

Reason Papers

A Journal of Interdisciplinary Normative Studies

Issue on Ethics and Political Philosophy

Special Editor: Fred D. Miller, Jr.
Social Philosophy and Policy Center

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REASON PAPERS No. 18 (Fall 1993)

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ACKNOWLEDGMENTS

This issue of *Reason Papers* was produced with the valuable assistance of the Social Philosophy and Policy Center at Bowling Green State University.

I would like to offer special thanks to Harry Dolan and Maureen Kelley for their extensive editorial work, from the initial copyediting through the proofreading stage. Gratitude is due as well to Carrie-Ann Lynch, Tamara Sharp, Terrie Weaver, and especially to Mary Dilsaver, who helped prepare the manuscripts for publication.

Fred D. Miller, Jr.
Special Editor

REASON PAPERS is published at the Department of Philosophy, Auburn University. Send orders to **REASON PAPERS**, Department of Philosophy, Auburn University, Auburn, AL 36849. The price is \$15.00 per copy in the United States \$16.00 elsewhere; make checks payable to Reason Papers. Copyright© 1993 by the Department of Philosophy, Auburn University. All rights reserved.

Symposium:

*Feminist Philosophy Reconsidered**

FEMINISM AND RESENTMENT

Christina Hoff Sommers
Clark University

Feminist philosophers do not take well to criticism, and while many scholars are appalled at the idea of an academic field adhering to a controversial political philosophy and pursuing a controversial agenda within the academy, very few have been willing to take on the daunting and unrewarding job of examining and criticizing the feminists' arguments and assumptions. In consequence, a feminist philosophy that is inspiring the successful effort to transform the American academy goes on virtually unchallenged. In this paper I will briefly be discussing some serious moral and pedagogic weaknesses of feminist philosophy. My intentions are to initiate discussion on some important and controversial topics. The hope is that others will enter the fray and that a more open and less diffident debate will ensue.

1. Equity Feminism and Gender Feminism

Every day the public is witness to feminist outrage at how badly women are treated: in the workplace, in the courts, on dates, in marriages, in the primary schools—by men mostly, but sometimes by other women. Much of what is reported is indeed true, and some of it is very disturbing and provocative. Of course, the abuse of women must be made known and must arouse indignation. Plato himself recognized the role of righteous indignation.

* The first four essays published here were originally presented at a December 1992 meeting of the American Association for the Philosophic Study of Society in Washington, D.C., chaired by Fred D. Miller, Jr., Professor of Philosophy and Executive Director, Social Philosophy and Policy Center, Bowling Green State University.

tion as a mainspring of moral action. In his metaphor, indignation is the good steed helping the charioteer to stay on the path of virtue by helping him to control the vicious, wayward steed straining to go its own brutish way. It is the "spirited" element in the soul that supplies the wise man with the emotional energy—the horse power—to curb the appetites so that he may act virtuously.

Certainly, feminist indignation at injustices to women is a motive force behind all of our efforts to right the wrongs women suffer. However, many of the umbrageous feminists who are publicly explaining the plight of women in America are moved by more dubious passions and interests. There is a feminism of resentment, one that goes quite beyond the moral passion for setting matters right. The feminists I have in mind are guided by a feminist philosophy that rationalizes, justifies, and fosters in women a wholesale rancor. It has little to do with moral indignation.

Resentment may begin in and include indignation, but it is by far the more abiding passion. Resentment is "harbored" or "nurtured"; it "takes root" in a subject (the victim) and remains directed at another (the culprit). It can be "vicarious." You need not have harmed me personally, but if I identify with someone you *have* harmed, I may resent you. Such resentment is very common, and it may easily be as strong and intense as resentment occasioned by direct injury. In a way it is stronger, for, by enlarging the class of victims to include myself and others, villainy has been magnified.

Having demarcated a victimized "Us" with whom I now feel solidarity, I have begun to think in terms of a victimized group. Pointing to one victim, I say to myself, "In wronging her he has betrayed his contempt for us all and wronged us as well," or, "Anyone who harms a woman harms us all," or simply, "What he did to her, he did to all of us."

Once one has thus generalized a victim class, it is quite common to take the next generalizing step by regarding the individual who wronged Us as himself representative of a group. Now resentment enlarges the focus of its animus to all the members of that group. This I may do quite "reasonably" by adopting a position from which people *like* the perpetrator (male, rich, etc.) are regarded as "the kind of people" that exploit people like "us." My social reality has now been dichotomized into two groups politically at odds, one dominating and exploiting the other.

Once I get into the habit of regarding women as a subjugated gender, I am primed to be alarmed, angry, resentful of men as oppressors of women. I am also prepared to believe the worst about them and the harm they cause to women. In all cases of this kind, animosity to a group is justified and made to seem reasonable by an analysis and social philosophy that promotes a picture of a bifurcated hierarchical society in which inimical forces represented by a group exploit and oppress the weak and the innocent. Those who promote this provocative analysis never think of

themselves as doing anything wrong. It is inevitable that anger and resentment is kindled against a whole group; it is inevitable that, in kindling public anger, falsehoods will sometimes be told. But these things cannot be helped: after all *that group* is the source of the oppression or pollution, and its power must be broken. Behind the popular books advertising the motifs of humiliation, subordination, and male backlash (e.g., Faludi's *Backlash*, Wolf's *The Beauty Myth*, Marilyn French's *The War against Women*),¹ there are the feminist philosophers who promote the doctrine of a bifurcated society in which women are trapped in a structure variously referred to as "capitalist patriarchy," "hetero-patriarchy," or the "sex/gender system."² According to Sandra Harding, it is "a system of male-dominance made possible by men's control of women's productive and reproductive labor."³ Borrowing from Gayle Rubin, Sandra Lee Bartky talks of the sex/gender system as "that complex process whereby bisexual infants are transformed into male and female gender personalities, the one destined to command, the other destined to obey."⁴ Virginia Held reports on the feminist conviction that feminist philosophers are the initiators of an intellectual revolution comparable to those of "Copernicus, Darwin, and Freud." Indeed, as Held points out, "some feminists think this latest revolution will be even more profound." According to Held, the "sex/gender system" is the controlling insight of this feminist revolution; she speaks of it as "intellectually gripping" and tells us of the impact the discovery of the sex/gender system has had on feminist theory: "Now that the sex/gender system has become visible to us, we can see it everywhere."⁵

Perhaps most feminist philosophers are "sex/gender feminists"; most do "see it everywhere." I sometimes envy Held and her sister gender feminists for the thrill they get from seeing the world through the lenses of sexual politics. Nevertheless, the sex/gender perspective on social reality constitutes the philosophical ground for a grim feminism of resentment and the ascription of collective guilt. For it promotes the doctrine of an impersonal but implacable male conspiracy built into the power relations that prevail in a culture deemed inimically androcentric.

Resentment is not a wholesome passion. Unlike indignation, it is not an ethical passion. But, because it often originates in moral outrage at real injustice (from wife battering to sexist job discrimination), resentment can be made to sound very much like a justifiable and even commendable passion for social justice.

Once a feminist has got the two genders in place in a system of oppression, her critical faculties are weakened, making it easy to believe ill of male-kind—and her hyper-readiness to be affronted is in place as well. Any little incident can then trigger rage, shock, and resentment. Reading feminist literature one finds a genre of writing in which the narrator reports on how she personally was the victim of some male outrage, often perpetrated by someone who may have been quite unaware of the distress

he caused.

The feminist theorist Kathryn Allen Rabuzzi opens her book *Mother-self* by telling us that she suffered while taking a walk on New York's Second Avenue.⁶ It happened when a bum asking for a handout said, "Mama can you spare some change":

[N]ever till that moment had I seen myself as "Mama" in such an impersonal, external context. In the man's speaking I beheld myself anew. "I" disappeared, as though turned inside out, and "Mama" took my place.

Ms. Rabuzzi reports on a "shocking dislocation of Self." Her reaction illustrates how a dichotomized view of social reality keeps many a feminist permanently on edge, ready to cringe at the slightest provocation.

Here is Sandra Bartky telling us how *she* was "dislocated" while taking a walk:

It is a fine spring day, and with an utter lack of self-consciousness, I am bouncing down the street. Suddenly . . . [c]atcalls and whistles fill the air. Those noises are clearly sexual in intent and they are meant for me. . . . I freeze. As Sartre would say, I have been petrified by the gaze of the Other. . . . I have been made into an object. . . . Blissfully unaware, breasts bouncing, eyes on the birds in the trees, I *could* have passed by without being turned into stone. . . . What I describe seems less the spontaneous expression of a healthy eroticism than a ritual of subjugation.⁷

In that last remark about "subjugation," Professor Bartky is taking pains to get the scarifying catcalls into proper focus: Bartky's personal discomfiture must be understood in *political* terms. It's what's happening to *all* of Us all the time—in the male-dominated culture.

In an article called "The Feminist Revelation," I suggested that the new feminism has many of the elements of a religion or religious cult.⁸ If so, the public testimony of its adherents has a *special* character. We are accustomed to hearing the testimony and confessions of sinners. But in the feminist case, the devotee testifies in public on how she has been *sinned against*.

Ms. Bartky gets her wounds when she passes construction sites. Marilyn French, the author of *The War against Women*, finds herself vulnerable in museums where she is mugged by works of art created by men:

Artists appropriate the female body as their subject, their possession . . . assaulting female reality and autonomy. . . . Visiting

galleries and museums (especially the Pompidou Center in Paris) I feel assaulted by twentieth century abstract sculpture that resembles exaggerated female body parts, mainly breasts.⁹

Not all of the women who believe they are in a gender war against men, are defiantly resentful. Some are demoralized by the feeling. This is well illustrated by Carole Sheffield's article "Sexual Terrorism" in a recent anthology on feminist philosophy.¹⁰ I excerpt it at some length, to show how the perspective of being trapped in a "rape culture" can lead one from angry defiance and resentment to a more permanent and crippling state of fearfulness. Unfortunately, Ms. Sheffield's reaction is common to many a teacher of feminist theory, and her mood of siege and terror is being conveyed to more and more students:

The word *terrorism* invokes images of furtive organizations ... whose members blow up buildings and cars. . . . But there is a different kind of terrorism. . . . Its targets are females—of all ages, races, and classes. . . . I call it *sexual terrorism* because it is a system by which males frighten and, by frightening, control and dominate females.

