just as well without the intake of complete proteins. People *can* live without these, but, I think, not as healthily or well; at the very least it is *ever* so much more difficult to design diets lacking meat and eggs, which yet contain the proper combination of proteins and amino acids. (See, for example, Richard Passwater's *Super-nutrition*; and *Dr. Atkin's Diet Revolution*.) At least, every physician known to me considers a meat-fowl-fish diet essential, and repudiates the authors cited by Regan on the other side.

To avoid endless empirical dispute, however, I shall state my point in the form of a hypothetical question: *Suppose* that human life were impossible unless people ate the meat of animals; or suppose the span of human life would be cut by half, or that continued existence would be fraught with pain, misery, and disease. Suppose, in other words, that it's either-or: would Regan still insist that it is immoral to eat the flesh of animals? Should we die, or be ill half our lives, for lack of animal nutrients? (After all, people are subjects-of-a-life too!)

Today people in most civilized nations can subsist largely (though not wholly) on nuts, fruits, and vegetables. But what about pre-agricultural tribes? Did American Indians, who knew no agriculture (with a few exceptions) and lived on game, act immorally, given their circumstances? Did Lewis and Clark do wrong in 1802 when they made it to the Pacific Coast by living on wild game? They could not stop in one place long enough to raise crops, nor did they have the benefits of refrigeration to prevent spoilage.

If Regan came across a wild deer in the forest who had been irreparably injured, presumably he would have no objection to eating it, since he does not object to the killing of irreparably injured animals. But I suspect that if the deer had been shot by a hunter, he would not eat it, and that if a hostess at dinner offered him a beef roast and told him truly that if he didn't eat it she would throw it into the garbage, he wouldn't eat it either, even though no one else would ever learn of the incident and there would be no tendency to kill other animals in the future. ("Side-effects don't count.") Many people would find this outcome "peculiar," but it would certainly be consonant with Regan's position.

3. Suppose you knew that by administering to one animal a painless death you would with certainty save one human life. Would you kill the animal? Most of us surely would, and not just because we ourselves are human beings (this would be "species-ism"), but because we discern in human beings far more of what Regan calls inherent value than we do in the other animals. By contrast, Regan holds that all subjects-of-a-life have equal inherent value, and are equally the possessors of rights.

This view creates special difficulties for certain either-or cases. I would not hesitate to kill a cobra, if my children were at all likely to wander about the grounds and possibly be killed by the snake the next day. (I would certainly not feel obliged to wait until the cobra has first killed the child, as some Hindus would, or *never* kill any living thing, as Albert Schweitzer would.) If I failed to kill it and the snake killed my child the next day, I would feel that her death was on my hands. Indeed, I would not hesitate to exterminate, if I could, entire species of poisonous snakes. (And lest this upset the balance of nature, nonpoisonous snakes could be imported instead to control the burgeoning rodent population. But since rodents are mammals and snakes are not, possibly Regan would protect the rodents against the snakes?)

It may be that Regan would go along with my action in killing the cobra, for

in his example of the crowded lifeboat containing four men and one dog, and one must be sacrificed lest the boat sink, he says that in these circumstances (one of several “emergency situations”) he would not hesitate to throw the dog overboard. I am somewhat at a loss to see why, if all subjects-of-a-life, human and animal, have equal inherent value, and thus equal claims to life. Indeed, if a Stalin were aboard, responsible as he was for the deaths of some hundred million people I would throw him overboard before the dog, as partial punishment for his multiple crimes.