Ms. Sheffield describes an "ordinary" event that took place one early evening. She was alone in a laundromat and suddenly felt very vulnerable:

[T]he laundromat was brightly lit; and my car was the only one in the lot. Anyone passing by could readily see that I was alone and isolated. Knowing that rape is a crime of opportunity, I became terrified.

Ms. Sheffield left her laundry in the washer and dashed back to her car, sitting in it with the doors locked and the windows up.

When the wash was completed, I dashed in, threw the clothes into the drier, and ran back out to my car. When the clothes were dry, I tossed them recklessly into the basket and hurriedly drove away to fold them in the security of my home. Although I was not victimized in a direct, physical way by objective or measurable standards, I felt victimized. It was, for me, a terrifying experience.

At home, her terror subsided and turned to anger:

Mostly I was angry at being unfree: a hostage of a culture that, for the most part, encourages violence against females, instructs

men in the methodology of sexual violence, and provides them with ready justification for their violence. . . . Following my experience at the laundromat, I talked with my students about terrorization.¹¹

Whether one reacts with terror to the feeling of being a hostage in the male culture is partly a matter of individual temperament. Among most gender feminists, a defiant resentment is perhaps more the norm.

Students in the "feminist classrooms" who are taught to regard the society they inhabit as a patriarchal system of oppression are deeply affected by this perspective. I have talked with quite a few women students who spoke to me of their feelings. Some are frightened, others are angry. But for most, the world had become grimmer than before.

According to Laurie Martinka, a Women's Studies graduate from Vassar, "You're never the same again. Sometimes I even bemoan the fact that so much has changed. I am tired of always ripping things apart because they exclude the perspective of women. . . . You become so aware of things. And it is hard. My mother cannot accept it. It is hard for her because I have changed so completely."

Anne Package, a student at the University of Pennsylvania, told me how students talk among themselves about this keen new awareness: "We call it 'being on the verge' or 'bottoming out.' You are down on everything. Nothing is funny anymore. It hits you like a ton of bricks. You hit rock bottom and ask: How can I live my life?"

The expression intrigued me. On the verge. Of what? But there is no mystery here. Women on the verge do not hesitate to tell you that they are barely containing their wrath at how women have been intimidated and put down. And every so often they vent it.

When I suggested to Ms. Package that she and her classmates are regarded as among the world's more fortunate young women, she bristled. "We still suffer psychological oppression. If you feel like the whole world is on top of you then it is."

There is a substantial literature on the "verge" reaction and how to help women to channel it properly. Professor Carolyn Shrewsbury of Mankato State University, Minnesota, suggests that feminist teachers can "empower" their students by talking about the verge feeling in a way that "recognizes their right to understand what they are undergoing." This validates their perspective on social reality and makes them feel not only normal but exceptionally insightful. The feeling of being on the verge is not treated as a transitory student stage, but as a permanent condition reached by women who have achieved a realistic awareness of their plight in the male-dominated society.

Contemporary resenters claim continuity with the likes of the eighteenth-century feminist Mary Wollstonecraft or later feminists like the

Grimke sisters, Elizabeth Cady Stanton, Susan Anthony, and Harriet Taylor. But those giants of the women's movement nursed no personal grievances. Speaking of the women who participated in the Seneca Falls convention of 1848, Elizabeth Cady Stanton wrote: "They had not in their own experience endured the coarser forms of tyranny resulting from unjust laws, or association with immoral and unscrupulous men, but they had souls large enough to feel the wrongs of others without being scarified in their own flesh."¹²

One of the main differences between the humanistic, Enlightenment feminists of yesteryear and today's sex/gender feminists is the degree of *self-preoccupation*. Elizabeth Stanton and Susan Anthony were other-directed in their focus; they were keenly aware that they themselves were privileged, middle-class, protected women; they knew in their bones how utterly inappropriate it would be to compare themselves with the vulnerable women of their day, and it never occurred to them to talk of their own personal grievances before the public.

The founders of the women's movement were inspired by Enlightenment principles of individual justice to wage their fight for women's rights, the very principles that the founders of America's political order had appealed to. Stanton had her consciousness raised by reading John Locke and Thomas Jefferson. Her reliance on the Declaration of Independence (adding only that women as well as men enjoyed the rights it proclaimed) was a direct expression of her sincerely held creed and the creed of the men and women assembled at Seneca Falls. Stanton and the other founding mothers of American feminism demanded that *recognized constitutional principles* be applied to women as well as to men.

By contrast, the radical demand to dismantle Patriarchy calls for a social revolution. The sexual politics of gender feminism is essentially utopian; its political goals cannot be achieved by amending the Constitution. The contemporary resenters have lost faith in the classically liberal Enlightenment principles. Again, where the classical feminist agenda was designed to work within the system, calling for constitutional reforms and other such measures, the new feminism is radical in calling for a new social order.

It is now a commonplace that feminist theory *must* move away from liberalism and individualism. According to Alison Jaggar, "radical and socialist feminists have shown that old ideals of freedom, equality and democracy are insufficient."¹³ Iris Young points out that "after two centuries of faith . . . the ideal of equality and fraternity" no longer prevails.¹⁴ Andrea Nye acknowledges that the liberal agenda has been successful in gaining women *legal* freedoms, but she insists that this means very little, since "the liberated enfranchised woman might complain that democratic society has only returned her to a more profound subordination."¹⁵

I want to linger just a bit over Jaggar's anti-liberal animadversions. Jaggar is, after all, a *doyenne* of contemporary feminist philosophy. (But I

confess, she interests me personally because she has taken a special interest in *me*.)

Like all gender feminists, Jaggar distrusts the aspirations and values of women who have been socialized under patriarchy. She is critical of the liberal notion of "autonomy":

Central to the concept of autonomy is the idea of self-definition, a reliance on the authority of individual judgment. If individual desires and interests are socially constructed, however, the ultimate authority of individual judgment comes into question. Perhaps people may be mistaken about truth, morality and even their own interests: perhaps they may be systematically self-deceived or misled by their society.¹⁶

However, her theory of false consciousness does leave room for exceptional women who are able to transcend their socialization: "[C]ertain historical circumstances allow specific groups of women to transcend at least partially the perceptions and theoretical constructs of male dominance. . . ." It is these women of raised consciousness who "inspire and guide women in a struggle for social change."¹⁷

Jaggar is a clear writer who makes no bones about saying that most women—including seemingly free and enlightened American women—are wrongly socialized, and confused, and that their values and aspirations and choices may therefore be mistaken. But of course she is *not* atypical. One sees many a feminist philosopher caught in the loop of exclaiming, over and over again, in ever more subtle ways, how women's choices are complicitous, confused, and manipulated by men intent on holding on to their own dominant status.

My own view (about which I have written at some length) is that this whole approach to American women is unacceptably elitist and matronizing.¹⁸ Indeed, in its devaluation of the professed preferences and interests of the majority of women, and in its idea that most women may be systematically self-deluded and in need of inspired guidance and deprogramming, the whole approach is profoundly condescending and not a little misogynist. The doctrine is morally flawed. What is more, it represents a betrayal of classical feminism.

2. Women's Ways of Knowing

Imperviousness to criticism is to be found whenever one encounters a closed perspective that chews up and digests all counter-evidence, transmuting it into confirming evidence. The fact that most people, including most *women*, do not see the "pervasive and tenacious system of male power" is

only taken to show how deeply inculcated it is. The more women reject the teachings of this radical feminism, the more it proves them in thrall to the androcentric system. Nothing and no one can upset the hypothesis of the sex/gender system for those who "see it everywhere."

Susan Sontag, who has been notably absent from the ranks of resent-er feminists, understood the totalizing and otiose character of their philosophy back in 1975. (I am convinced that, even earlier, Ms. Sontag must have taken a good course in analytic philosophy and taken to heart some elementary cautions.) Here she is answering critics who had accused her of not fully appreciating the plight of women (and of not seeing it everywhere):

Virtually everything deplorable in human history furnishes material for a restatement of the feminist plaint . . . just as every story of a life could lead to a reflection on our common mortality and the vanity of human wishes. But if the point is to have meaning some of the time, it can't be made all the time. . . . [I]t is surely not treasonable to think that there are . . . other wounds than sexual wounds, other identities than sexual identity, other politics than sexual politics—and other 'anti-human values' than 'misogynist' ones.¹⁹

Ms. Sontag also shows her sound philosophical instincts when she speaks disapprovingly of feminist "anti-intellectualism," telling us that she has felt the need to "dissociate [her]self from that wing of feminism that promotes the rancid and dangerous antithesis between mind . . . and emotion." Needless to say, feminist philosophers promote that antithesis in the manner in which they oppose male to female "ways of knowing."

Susan Haack and Susan Sontag are liberal feminists who are disturbed by the gynocentric turn taken by feminist philosophy. There are others. Two years ago I wrote to the British novelist and philosopher Iris Murdoch, asking for her views on some recent trends in Women's Studies. In her response she said:

Men "created culture" because they were free to do so, and women were treated as inferior and made to believe they were. Now free women must join in the human world of work and creation on an equal footing and be everywhere in art, science, business, politics etc. . . . However, to lay claim, in this battle, to *female* ethics, *female* criticism, *female* knowledge . . . is to set up a new female ghetto. (Chauvinist males should be delighted by the move. . . .) 'Women's Studies' can mean that women are led to read mediocre or peripheral books by women rather than the great books of humanity in general. . . . It is a

dead end, in danger of simply separating women from the mainstream thinking of the human race. Such cults can also *waste the time* of young people who may be reading all the latest books on feminism instead of studying the difficult and important things that belong to the culture of humanity. (Her emphases.)

The universal ideal of a culture of humanity is a theme glaringly missing from contemporary feminist philosophy. On the contrary, the self-imposed segregation of women is everywhere in evidence. The harmful idea of gendered ways of knowing has trickled down to rank-and-file feminists, who are hard at work transforming the curriculum in schools all over the country. Even science education is not escaping the sweeping gender-feminist broom.

Philosophers from Plato to John Dewey have been keenly aware that good or bad education is primarily a matter of good or bad philosophy. At the present time, too many philosophers have virtually abandoned their historic function of being watchdogs to education. One result is that, increasingly, educational philosophy and practice are being influenced by bad feminist philosophy. It is unfortunate that clearheaded philosophers, whether feminist or nonfeminist, have only *just* begun to join the discussion.

Elizabeth Minnich traces the tradition of a male cultural elite to a "few privileged, males . . . who are usually called The Greeks."²⁰ Minnich, along with the other "curriculum transformationists," believes that the conceptions of *rationality* and intelligence are white male creations. Professor Minnich:

[A]t present . . . not only are students taught "phallogentric" and "colonial" notions of reason as *the* forms of rational expression, but the full possible range of expression of human intelligence also tends to be forced into a severely shrunken notion of intelligence.²¹

Note the references to a "colonial" rationality that binds women to a narrow conception of reason. The transformationist feminist critique of the imperial male culture is not confined to impugning the history, art, and literature of the past. Logic and rationality are also regarded as "phallogentric." It has become common to use scare quotes to advertise the suspicion of a "reality" uncovered by male ways of knowing. Thus, the feminist philosopher Joyce Trebilcot speaks of "the apparatuses of 'truth,' 'knowledge,' 'science,'" that men use to "project their personalities as reality."²²

The attack on male culture has become an attack on the rational standards and methods that have been the hallmark of scientific progress. Here, for example, is a characteristic fragment of applied feminist philoso-

phy taken from the guidelines of the state-funded New Jersey Project on Curricular Transformation (the project has already done considerable damage and should long ago have been discredited by philosophers of science): "Mind was male, Nature was female, and knowledge was created as an act of aggression—a passive nature had to be interrogated, unclothed, penetrated and compelled by man to reveal her secrets."²³

That the state of New Jersey should find itself in the position of endorsing controversial conceptions of reality and knowledge is a tribute to the energy and influence of the feminist transformationists. The New Jersey Project conducts "conferences, workshops and a regional network of meetings," all in aid of transforming knowledge to make it more women centered.

A nationwide feminist campaign to change the curriculum of the American academy to reflect the "new epistemologies" is being supported at the highest levels of the academy and government. There are now more than two hundred individual projects devoted to making the academy more congenial to "women's ways of knowing." The transformation projects are generously funded by the Ford Foundation and by federal agencies such as the Women's Education Equity Act Program and FIPSE, as well as by state governments from New Jersey to Tennessee to California—even Montana has one.²⁴

In a much-cited transformationist text entitled *Women's Ways of Knowing*, the authors distinguish between two kinds of knowing. "Separate knowing" is defined as "the game of impersonal reason," a game that has "belonged traditionally to boys." Male scholars specializing in their academic disciplines (from chemistry to philosophy) are known as "separate knowers":

Separate knowers are tough-minded. They are like doormen at exclusive clubs. They don't want to let anything in unless they are pretty sure it is good. . . . Presented with a proposition, separate knowers immediately look for something wrong—a loophole, a factual error, a logical contradiction, the omission of contrary evidence.²⁵

Separate knowers play the "doubting game." The authors of *Women's Ways of Knowing* contrast separate knowing with a higher state they call "connected knowing." In place of the "doubting game," connected knowers play the "believing game." This is more congenial for women because "many women find it easier to believe than to doubt."²⁶

The credulous transformationists do, however, reserve their skepticism for the "male-centered curriculum" they wish to replace. Catharine MacKinnon has given extreme expression to feminist anger at being taken in by male ways of knowing and patriarchal constructions of knowledge. Here she

is in *Signs*: "In the Bible, to know a woman is to have sex with her. You acquire carnal knowledge. . . . Feminists are beginning to understand that to know has meant to f***"²⁷ (expletive deleted).

Peggy McIntosh, one of the principal architects of the influential Wellesley Report on primary and secondary education, is more decorous in her choice of words.²⁸ But her views are not far from MacKinnon's, or from those of the New Jersey Project. She is known among feminist pedagogues for her refinement of the distinction between "vertical and lateral thinking." McIntosh's "five phases of curricular consciousness" rest upon her own special variant of the "connected knower" and "separate knower" distinction. Vertical thinking is how the "white male elite" thinks. The dominant elite aim at "exact thinking, or decisiveness or mastery of something, or being able to make an argument and take on all comers, or turning in the perfect paper."²⁹ Vertical thinking is "triggered by words like excellence, accomplishment, success and achievement." Lateral thinking is more spiritual, "relational," and "inclusive." Women and people of color tend to be lateral thinkers. For "laterals," the "aim is not to win, but to be in a decent relationship with the invisible elements of the universe."³⁰ Dr. McIntosh is convinced that the current curriculum in the primary and secondary grades is dominated by vertical thinking. The Wellesley Report urges rooting out such "Anglo-European male values." For example, the report is down on debating clubs, which it sees as expressions of the emphasis on vertical thinking: "Debating clubs . . . take for granted the adversarial, win/lose orientation. . . . The definition of the citizen in debate clubs . . . relates more to what psychologist Carol Gilligan names 'the ethos of justice' . . . rather than the 'ethos of care.'"³¹

To me, as to Susan Haack, the assumption that "knowing" and knowledge can be gendered is thoroughly alarming on social and political grounds. Just as alarming is the question of why a philosophical establishment that feels free to express its abhorrence of the Nazi idea of Jewish Science, should find itself so tongue-tied when it comes to feminist talk of "male science," "male ideas," and "male ways of knowing."

My area of expertise is ethics, so I am happily leaving it to epistemologists such as Ms. Haack to sort out and appraise the "new epistemologies." For the moment, I defend not the strong thesis that feminist epistemology is completely wrongheaded, but the weaker thesis that the debate over its merits has hardly begun. In any case, it is much too soon for anyone—including the State of New Jersey—to begin "transforming the curriculum" to reflect the "new epistemologies."

At the root of all transformation projects is the thesis that not just people but also ideas and disciplines are gendered. But, as the academic promoters of the politics of sexual identity are beginning to learn, gender is not sacrosanct as a principle of social and epistemic division. Why should identity politics be stabilized at just two? A woman can be simultaneously a

victim, and, depending on her race and physical status, also a white, able-bodied oppressor of Latinas, black males, and the disabled.

Today, white, able-bodied, heterosexual, feminist authors, awash in the new "politics of identity," are encouraged to confess to their privileged status right from the start. Here is a characteristic self-introduction by two feminist editors in their new book *Feminisms*:

'We' are Robyn and Diane; we speak as white middle-class heterosexual American feminist academics in our early thirties (to cover a number of the categories feminist criticism has lately been emphasizing as significant to one's reading and speaking position: race, class, sexual orientation, nationality, political positioning, education-level, and age).³²

The middle-class, educated women who discovered the sex/gender system are now being forced to regard themselves as oppressors in a complex ecology of domination and subjugation. But perhaps "ecology" is too orderly a concept for a victimology that is spinning out of control.

Feminist philosophy must itself be critiqued; and the radical pedagogical programs it has inspired must be put on hold. The doctrine of the divided society and the thesis of gendered knowledge need to be squarely confronted and evaluated by philosophers prepared to brave the wrath of feminist academics with full awareness that their criticisms may well be taken as expressions of sexist backlash.

I was speaking recently to a historian friend of mine about the feminist philosophers' attacks on rationality, and we both agreed that the negative attitude toward reason was deplorable. "But don't be depressed," she said, "after all, most of human history has been dominated by ignorance, superstition, and irrationality. Why should we be any different?"

But of course, as philosophers, we must do our utmost to *be* different. I do find it depressing that philosophers are not loudly protesting the talk about vertical and lateral reasoning, about separate and connected knowing. It is dismaying that so few are challenging the philosophical premises of other pernicious doctrines that have already affected educational practice and policy. That reason and reasonableness are rare is true enough. But defending an enclave of clarity and reason from the forces of unreason has been the point of doing philosophy from the very beginning. We are not morally free to hang back and allow unreason to have the last word.

1. Susan Faludi, *Backlash: The Undeclared War against American Women* (New York: Doubleday, 1991); Naomi Wolf, *The Beauty Myth: How Images of Beauty are Used against*

Women (New York: Doubleday, 1991); Marilyn French, *The War against Women* (New York: Simon and Schuster, 1992).

2. Sandra Lee Bartky, *Femininity and Domination: Studies in the Phenomenology of Oppression* (New York: Routledge, 1990), p. 50. Bartky is relying on the work of the feminist anthropologist Gayle Rubin, who was among the first to speak of the "sex/gender system." Here is Rubin's definition: "While particular socio-sexual systems vary, each one is specific and individuals within it will have to conform to a finite set of possibilities. Each new generation must learn and become its sexual destiny, each person must be encoded with its appropriate status from within the system." See Gayle Rubin, "The Traffic in Women," in Rayna Reiter, ed., *Toward an Anthropology of Women* (New York: Monthly Review Press, 1975), p. 161. See also Alison M. Jaggar, *Feminist Politics and Human Nature* (Totowa, NJ: Rowman and Littlefield, 1988), p. 148; Virginia Held, "Feminism and Epistemology: Recent Work on the Connection between Gender and Knowledge," *philosophy and Public Affairs*, vol. 14, no. 3 (Summer 1985), p. 296; Sandra Harding, *The Science Question in Feminism* (Ithaca, NY: Cornell University Press, 1986), p. 113.