4. According to Sir David Ross, parents have *prima facie* duties toward their own children that they don’t have toward other people’s children: they have a general duty of benevolence, but a special duty to the children they have brought into the world (or adopted) and who are their special and voluntarily undertaken responsibility. Regan agrees with this, in a slightly different form: children have rights *vis-à-vis* their parents (thus implying parental duties) that they don’t have *vis-à-vis* other people. It would seem that this distinction applies to animals also: if I have taken a dog or cat as a pet, I have special duties to feed it and keep it comfortable, more at least than I have toward other animals in the world, for whom I have not undertaken any such responsibility. By making the animal dependent on me, and probably in time unable to fend for itself, I have a duty toward it which I cannot suddenly cancel if I get tired of it by saying “Get lost!” Particularly appalling in this connection are newspaper accounts of starving dogs roaming the Long Island seashores, abandoned by their owners who obtained them during vacation summers on the island and cannot (or will not) take the pets with them back to their apartments in Manhattan.

Nevertheless, according to Regan, I have duties to *all* such creatures, not only my own, and I am not sure how far Regan wishes to carry the special duties to my own animals. Should I feed my own dog even if the dogs next door are starving, and I can’t feed both? If I am driving at night and can’t stop in time to avoid hitting one of two dogs on the road, am I justified in hitting the strange dog in order to avoid hitting my own dog? Let’s say that I am. But if the choice is between hitting my own dog and hitting a human being unknown to me, presumably I should run over my own dog in order to avoid hitting the person. Apparently my duties to my own dog don’t carry *that* far. But if all subjects-of-a-life equally have rights, it is difficult to see why.

5. The problem is compounded because Regan is not satisfied with merely negative rights. If you have the right not to be killed, I have only the (negative) duty not to kill you; I do not have to support you for life. But Regan is apparently not satisfied with negative rights, which require only duties of forbearance or abstinence from action by others. He repeatedly quotes with approval a passage from Mill to the effect that rights are something that “society should defend me in the possession of.” Though the passage could be construed as insisting on only negative rights, Regan does not so construe it: active support is also required. But this raises endless difficulties, for if rights imply active duties, there is no foreseeable end to the duties one is required to discharge. Once these floodgates are opened, we confront the same array of problems as confront the utilitarian who insists that a person has as much of a duty to help a starving peasant in India as to help a neighbor or friend.

In the case of animals, one wonders where it would all stop. “Mere abstinence” from eating meat, he says, isn’t enough. Must one initiate campaigns

for animal rights? Advertise in newspapers? Go on the lecture circuit? Talk about it to everyone one knows? Postpone for a year the completion of *The Case for Animal Rights*? Buy television time to advance the cause, even if this means doing without sufficient food for one's family?

Suppose that one day I feed not only my own dog but a stray dog who wanders into the yard. Next day it is still there, and I feed it again. Before long the stray dog has been adopted into the household. (If I contact the dog pound, I know that the animal will be put to sleep.) The canine communication network goes into operation: there's free food over there. Soon I am feeding a hundred stray dogs. Should I break the budget to do this? Buy cabbage to eat instead of the more expensive asparagus that I prefer? Work overtime to relieve the financial strain? Abandon my work and go out campaigning for the neutering of dogs? At some point in all this one's efforts would soon violate Regan's Freedom Principle. But the need is endless, and the efforts required to meet it are equally endless. There are even more hungry animals than hungry people in the world. It is nature, not I, who overproduces young; how much am I expected to remedy this fault in the natural order of things?

I have a neighbor who makes a profession of taking in stray animals and feeding them; at any given time he has hundreds of stray dogs and cats on his property (in violation of city ordinance, which places the limit at three). But this requires many hours a day of his time, and a large percentage of his limited income. I consider him heroic for doing it, but I haven't the time to attempt it myself. Unlike him, I have numerous other claims on my time, other enterprises that to me at least are more important. Am I therefore shirking my duty? I may be reading between the lines, but it would seem to me that such actions as my neighbor's, which most people would consider supererogatory, would be classified by Regan as positive duties: if animals have rights, others must actively defend them in the fulfillment of those rights—the more so since animals, as Regan says, are moral patients but not moral agents. (As Albert Payson Terhune used to say, in one of his many books about dogs that I read avidly as a child, what is more miserable than a homeless child? Answer: a homeless dog. People will see the homeless child and try to have it taken care of, but few people pay attention to the homeless dog.)