3. *Discovering Reality: Feminist Perspectives on Epistemology, Metaphysics, Methodology, and philosophy of Science*, ed. Sandra Harding and Merrill B. Hintikka (Dordrecht: Reidel, 1983), p. 312.

4. Bartky, *Femininity and Domination*, p. 50.

5. Held, "Feminism and Epistemology," pp. 296 and 297.

6. Kathryn Allen Rabuzzi, *Motherself: A Mythic Analysis of Motherhood* (Bloomington: Indiana University Press, 1988), p. 1.

7. Bartky, *Femininity and Domination*, p. 27.

8. Sommers, "The Feminist Revelation," *Social philosophy & Policy*, vol. 8, no. 1 (Autumn 1990).

9. French, *The War against Women*, p. 163.

10. *Feminist Philosophies*, ed. Janet A. Kourany, James P. Sterba, and Rosemarie Tong (Englewood Cliffs, NJ: Prentice Hall, 1992).

11. These four block quotes are from Carole Sheffield, "Sexual Terrorism," in *Feminist Philosophies*, p. 61. Sheffield is a Professor of Political Science at William Paterson College, where she serves as co-chair of the campus violence project.

12. *The Feminist Papers: From Adams to de Beauvoir*, ed. Alice S. Rossi (New York: Bantam Books, 1973), p. 416.

13. Jaggar, *Feminist Politics and Human Nature*, p. 148.

14. Iris Marion Young, *Throwing Like a Girl and Other Essays in Feminist philosophy and Social Theory* (Bloomington: Indiana University Press, 1990), p. 93.

15. Andrea Nye, *Feminist Theory and the Philosophies of Man* (New York: Routledge, 1988), p. 23.

16. Jaggar, *Feminist Politics and Human Nature*, p. 44.

17. *Ibid.*, p. 150.

18. See Christina Sommers, "Philosophers against the Family," in *Person to Person*, ed. Hugh La Follette and George Graham (Philadelphia: Temple University Press, 1989); "Do These Feminists Like Women?" *Journal of Social philosophy*, vol. 21, no. 2 (Fall/Winter 1990); and "Argumentum Ad Feminem," *Journal of Social philosophy*, vol. 22, no. 1 (Spring 1991).

19. Susan Sontag, "Feminism and Fascism," *New York Review of Books*, March 20, 1975.

20. "Transforming the Knowledge Base: A Panel Discussion at the National Network of Women's Caucuses, 1989," National Council for Research on Women, New York City, 1990.

21. Elizabeth Kamarck Minnich, *Transforming Knowledge* (Philadelphia: Temple University Press, 1990), p. 113.

22. Joyce Trebilcot, "Dyke Methods," *Hypatia*, vol. 3, no. 2 (Summer 1988), p. 3.

23. "The New Jersey Project: Integrating the Scholarship on Gender," by Paula

- Rothenberg; available through the New Jersey Project, White Hall 315, William Paterson College, Wayne, NJ 07470.
24. For fuller accounts of the curriculum-transformation projects, see *The Courage to Question: Women's Studies and Student Learning*, ed. Caryn McTighe Musil (Washington, DC: Association of American Colleges, 1992), p. 3; Betty Schmitz, *Integrating Women's Studies into the Curriculum: A Guide and Bibliography* (Old Westbury, NY: The Feminist Press, 1985); *Transforming the Curriculum: Ethnic Studies and Women's Studies*, ed. Jonella Butler and John Walter (Albany: SUNY Press, 1991), see esp. pp. 21-34.
25. Mary Field Belenky et al., *Women's Ways of Knowing: The Development of Self, Voice, and Mind* (New York: Basic Books, 1986), p. 104.
26. *Ibid.*, p. 113.
27. Catharine MacKinnon, "Feminism, Marxism, Methodology, and the State," *Signs*, Summer 1983, p. 636.
28. *How Schools Shortchange Girls*, commissioned by the AAUW Educational Foundation, researched and distributed by the Wellesley College Center for Research on Women, Wellesley, MA, 1992.
29. Dr. McIntosh gave a lecture on curriculum transformation in Brookline, Massachusetts, in October 1990; her lecture was videotaped and is available through the Brookline School Department. The quoted words are from her lecture. An article about the lecture appeared in the *Brookline Citizen*, March 15, 1991 ("The Mother of All Curriculums," by Robert Costrell). Versions of her lateral/vertical distinction can be found in two "Working Papers" by Dr. McIntosh distributed by the Wellesley College Center for Research on Women: "Interactive Phases of Curricular Re-vision: A Feminist Perspective," 1983, and "Interactive Phases of Curricular and Personal Re-vision with Regard to Race," 1990.
30. McIntosh, Brookline lecture, October 1990; see also her "Interactive Phases of Curricular and Personal Re-Vision with Regard to Race."
31. *How Schools Shortchange Girls*, p. 66.
32. Robyn R. Warhol and Diane Price Herndl, *Feminisms* (New Brunswick, NJ: Rutgers University Press, 1991), p. ix.

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FEMINIST THEORY RECONFIGURED

Patrice DiQuinzio
University of Scranton

The request that one reconsider feminist philosophy makes at least two presuppositions: it presupposes that we know what feminist philosophy is and that feminist philosophy is in a position to be reconsidered. I believe, however, that both of these presuppositions are unwarranted. So rather than reconsider feminist philosophy, I propose first to investigate these two matters. What might 'feminist philosophy' be? The name 'feminist philosophy' suggests that a place for feminism within philosophy has been made—offered by philosophy and/or forged by feminism. Thus, it suggests the accommodation of philosophy to feminism. 'Feminist philosophy' in this sense would be like political philosophy, moral philosophy, or all the 'philosophies of' (philosophy of science, history, religion, etc.). Here philosophy is the master discipline that analyzes, criticizes, and thereby improves the practices of politics, ethics, science, history, religion, and feminism.

The name 'feminist philosophy' also implies that the proper place for feminism in academic practices and institutions is in the company of, perhaps even under the protection of, one of the traditional disciplines. Thus, 'feminist philosophy' also suggests the domestication of feminism by philosophy. In this respect 'feminist philosophy' would be like feminist literary criticism, women's history, sociology of gender, psychology of women—the feminine and the feminist may appear on the academic scene only when properly escorted by one of the established disciplines. Feminism in this way becomes the helpmate of the established disciplines by supplying what they have somehow been missing, by allowing them to do better what they have always done. Such a relationship between feminism and the established disciplines is also implied by the proliferation of 'feminist perspectives' in or on the established disciplines. Feminism thus becomes another

way of looking at what those disciplines have always looked at and another way of doing what they have always done; but always only one of at least several 'perspectives' that the discipline acknowledges and at least tolerates, if not embraces.

My concern with 'feminist philosophy' in these senses is not an empirical concern about whether philosophy really has accommodated and/or domesticated feminism. My concern is rather that to adopt the name 'feminist philosophy' is to assume that some combination of accommodation and domestication is and ought to be the relationship of feminism and philosophy. I want to argue instead that, at this moment, the relationship of feminism and philosophy is much less settled and stable than the name 'feminist philosophy' suggests. Feminism has tried to be both a counter-practice in resistance to established disciplines such as philosophy and an approach accepted on an equal footing with other approaches they acknowledge. This is in part a function of the ways in which, at this moment in the American context, feminism is neither a discipline, as these are traditionally understood in academic settings, nor a traditional political movement in the sense of a distinct, coherent view of the social and political field that motivates collective action on the part of a significant number of people. 'Feminist philosophy' therefore seems to me to name a position that is accommodated and domesticated by philosophy as well as a position that is resisted by philosophy, a position from which to resist philosophy and a position from which to demand inclusion in philosophy.

The request to reconsider 'feminist philosophy' also presupposes that the matter of 'feminist philosophy' has been considered and settled at least once, and implies that decisions reached previously about 'feminist philosophy' now need to be altered or modified. But 'feminist philosophy' cannot be reconsidered, precisely because the relationship of feminism and philosophy has never attained anything like the stability presupposed by the notion of 'reconsideration'. In addition, the request to reconsider 'feminist philosophy' makes certain presuppositions about the epistemological standpoint of its addressee. But an analysis of these presuppositions indicates that this addressee is not in a position to engage in reconsideration. Consider the circumstances from which this particular request for reconsideration was issued and the circumstances of those to whom it was addressed. This request was first articulated under the auspices of the American Association for the Philosophic Study of Society (AAPSS) and the Social Philosophy and Policy Center at Bowling Green State University, who proposed a panel on this topic at the American Philosophical Association's Eastern Division annual meeting, thus determining that this instance of reconsideration would have an audience composed primarily of professional philosophers. That the papers from this session were to be published in a journal sponsored by the AAPSS has a similar effect with respect to audience. In addition, the panelists are all Ph.D.s in philosophy who cur-

rently hold university teaching positions and have previously spoken and written about feminism and philosophy. Consider the history of my relationship to the profession of philosophy as evidenced by a set of credentials—Ph.D. in philosophy, job as an assistant professor of philosophy, position as executive secretary of an organization for women in philosophy. These circumstances and this history would seem to have the effect of stabilizing the position of feminist philosopher by institutionalizing it and in this way making me a feminist philosopher.

This particular request for reconsideration, however, also includes a demand for objectivity as this is traditionally understood by the epistemological paradigms of modern philosophy. This is suggested by the selection of two panelists well known for their criticisms of 'feminist philosophy'. It is also implied in the notion of reconsideration, which imputes epistemological agency to the knower who does the reconsidering, and leaves the object of reconsideration subject to the knower, who is unaffected by that which she reconsiders and who is in a position to validate, reconstruct, or entirely reject it. Thus, the request for reconsideration assumes the possibility and desirability of an epistemological standpoint entirely outside of feminism (if the request is addressed to philosophy or a philosopher as a demand that philosophy justify its accommodation of feminism) and entirely outside of philosophy (if the request is addressed to feminism or a feminist as a demand that feminism justify its desire for inclusion by philosophy). But, regardless of whether such standpoints are possible or desirable (and I think they are neither), a position outside of feminism and of philosophy surely cannot be the position of a feminist philosopher.

So not only is 'feminist philosophy' in no position to be reconsidered, but the position from which one could reconsider it seems to be indeterminable. Finding the request to 'reconsider feminist philosophy' addressed to me, I find myself contradictorily constrained. I am supposed to represent 'feminist philosophy' in some way, to discuss it knowledgeably, examine it critically, perhaps defend it; at least to make some sense of it. But I am also expected to 'reconsider feminist philosophy' from a position outside of both feminism and philosophy. Thus the request that I 'reconsider feminist philosophy' requires both that I be a feminist philosopher and that I be neither a feminist nor a philosopher.

For all these reasons, then, I am not going to discuss 'feminist philosophy' and I am not going to reconsider anything. Instead, I will discuss 'feminist theory' and suggest in place of reconsideration the concept of tracing reconfigurations in feminist theory. I prefer the term 'feminist theory' because it neither claims feminism's ownership by any of the established disciplines, nor dismembers feminism and parcels it out among them. By 'feminist theory' I mean a set of questions about woman, women, and femininity; man, men, and masculinity; about sex, gender, and bodies; about sex, gender, and other categories of identity; about sex, gender, knowledge,

power, and agency; sex, gender, language, culture, and history.

I intend the concept of tracing feminist theory's reconfigurations to represent the way in which I find myself both positioned within feminism and philosophy and called on to stand outside of both of them. From this perspective, feminist theory is not so much something that I do as it is something that moves me about, positioning and repositioning me in its shifting currents. In thinking of the development of feminist theory as a series of reconfigurations, I also hope to point to the instability of the position of feminism vis-à-vis philosophy, and the other established disciplines, that I have described. I argue that feminist theory's questions, the conflicting quality of its answers so far, and its insistence that the meanings and effects of these fundamental questions be continually reexamined are partly a function of the instability of this relationship. Finally, this notion of reconfiguration is meant to suggest that the instability of feminist theory is one reason why it has continued to generate debate about the issues it addresses and thereby to surface additional, more complex questions. Rather than reconsidering 'feminist philosophy' from the perspective of its failure to solidify itself in the same ways as philosophy and its sub-specialties have become solidified in academic settings, I want to argue that the instability of feminism's relationship to philosophy and the other established disciplines is a virtue.

In the following discussion, I focus on conflicts and tensions that criss-cross feminist theory itself. To do this, I map over the field of feminist theory a distinction of approaches. The first is a focus on the question of women's situation—what is it, how did it come to be what it is, how should it be changed, how can such changes be brought about? The second is a focus on the question of women's identity—what does it mean to be a woman, how is this best explained, how does one become a woman? I want to emphasize here the ways in which the positioning together of these approaches is disruptive within feminist theory. The responses proposed to each of these questions raise problems for those proposed in response to the other. While this may seem to be a disruption that entirely undoes the possibility of feminist theory, it is an instance of what I mean by a reconfiguration. And this particular reconfiguration is an extremely important moment in feminist theory, for it has generated a reappraisal of what feminist theory so far has accomplished, as well as what it has provoked, intentionally or unintentionally. There is no recent development in American academic practice that has been led, by sympathetic as well as unfriendly critique, to interrogate itself—its foundations, its implications, its results—as thoroughly as feminist theory.

So, in tracing these reconfigurations of feminist theory, I give in to conflicting impulses that are a function of the contradictory position I find myself occupying here. On the one hand, I give an account of feminist theory, explicating the meaning of its questions to show how the issues cur-

rently debated within feminist theory came to be so. But I also emphasize the points at which feminist theory's attempts to answer its questions break down, the points at which its answers encounter objections from within feminist theory. To the extent that I function as a philosopher here, I want to show that the reconfigurations of feminist theory have had the effect of surfacing better questions. To the extent that I function as a feminist here, I want to contribute in some way to the self-interrogation that I see ongoing in feminist theory. While I want to avoid as much as possible forcing any closure on these reconfigurations, I recognize that to give an account of feminist theory is to establish a framework for understanding it that in some ways forecloses possibilities for further questioning.

1. The Question of Women's Situation

In considering the question of women's situation, I want to trace one reconfiguration of feminist theory. This is the move away from the appeal to established political theories and traditions as sources for explanations of women's situation and toward the development of accounts of women's experience as foundations for theories to explain women's situation. A brief survey of feminist work on women's situation shows that explanations attempted so far have generated more resistance than consensus within feminist theory. This resistance has raised questions about both the project of appropriating established traditions in political theory for feminist theory and the project of explaining women's situation by appealing to some account of women's experience. By questioning what an account of women's experience assumes about experience and identity (about being a woman and having women's experiences), the project of explaining women's situation collides with the question of women's identity.

Appeals to most of the established traditions in political theory mark feminist theory's attempts to explain women's situation and develop arguments for changing social and political arrangements to improve it. And the presuppositions typical of political theory are at work here: for instance, that the defense of a particular set of political arrangements is best accomplished by appealing to a convincing theory of human nature and showing that these political arrangements are best suited to human persons so understood. In feminist theory, this approach has yielded a number of hybrid positions, such as liberal feminism, Marxist feminism, and socialist feminism.¹

The attempt to appropriate established political theories and turn them to this task of feminist theory, however, has shown that such theories usually cannot account adequately for women's situation without having to be so reconstructed as to be almost unrecognizable. Many feminist theorists have concluded that this is a function of gender bias in theory construction,

that is, that the 'human nature' or 'human situation' to which such theories appeal is actually a masculine subject, or the situation of the subject of masculine experience. For instance, some have argued that an analysis of human nature in terms of rational autonomous agency, such as that on which liberalism relies, is a convincing account of human nature only if one overlooks human embodiment and material needs and the need for emotional and psychological connectedness, aspects of human existence which are central to women's experiences as a result of a gender division of labor. Thus, liberalism's theory of human nature cannot account for much of women's experience and offers little basis for theorizing these aspects of human existence.²

Others have made similar arguments about Marxism. Marx's view of labor as a paradigmatically human practice understands labor as the transformation of the natural (the nonhuman) world in terms of human material needs. On this view, labor is always to some extent objectified in the product of labor, and the social organization of labor determines all other social relations. Such an understanding of the paradigmatically human, however, does not account well for women's experiences of pregnancy, birth, and child-rearing, of meeting the psychological and emotional needs of others and sustaining connectedness with others, or of sexual objectification and exploitation. These experiences cannot be adequately theorized as instances of labor as Marxism understands it.³

Thus, the appropriation and reworking of established positions in political theory for feminist purposes reveals gaps in these theories, and shows that these gaps are only barely concealed by the theories' avoidance of questions about women's situation. This account of gender bias in traditional political theory reconfigures feminist theory toward the development of explanations of women's situation that explicitly appeal to a feminine subject, or the situation of the subject of feminine experience. Various forms of radical⁴ or cultural feminism,⁵ more recently called 'difference feminism',⁶ make this sort of argument. Analyses of women's sexual objectification and exploitation have been developed to show that patriarchy, the domination of women by men, is the fundamental social relation that determines the nature and quality of all others, and that the liberation of women, as well as of all oppressed persons, requires dismantling patriarchy. Analyses of an ethic of care focus on experiences that women are more likely to have as a result of a gender division of labor, such as the experiences of mothering, of meeting the material, emotional, and psychological needs of others, or of sustaining relationships among persons. They also look to patterns of women's psychological and moral development or women's traditional subcultures within patriarchy for more adequate theories of human nature or human experience.⁷ Analyses of these experiences then provide grounds for a defense of social and political arrangements better suited than patriarchy to the human so understood.

Such arrangements would be based on traditionally feminine values or virtues such as empathy with and concern for others, attentiveness to the specificity of different contexts of human existence, and the priority of sustaining connections over maintaining boundaries among persons.

With this particular reconfiguration, however, feminist theory has become more conflicted over the question of how to explain and argue for changes in women's situation. Consider, for instance, the proliferation of feminist theories addressed to this question. In 1978, when Alison Jaggar and Paula Rothenberg first published *Feminist Frameworks*,⁸ they distinguished liberal, Marxist, radical, and socialist feminisms, and Jaggar argues for this same taxonomy in *Feminist Politics and Human Nature*.⁹ The 1984 edition of *Frameworks* adds, with some hesitation, the perspective of women of color, while the 1993 edition talks about overlapping lenses through which to see women's subordination, and pairs lenses and theories as follows: the lens of gender with liberalism; the lens of class with classical Marxism; the lens of sex, gender, and sexuality with radical feminism; the lens of gender and class with socialist feminism; the lens of race, gender, class, and sexuality with multicultural feminism; and the same edition identifies as 'global feminism' a perspective on "women's subordination worldwide." In *Public Man, Private Woman*, Jean Elshtain specifies radical, liberal, Marxist, and psychoanalytic feminisms before arguing for her own version of a feminist theory,¹⁰ which she elsewhere calls 'social feminism'.¹¹ Josephine Donovan's *Feminist Theory: The Intellectual Traditions of American Feminism*¹² offers accounts of Enlightenment liberal feminism, cultural feminism, feminism and Marxism, feminism and Freudianism, feminism and existentialism, radical feminism, and a "new feminist moral vision." Rosemarie Tong's *Feminist Thought: A Comprehensive Introduction*¹³ distinguishes seven forms of feminism—liberal, Marxist, radical, psychoanalytic, socialist, existentialist, and postmodern. Eliminating the overlapping categorizations, this represents eleven feminist theories developed in fifteen years!