6. But all this, apparently, applies only to domesticated animals who can't fend for themselves, particularly in cities. With regard to animals in the wild, Regan's advice is, "Leave them alone." (Don't even cramp their style by putting them in zoos.) This doesn't mean that one has only negative duties toward them; positive duties might include trying to extend the range of wildlife preserves so that the wild animals can continue to exist in their native habitats.

In August 1983 I spent several weeks on safari in Botswana and Zimbabwe (cameras, no guns). Spending these weeks in close proximity to lions, zebras, antelopes, buffalo, and elephants in the wild, and sleeping at night under the open sky listening to the sounds of the animals all about, gave one a renewed reverence for life. Those weeks brought me about as close to a mystical experience as I shall probably ever attain. The attitude of the safari leader was most instructive: he was tolerant of the human foibles from greed to gluttony, but inflexible on certain rules relating to animals. When he once caught me feeding some monkeys in the camp, he was livid: "That should be a capital crime," he said. "Leave the animals alone." His reasons, however, might not be the same as Regan's: "If they get used to being fed by humans, they will

come to depend on it. And animals that come to expect food from humans and don't get it can become dangerous." (Cf. the attacks by grizzly bears in Glacier National Park on campers who left food out in the open.)

His principal aim in life was the preservation of wild life. He strongly approved, for example, the U.S. customs regulation prohibiting the importation of elephant hides, tusks, or even hair, along with similar regulations concerning all members of the African cat family. If someone said, "But these animals are already dead," he would say, "And this would only encourage killing more of them." Yet he quite approved the killing of wild animals under certain circumstances, e.g., the shooting of hundreds of elephants by park rangers in 1983: each elephant needs several hundred gallons of water each day and untold quantities of green vegetation, and with the severe drought there was no way to supply this need. It was done as a humane act, as the only alternative to slow starvation. (Regan's condemnation of the animal industry surely does not apply to these men.) But presumably Regan would consider such acts wrong: killing the elephants would be on his view a violation of their rights, so it would be better to "leave them alone," in this case to die slow lingering deaths.

Nor was the safari leader opposed on principle to killing wild animals for other reasons: "Sometimes you have to transplant them to other regions, even kill them to avoid overpopulation. The big crime is not killing them, but destroying their habitat. If some are killed, the rest can reproduce again; but if you destroy their habitat, you destroy the means by which they can survive in the future. *Never* destroy the habitat." But I suspect that Regan would be more opposed to destroying the animals, for whatever reason, than to destroying the habitat: to destroy an animal would be, for Regan, a violation of its individual rights; to destroy the habitat would only be to make things more difficult for future generations of animals.

But one should not generalize hastily concerning a policy of noninterference with creatures in the wild. One can cause their deaths actively (by killing them) and passively (by leaving them alone). The effect is the same, but for Regan the method—passivity vs. activity—is what makes all the moral difference. Similarly, one *can* cause their lives to be continued by active interference. An old lady, let's say, leaves breadcrusts and other tidbits on the window sill for the birds, especially in winter when the ground is covered with snow and the trees with ice. Undoubtedly she saves the lives of many birds who would otherwise starve in the cold winter. Would Regan applaud her actions, or would he insist on a policy of "leave them alone" (birds being wild untamed creatures as well as lions), even though such a policy would cause many of them to die?

Of course, if thousands of ladies in their respective homes throughout cold climates fed the birds on icy days, many thousands of birds would survive the winter who otherwise would not. But then the following spring there would be, in all likelihood, a great overpopulation of birds: without food for them all, many of them would die anyway. "You can't cheat Mother Nature." With regard to generalizations such as these on what to do or not to do, every silver cloud has a gray lining. On the whole I am somewhat surprised that Regan inserts no cautious qualifications in his policy of noninterference with wild creatures. He does not want us to cause their deaths; but neither, apparently, does he want us to provide the means for keeping them alive when otherwise they would die.