This proliferation of feminist theories suggests both that feminist theory so far has failed to articulate an adequate position on women's situation and women's experience, and that the project of developing feminist theories itself should be called into question. For instance, each of these theories has generated objections on the part of or on behalf of specific groups of women, who argue that important aspects of their identities (race, class, sexual orientation, etc.) are not adequately articulated in these accounts of women's situation or experience.¹⁴ On this view, the already established political theories no more admit consideration of these aspects of identity than they do of gender, and the accounts of women's experience offered as foundational for feminist theory emphasize gender in such a way as to exclude consideration of other categories of identity.

But this reconfiguration of feminist theory has also surfaced several

important questions. It questions the relationship of feminist theory to established traditions in political theory, for instance, asking whether and how bringing different questions to the reading of these political theories enables them to be read differently. It also raises questions about the project of taxonomy itself. To what extent should feminist theory involve the neat and orderly categorization of itself? Is feminist theory mired in such work because it has taken up a stance of submission vis-à-vis the history of political theory? Or is such categorization the inevitable result of feminism's becoming a kind of theorizing? Finally, this reconfiguration in feminist theory raises questions about what is implied in the move toward thinking experience in terms of identity. Is specifying certain experiences as women's experiences, that is, breaking philosophy's traditional silence about such experiences by naming them and claiming them for women, a liberating gesture? Or is this to reconsolidate the traditional images of women that have historically been deployed with results oppressive of women? In this way, the question of women's situation encounters the question of women's identity.

2. The Question of Women's Identity

Ever since Simone de Beauvoir's argument that women are not born, but made,¹⁵ a central concern of feminist theory has been to explicate the processes through which women are made, to give an account of femininity. There are two points of departure here. The first is the view that femininity is not adequately explained by appeal to female anatomy and physiology, although feminist theorists disagree about whether—and if so, how—biology should be a factor in an account of gender identity.¹⁶ The second is the view that, at least in modern Western thought, theories of human identity formation, despite their claims to universality, tend to focus on masculinity or men's experience, to argue that some quality of masculinity or some aspect of men's experience is definitively human, and thus to yield accounts of women's identity as a deviation from that norm.

Here feminist theory intends to avoid both the deterministic accounts of gender identity that follow from equating gender and the body, and the flawed accounts of femininity as the deviation from a norm that follow from theories of identity formation that assume the masculinity of the subject of identity. Feminist theories of gender identity are intended to explain the persistence of the different and unequal significance of masculinity and femininity in social relations in the modern era, while also enabling a reconstruction of gender identities so as to end the devaluation of femininity and the exclusion of women from those activities and practices most valorized in modern social relations. A brief survey of recent work on this question shows that explanations of women's identity have proliferated, that

there has been considerable resistance to these explanations within feminist theory, including resistance to the very project of theorizing identity, and that this resistance further problematizes the appeal to women's experience as the foundation for an account of women's situation.

Feminist theory has looked to already established theories of identity formation, such as the sociology of roles, stage theories of psychological development, and psychoanalysis, as sources for explanations of women's identity. Here, too, feminist theory has become embroiled in debates about whether such theories adequately explain gender identity, or whether they can be reworked so as to address this question adequately. Feminist theory's ongoing engagement with psychoanalysis is perhaps its most thorough instance of such involvement. Feminist theory's relationships to psychoanalysis range from an insistence that it is irredeemably misogynist¹⁷ to a view that its adoption of the development of masculinity as its paradigm for human development is a serious but correctable problem for its use for feminist purposes.¹⁸ Thus, feminist theory has also included various attempts to rework psychoanalysis—for instance, by focusing on the pre-Oedipal period,¹⁹ or on the ways in which the question of femininity is disruptive of psychoanalytic texts, especially Freud's,²⁰ or by turning to other reworkings, such as Lacanian psychoanalysis.²¹ And feminist theory's preoccupation with psychoanalysis has also elicited resistance within feminist theory on the grounds that psychoanalysis provides little or no basis for theorizing other aspects of identity.²²

The question of women's identity has proliferated explanatory concepts in a way analogous to the proliferation of feminist theories addressed to the question of women's situation. Rejecting the view that gender is reducible to the body, but finding already established theories of identity formation inadequate to account for gender identity, feminist theory articulates the distinction of sex and gender. 'Sex' refers to the anatomical and physiological differences that characterize human males and females, and 'gender' refers to the psychological, social, and political meanings these differences come to have in social contexts.²³ Gender is thus the social and cultural encoding of the meaning of sex. On the assumption that bodily manifestations of sex are invariant, the sex/gender distinction points to the need for an explanation of how gender is constructed and how the social construction of gender is related to the different and unequal position of women in society.

The sex/gender distinction itself, however, raises difficult questions about gender and embodiment.²⁴ If gender is the social construction of the meaning of sex, then what is the sexed body? What are we knowing about bodies, in knowing that bodies have a sex, if sex is distinct from gender? And how do we know it? Here the body and its sex seem to be some sort of inert, raw material out of which gender is made or onto which gender is grafted. And knowledge of how sex becomes gender presupposes some

experience of the sexed body apart from gender, or at least some access to the un- or pre-gendered, but sexed, body. This is also implied by the view that an understanding of the social processes that construct gender will allow the reconstruction of gender identities, so that, while there will still be males and females, there might no longer be masculinity and femininity, or masculinity and femininity might have different meanings.

On the other hand, if gender is the social construction of the meaning of the body, then what is sex to the body? If the social construction of gender identity operates on the body in some way, what exactly is sexed embodiment? The argument that gender is the social construction of the meaning of the body raises the possibility that there is no necessary connection between sexual dimorphism and gender dimorphism, that is, that the body is susceptible to a multiplicity of socially constructed gender meanings. And the sex/gender distinction similarly problematizes the question of sexual desire. If sexual desire is socially constructed in a way similar to the social construction of gender, then there is also no necessary connection between sexual dimorphism and any dimorphism of sexual desire; sexual desire is also susceptible to a multiplicity of socially constructed meanings.

Thus, whether gender is the social construction of the meaning of sex (the sex of the body) or of the meaning of the (sexed) body, the question of sex remains intact. The sex/gender distinction, then, looks more like an explanatory triad—the body/sex/gender—with ‘sex’ as a pivotally unstable term. In feminist theory’s attempts to articulate the relationship of the body, sex, and gender, the category ‘sex’ is always poised on the verge of collapsing back into either the body or gender. Despite feminist theory’s intentions, then, the sex/gender distinction, or the body/sex/gender triad, seems to undo the possibility of accounting for that which it was developed to explain.

Feminist theory developed the sex/gender distinction to explain masculinity and femininity, to account for the persistent significance of gender identity in social relations, and to enable the reconstruction of gender identities. But it seems instead to have dispersed masculinity and femininity among a multiplicity of genders and sexual desires. This reconfiguration might do more than an explanation of the social construction of masculinity and femininity to enable the reconstruction of gender identities. But it problematizes any explanation of the significance of masculinity and femininity typical of social relations in the modern era.

In response to this reconfiguration, feminist theory has turned to the question of difference itself, especially as this is posed by various forms of post-structuralism, for some way of thinking the relationship of the body, sex, gender, and sexual desire without relying on the category ‘sex’ to function as it does in the sex/gender distinction. But with this move, feminist theory finds itself confronting a variety of challenges to the very project of

theorizing identity. Jacques Lacan's argument that the self's relationship to the desire of the other means that subjectivity is not only constructed within discourse but also fundamentally divided,²⁵ deconstruction's critique of the metaphysics of presence that grounds theories of identity,²⁶ and Michel Foucault's analyses of the ways in which being a subject is always also a subjection to normalizing discursive practices and regimes of power,²⁷ all throw into question the concept of identity on which feminist theory's project of theorizing women's identity depends. And, while some feminist theorists see these difficulties for theorizing identity as a challenge that feminist theory must engage, others have serious misgivings about surrendering the concept of identity, because feminism, if it is to be about anything, ought to be about women articulating and reconstructing what it means to be a woman.²⁸

At this point, the two approaches in feminist theory that I have distinguished—that which focuses on women's situation and that which focuses on women's identity—and considered separately, must be brought together. From the perspective of the present moment in feminist theory, it seems that these two sets of questions have been on a collision course. The attempt to explain women's situation, and to develop arguments for how to change it, has made explicit in established political theories and traditions a gender bias resulting from the failure to consider women's experience in its specificity. For this reason, feminist theoretical accounts of women's situation have come to rely on a more explicit appeal to women's experience, which presupposes some account of women's identity. But the attempt to explain women's identity has provoked difficult questions about the very concept of identity, thus undermining the appeal to women's experience that has become foundational to the project of explaining and changing women's situation. In short, this reconfiguration leaves feminist theory in the difficult position of wondering what can be said for, by, and about women when what it means to be a woman has become less rather than more certain. In other words, feminist theory faces a set of questions about what questions it might now ask. What other ways of thinking identity, experience, and situation might emerge here? How else might we theorize agency, action, and change? How else might we conceptualize the body, sex, and gender; or gender and other aspects of identity? What other sorts of critical encounters with what other established (or establishing) disciplines and theoretical perspectives can we anticipate? I do not know the answers to these questions. But I do recognize them as the sort of difficult yet compelling questions that philosophy is also thought to raise and address. Philosophy, I believe, would be a more difficult and yet more compelling academic practice if it were as thoroughly self-questioning and self-critical as feminist theory. Thus, the instability of feminist theory suggests to me, not that feminist theory ought to be reconsidered, but rather that feminist theory's very instability is one reason why it surfaces so many difficult yet

compelling questions. In this respect, feminist theory can serve as a model for philosophical practice, or a position from which to reconsider philosophy.