7. One consideration that Regan does not mention, but which seems to me of vital importance, is the fact that animals have no concept of death, and hence no expectation or dread of it. This seems to me to make an enormous difference. Isn't this why we put an irreparably injured animal painlessly out of the way, whereas we don't do this with people? If we did it with people, they would soon dread going into hospitals or hospices, fearing that they would get the "painless death" treatment. Besides, even when terminally ill, people can, unlike animals, usually understand the situation and give their consent, or refuse to give their consent, to their own deaths (though euthanasia, even with consent, is illegal in most jurisdictions). For Regan, by contrast, killing an animal, except in the special circumstance of an irreparable injury, is just as wrong, and just as much of a violation of its rights, as killing a human being. This seems to me to blur the important distinction between creatures who have a concept of future death and those who do not.

I grew up on an Iowa farm. We raised poultry and cattle. The chickens were not overcrowded, and they never saw wire netting—they rooted in the earth; on cold nights they roosted in warm sheds. The cattle had plenty of fodder and grazed in uncrowded fertile pastures, with barns available in winter. They had a happy—or perhaps the word is contented (free of wants and worries)—life. For those animals, it was a good life. There was no cruelty, and illnesses and injuries were always tended; my father was a humane man who could not bear to see animals suffer. They had a much better life on our farm than ever they would have had in the wild.

For Regan, of course, all this is not enough: if domestic animals were well fed and kept in comfortable surroundings, this would not remove his objections, as it would many of Singer's. What counts for Regan is that their lives were terminated by the deliberate acts of human beings, and to kill them is to fail to treat them with the respect that is their due. On the farm, there did of course come the inevitable day when the cattle were transported to market. My father tried to ensure that their deaths were painless, even if this meant going to more distant markets, involving more expensive transportation. If the cattle had had a dread of impending death, like people going to hospices, he would never have raised them. (The horses, by contrast, were not slaughtered but lived out their natural lives on the farm, fed and tended till the end. But at least the cattle never suffered, and all things considered, they probably had a better life than the horses who died protracted deaths of old age.)

I agree with Regan that any market activity involves risk. If most people become vegetarians, and there is no more market for beef, the raising of cattle will become uneconomic and will cease. No one can complain that we have duties to cattle-raisers to keep their livelihood going, any more than we have duties to the manufacturers of buggies after the automobile has replaced the buggy as the preferred means of transportation. Yet it is important to note that in the case of my father's cattle, it was only because they were raised for food that they had *any life at all*: without that, they would never have come into existence at all, or had the good life that they enjoyed.

8. There are certain empirical facts, which Regan does not mention, which surely have a bearing on this whole issue. You can't have 240 million people within the geographical limits of the United States and *also* have herds of buffalo and millions of deer roaming the plains. When land is fenced off and used for agriculture—which is indispensable to human survival, especially if we

can't eat meat—then it can't be constantly trampled on by roving herds, and predators like vultures and gophers will have to be eliminated in order to protect the crops.

My favorite animal, the wolf, has all but disappeared from the North American continent. When I see fine films like *Wolves and Wolf-men* and the recent *Never Cry Wolf*, and realize what a finely honed and intricately complex product of evolution it is, I deeply regret the wolf's passing from the scene. Yet I see no way that the land can accommodate *both* millions of people and millions of wolves. (The wolves, of course, were mostly killed by man; but how else could it be if men were to till the land and multiply? The wolves, uninterfered with, would have multiplied also.)