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Social Philosophy and Policy

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Fred D. Miller, Jr. and Jeffrey Paul

Social Philosophy and Policy Center
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Semi-annual (ISSN 0265-0525)

Volume 10, 1993

Institutions \$70.00; Individuals \$28.00.

Single Parts \$38.00.

Send orders to:

Cambridge University Press
40 West 20th Street
New York, NY 10011-4211

(Outside the USA, Canada or Mexico, contact:
Cambridge University Press, The Edinburgh Building,
Shattesbury Road, Cambridge CB2 2RU, England.)

CAMBRIDGE
UNIVERSITY PRESS

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Economic Rights		
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EPISTEMOLOGICAL REFLECTIONS OF AN OLD FEMINIST

Susan Haack
University of Miami

The philosophy which is now in vogue . . . cherishes certain tenets . . . which tend to a deliberate and factitious despair, which . . . cuts the sinews and spur of industry. . . And all for . . . the miserable vainglory of having it believed that whatever has not yet been discovered and comprehended can never be discovered or comprehended hereafter. — Francis Bacon¹

I have been a feminist since the age of twelve, when I got the top grade in my first chemistry exam, and the boy who got the next highest grade protested indignantly that it wasn't *fair*, "everyone knows girls can't do chemistry." And, since I have been working in epistemology for more than a decade now, I think I qualify as an epistemologist. So I must be a feminist epistemologist, right? Wrong; on the contrary, I think there is no such connection between feminism and epistemology as the rubric "feminist epistemology" requires.

Perhaps you think that only someone of extreme right-wing political views could possibly be less than enthusiastic about feminist epistemology. If so, you are mistaken; both because the only thing extreme about my political views is my dislike of extremes, and because my reasons for thinking feminist epistemology misconceived are, in any case, not political but epistemological.

The last fifteen years or so have seen a major shift within feminist philosophy: from a modest style which stressed the common humanity of women and men, focused on justice and opportunity, and was concerned primarily with issues in social and political theory; to an ambitious, imperialist feminism which stresses the "woman's point of view," and claims revolutionary significance for all areas of philosophy, epistemology included.

So, yes, the pun in my title is intentional; my feminism is of the older-fashioned, modest stripe.² But I am taking issue, here, only with the imperialist ambitions of the new feminism with respect to epistemology specifically.

The rubric "feminist epistemology" is incongruous on its face, in somewhat the way of, say, "Republican epistemology." And the puzzlement this prompts is rather aggravated than mitigated by the bewildering diversity of epistemological ideas described as "feminist." Among self-styled feminist epistemologists one finds quasi-foundationalists, coherentists, contextualists; those who stress connectedness, community, the social aspects of knowledge, and those who stress emotion, presumably subjective and personal; those who stress concepts of epistemic virtue, those who want the "androcentric" norms of the epistemological tradition to be replaced by "gynocentric" norms, and those who advocate a descriptivist approach. . . . Even apparent agreement, e.g., that feminist epistemology will stress the social aspects of knowledge, masks significant *disagreement* about what this means: that inquirers are pervasively dependent on one another; that cooperative inquiry is better than individual inquiry; that epistemic justification is community-relative; that only a social group, not an individual, can properly be said to inquire or to know; that reality is socially constructed. . . .³

The puzzlement is further aggravated by the reflection that neither all, nor only, females, or feminists, favor all, or indeed any, of the ideas offered under the rubric "feminist epistemology." Charles Peirce, for example, is critical of what he calls the "vicious individualism" of Descartes's criterion of truth, and has a subtle conception of the social aspects of inquiry; yet he was neither female nor (to judge by his use of "masculine intellect" to mean "tough, powerful mind") feminist. John Stuart Mill surely qualifies as feminist if any male philosopher does; yet one finds none of the supposedly feminist themes in his epistemology—any more than one does in Ayn Rand's.⁴

So, what *is* feminist about feminist epistemology? There seem to be two routes by which feminism and epistemology are taken to be connected, corresponding to two interpretations of the phrase "the woman's point of view": as "the way women see things," or as "serving the interests of women."⁵

Sometimes we are told that feminist epistemology represents women's "ways of knowing." This reversion to the notion of "thinking like a woman" is disquietingly reminiscent of old, sexist stereotypes.⁶ Still, there

are disquieting truths, so this hardly settles the matter. But I am not convinced that there *are* any distinctively female "ways of knowing." All *any* human being has to go on, in figuring out how things are, is his or her sensory and introspective experience, and the explanatory theorizing he or she devises to accommodate it; and differences in cognitive style, like differences in handwriting, seem more individual than gender-determined.⁷

The profusion of incompatible themes proposed as "feminist epistemology" itself speaks against the idea of a distinctively female cognitive style. But even if there were such a thing, the case for feminist epistemology would require further argument to show that female "ways of knowing" (scare quotes because the term is tendentious, since "knows" is a success-word) represent better procedures of inquiry or subtler standards of justification than the male. And, sure enough, we are told that insights into the theory of knowledge are available to women which are not available, or not easily available, to men. In all honesty, I cannot see how the evidence to date could be thought to speak in favor of this bold claim; what my experience suggests is rather that the questions of the epistemological tradition are *hard*, very hard, for anyone, of either sex, to answer or even significantly to clarify.⁸

It is said that oppressed, disadvantaged, and marginalized people are epistemically privileged in virtue of their oppression and disadvantage.⁹ If this were true, it would suggest that the *truly* epistemically privileged are not the affluent, well-educated, white, Western women who (mostly) rest their claim to special insight upon it, but the most oppressed, the most disadvantaged—some of whom are men. But, aside from appeals to the authority of Karl Marx on epistemological matters,¹⁰ is there any reason to think it *is* true? Thomas Kuhn observed that revolutionary scientific innovations are often made by persons who are at the margin of a discipline;¹¹ but women, as a class, are not "marginal" in *this* sense. And one of the ways in which oppressed people *are* oppressed is, surely, that their oppressors control the information that reaches them. This argues, if anything, an epistemic *disadvantage* for "oppressed, disadvantaged, marginalized" people.

So no such connection between feminism and epistemology as the rubric "feminist epistemology" requires is to be found under the first interpretation of "the woman's point of view" as "the way women see things."

Under the second interpretation, "serving the interests of women," the connection is supposed to be made, rather, by way of feminist criticisms of sexism in scientific theorizing.¹² The two routes connecting feminism and epistemology would merge on the assumption—which, of course, I do not accept—that sexism in scientific theorizing is the result of the exclusion of female "ways of knowing." A very faint trace of the first route would be detectable along the second on the assumption—which, with the caveat that it would be naive to suppose that only men subscribe to sexist stereotypes,

I am inclined to grant—that women are a bit more likely than men to notice such sexism.

In the social sciences and biology, theories which are not well-supported by the evidence do seem sometimes to have come to be accepted by scientists, most often male scientists, who have taken stereotypical ideas of masculine and feminine behavior uncritically for granted.¹³ Those who think that criticisms of sexism in scientific theorizing require a new, feminist epistemology insist that we are obliged, in the light of these criticisms, to acknowledge political considerations as legitimate ways to decide between theories.

But on the face of it these criticisms suggest exactly the opposite conclusion—that politics should be kept out of science.¹⁴ I can make sense of how things get so startlingly *aufgehoben* only by looking at feminist epistemology, not just as part of a larger development in feminism, but also as part of a larger development in epistemology. Here the last thirty years or so have seen a major shift: from the old romantic view, which took science to deserve a kind of epistemic authority in virtue of its peculiarly objective method of inquiry; to a new cynicism, which sees science as a value-permeated social institution, stresses the importance of politics, prejudice, and propaganda, rather than the weight of the evidence, in determining what theories are accepted, and sometimes goes so far as to suggest that reality is constructed by us, and “truth” a word not to be used without the precaution of scare quotes.¹⁵

My diagnosis is that the new cynicism in philosophy of science has fed the ambition of the new feminism to colonize epistemology. The values with which science is permeated, it is argued, have been, up till now, androcentric, sexist, inhospitable to the interests of women. Feminist criticisms of sexism in scientific theorizing, the argument continues, cannot be seen merely as criticisms of bad science; the moral to be drawn is that we must abandon the quixotic quest for a science that is value-free, in favor of the achievable goal of a science informed by feminist values. There would be a genuinely feminist epistemology if the aspiration to *legitimate the idea that feminist values should determine what theories are accepted* could be achieved.

The arguments offered to motivate the shift from feminist criticisms of sexism in scientific theorizing to feminist epistemology are of precisely the kind this diagnosis would predict. I can consider here only the two most important lines of argument, each of which focuses on a notion dear to the hearts of the new cynics: underdetermination and value-ladenness.

The first appeals to “the underdetermination of theories by data,” claiming that, since there is unavoidable slack with respect to what theories are accepted, it is proper to allow political preferences to determine theory choice.¹⁶ Suppose, first, that the appeal to underdetermination is intended only to point to the fact that sometimes the available evidence is not suffi-

cient to decide between rival theories, and that in some cases (e.g., with respect to theories about the remote past, “man the hunter” and all that) additional evidence may be, in practice, unobtainable. The proper response is that, unless and until more evidence is available, scientists had better suspend judgment—and that the lay public, philosophers included, should not be too uncritically deferential to scientists’ sometimes unwarrantedly confident claims about what they have discovered. Underdetermination, in this sense, has not the slightest tendency to show that we may legitimately choose to believe whatever theory suits our political purposes.