One possible reply is, "Well, then there shouldn't be so many people." It may well be that there are already "too many people" on this planet (but "too many" from whose point of view?). For my money the ideal number of people, in relation to the animal population, had already been passed by 1900. But what can we do about this now, short of going around killing people—which would, according to Regan, be just as immoral as (but no more so than) killing animals? We could stop the process of human multiplication in its tracks if we adopted a policy like China's of strictly regulated birth control (and mass abortions when birth control doesn't work). But this, in addition to inviting the usual objections to abortion, would interfere with Regan's Freedom Principle by circumscribing and constricting human freedom quite drastically in one of its most vital and intimate sectors.

Still, it's either-or: one or the other has to go. Animals in the wild require lots of space, and if human beings are to multiply as they choose, they need that same space. As Will Rogers said, nobody is making any more of it.

9. As one reads page after page of Regan's book, one has the growing impression that his thesis is in an important way "going against nature." It is a fact of nature that living things have to live on other living things in order to stay alive themselves. It is a fact of nature that carnivores must consume, not plants (which they can't digest), but other sentient beings capable of intense pain and suffering, and that they can survive in no other way. It is a fact of nature that animal reproduction is such that far more creatures are born or hatched than can possibly survive. It is a fact of nature that most creatures die slow lingering tortuous deaths, and that few animals in the wild ever reach old age. It is a fact of nature that we cannot take one step in the woods without killing thousands of tiny organisms whose lives we thereby extinguish. This has been the order of nature for millions of years before man came on the scene, and has indeed been the means by which any animal species has survived to the present day; to fight it is like trying to fight an atomic bomb with a dartgun. "Nature, red in tooth and claw," wrote Tennyson, "with ravine shrieks against man's creed." The cruelty of the entire mechanism by which animal life survives, particularly the food-chain, is one of the main reasons why many persons reject the teleological argument for a benevolent God when they might otherwise have accepted it; only a sadistic monster, they allege, could have devised a system so full of cruelty and torment. (See Mill's magnificent essay "Nature" in his *Three Essays on Religion*, and books eight through ten of Hume's *Dialogues Concerning Natural Religion*.) This is the world as it is, nature in the raw, unlike the animals in Disney cartoons. When the child sees on a National Geographic television program the constrictor snake ingesting live prey, the experience can be just as traumatizing to the child as seeing "The

Day After." But this is the way it is—it's all real; nature is cruel, not kind.

Regan might well grant all of this, but say that it's irrelevant. The issue for him is not what animals do to each other, but what we should do in relation to animals. When the lion eats the giraffe piece by piece, tearing off limbs while the creature is still alive, it does no wrong: the lion is not a moral agent. But we do wrong when we administer to the victim a painless death; we, but not the lion, are violating its rights. If the giraffe could speak, it might well contest this allegation.

When one's house becomes infested by mice, it is usual to get a cat. The cat is not a moral agent, so it is morally innocent when it catches the mice; but if we set traps for the mice, we would be violating the rights of the mice. (Mice, after all, are mammals just as cats are, and according to Regan are equally subjects-of-a-life.) The fact remains, however, that a mouse's existence is as effectively terminated by cats as by traps.

Suppose that Regan's house became infested with rats; and suppose that the rats posed no threat to his life or even his health, but only his comfort and convenience: they would keep him awake at night, he would constantly have to try to overcome a natural antipathy toward rats, he wouldn't be able to invite guests to his house because they wouldn't come even if invited, and so on. Under such circumstances, how long would it be before Regan declared "Enough is enough!" and resolved on some means to get rid of the rats? If he is to remain consistent with his position, I think the answer would have to be, *Never*. Rats are subjects-of-a-life, along with human beings, and to terminate the existence of even one of them would be an immoral act. I cannot help wondering how long Regan could live with this conclusion. And if he kept on suffering as the rats grew and multiplied, what would his heroism achieve? The order of nature would still remain unchanged. As A.E. Housman wrote,

Stars, I have seen them fall;
And when they drop and die,
No star is lost at all
From all the star-sown sky.

The tears of all that be
Help not the primal fault.
It rains into the sea,
And still the sea is salt.

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