Suppose, next, that the appeal to underdetermination is intended, rather, to rest on the Quinean thesis that there can be incompatible theories with the same observational consequences—theories, therefore, between which not even all possible evidence could decide. Fortunately the issues at stake here do not depend on whether or not the thesis is proven. (Quine himself at one point suggests that what he formerly described as empirically equivalent but incompatible theories would really only be verbal variants of one theory.) For in any case, if the thesis were true, it would presumably be true only of the genuinely theoretical (in the sense of “unobservable”); it would be irrelevant, therefore, to such questions as whether men’s hunting or women’s gathering mainly sustained prehistoric communities. And if it *were* relevant to such questions, the feminists’ appeals to it would be self-defeating, since in that case it would undermine their presumption that we can know what theories conduce to the interests of women, or what those interests are.¹⁷

The second line of argument urges the necessity of “rubbing out the boundary between science and values,”¹⁸ and hence, again, the appropriateness of allowing feminist values to determine theory choice. In one version, the argument seems to be that the idea that feminist values could not constitute evidence with respect to this or that theory rests on an untenable distinction of descriptive versus normative. This argument is only as good as the reasons for thinking the required distinction untenable. What is at issue is not whether moral or political criticisms of priorities within science, or of uses of the findings of science, are ever appropriate; not whether an evolutionary account of moral values is defensible; not whether simplicity, e.g., might have a more than pragmatic role; not whether some epistemic norms may turn out to be covertly of a descriptive, means-end character; but *whether it is possible to derive an “is” from an “ought.”*¹⁹ I can find no argument in the literature that even purports to show this, and neither can I think of one. That it is false is manifest as soon as one expresses it plainly: that propositions about what states of affairs are *desirable* or *deplorable* could be evidence that things *are*, or *are not*, so.

In another version, the second line of argument seems to rest on the claim that it is impossible entirely to exclude “contextual” (i.e., external, social, and political) values from science. In this version, the argument is a

non sequitur. Perhaps it is true that scientists are never entirely without prejudice; perhaps it is impossible that they should entirely put their prejudices out of sight when judging the evidence for a theory; it doesn't follow that it is proper to allow prejudice to determine theory choice. Even if it is not possible to make science perfect, it doesn't follow that we shouldn't try to make it better.

The failure of these arguments is symptomatic of the false presupposition on which the second proposed route to connect feminism and epistemology depends: that, since the old romantic picture is not defensible, there is no option but the new cynicism. These are not the only options; the truth lies, as it so often does, between the extremes.²⁰ The old romanticism overstates the virtues, the new cynicism the vices, of science; the old romanticism focuses too exclusively on the logical, the new cynicism too exclusively on the sociological, factors that an adequate philosophy of science should combine. Science is neither sacred nor a confidence trick. It has been the most successful of human cognitive endeavors, but it is thoroughly fallible and imperfect—and, in particular, like all human cognitive endeavors, it is susceptible to fad and fashion, partiality and politics.

Implicit here is a conception of the epistemological role of the sociology of science which is worth making explicit, since it challenges an assumption which, it seems, both some old romantics and some new cynics take for granted—that the sociology of knowledge somehow constitutes a threat to traditional epistemological concerns. It is manifest as soon as it is stated plainly that no sociological investigation or theory could be sufficient by itself to show that the idea of theories being better or worse supported by evidence is untenable. But to say this is not to deny that the sociology of knowledge has any possible relevance to epistemology. Sometimes scientists are scrupulous in seeking out and assessing relevant evidence; sometimes not. Presumably, there is always some explanation of why they behave as they do, sometimes an explanation appealing to the individual psychology of the scientists concerned, sometimes an explanation appealing to considerations of a more sociological kind (e.g., that political pressures led these scientists to ignore or gloss over the relevance of such-and-such easily available evidence; that the knowledge that their work would come under the critical scrutiny of a rival team also aspiring to the Nobel prize ensured that those scientists left no stone unturned; etc.). The value of such sociological investigations to epistemology is that they may suggest what ways of organizing science are apt to encourage, and what to discourage, scrupulous attention to the evidence.²¹

If my diagnosis is correct, then though it is not inevitable that all the themes offered under the rubric "feminist epistemology" are false, it is inevitable that only those themes can be true which fail in their cynical intent. It is true, e.g., that inquirers are profoundly and pervasively dependent on each other; it is true that sometimes scientists may perceive relevant

evidence *as* relevant only when persuaded, perhaps by political pressure, out of previous prejudices. But such truths have no radical consequences; it does not follow, e.g., that reality is however some epistemic community determines it to be, or that what evidence *is* relevant is not an objective matter.

And the epistemological significance of feminist criticisms of sexism in scientific theorizing, though real enough, is undramatic and by no means revolutionary. One traditional project of epistemology is to give rules, or, better, guidelines, for the conduct of inquiry; another is to articulate criteria of evidence or justification.²² One sub-task of the “conduct of inquiry” project is to figure out what environments are supportive of, and what hostile to, successful inquiry. One sub-task of this sub-task is to figure out how to minimize the effect of unquestioned and unjustifiable preconceptions in encouraging the acceptance of theories which are not well-supported by evidence. (Greater diversity within science may be one way to do this. If we cannot ensure that scientists leave all their prejudices at the laboratory door, it may nevertheless be possible to ensure that there is enough diversity within the laboratory for prejudices and counter-prejudices to cancel out.)²³ Feminist criticisms of sexist science, like studies of the disasters of Nazi or Soviet science, can be a useful resource in this sub-sub-task of the “conduct of inquiry” project. But this is a role that requires the conception of theories as better or worse supported by the evidence, and the distinction of evidential and non-evidential considerations, traditionally investigated in the “criteria of justification” project; it is not a role that allows us to abandon or requires us radically to revise the concepts of evidence or truth or reality.²⁴

Still, you may ask, given that I have not denied that some themes presented under the rubric “feminist epistemology” are true, and that I grant that some feminist criticisms of sexist science seem well-founded and have a bona fide epistemological role, why do I make all this fuss about the label? Well, since the idea that there is an epistemology properly called “feminist” rests on false presuppositions, the label is at best sloppy. But there is more at stake than dislike of sloppiness; more than offense at the implication that those of us who don’t think it appropriate to describe our epistemological work as “feminist” don’t care about justice for women; more than unease at sweeping generalizations about women and embarrassment at the suggestion that women have special epistemological insight. What is most troubling is that the label is designed to convey the idea that *inquiry should be politicized*. And *that* is not only mistaken, but dangerously so.

It is dangerously mistaken from an epistemological point of view, because the presupposition on which it rests—that genuine, disinterested inquiry is impossible—is, in Bacon’s shrewd phrase, a “factitious despair” which will, indeed, “cut the sinews and spur of industry.” Serious intellec-

tual work is hard, painful, frustrating; suggesting that it is legitimate to succumb to the temptation to cut corners can only block the way of inquiry.²⁵

I would say that inquiry really is best advanced by people with a genuine desire to find out how things are, who will be more persistent, less dogmatic, and more candid than sham reasoners seeking only to make a case for some foregone conclusion; except that, since it is a tautology that inquiry aims at the truth, the sham reasoner is not really engaged in inquiry at all.²⁶ This should remind us that those who despair of honest inquiry cannot be in the truth-seeking business (as they should say, “the ‘truth’ racket”); they are in the propaganda business.²⁷

And this makes it apparent why the idea that inquiry should be politicized is dangerously mistaken, also, from a political point of view, because of the potential for tyranny of calls for “politically adequate research and scholarship.”²⁸ Think what “politically inadequate research” refers to: research informed by what some feminists deem “regressive” political ideas—and research not informed by political ideas at all, i.e., honest inquiry. Have we forgotten already that in *Nineteen Eighty-Four* it was *thoughtcrime* to believe that two plus two is four if the Party ruled otherwise?²⁹ This is no trivial verbal quibble, but a matter, epistemologically, of the integrity of inquiry and, politically, of freedom of thought. Needless sacrificing these ideals would not help women; it would hurt humanity.³⁰

1. Francis Bacon, *The New Organon* (1620), Book 1, aphorism LXXXVIII.

2. The clash of “old” and “new” feminisms is nothing new; here is British novelist and feminist Winifred Holtby, writing in 1926:

The New Feminism emphasises the importance of the ‘woman’s point of view’, the Old Feminism believes in the primary importance of the human being. . . . Personally I am . . . an Old Feminist, because I dislike everything that feminism implies. I desire an end to the whole business, the demands for equality. . . . But while . . . opportunity [is] denied, I shall have to be a feminist. . . . (Cited in Rosalind Delmar, “Afterword,” to Vera Brittain, *Testament of Friendship* [1945; London: Virago, 1980], p. 450.)

It ought to be said that fewer opportunities are now denied, that the “end to the whole business” is, hopefully, closer than it was in 1926.

3. For example, Lorraine Code represents herself as an “empirico-realist,” acknowledging the affinity of this conception with foundationalism (*Epistemic Responsibility* [Hanover, NH: Brown University Press, 1987], p. 6); Lynn Hankinson Nelson follows Quine, whom she interprets as holding a coherentist theory of evidence (*Who Knows: From Quine to a Feminist Empiricism* [Philadelphia, PA: Temple University Press, 1990], pp. 25-27, 85-86, 91-94, 112-17); Jane Duran represents herself as a contextualist (*Toward a Feminist Epistemology* [Savage, MD: Rowman and Littlefield, 1991], pp. 119ff.). But matters are not really as straightforward as this suggests, since there are in each case apparent in-

consistencies: after aligning herself with “empirico-realism,” Code bemoans the “aridity” of the whole issue of foundationalism versus coherentism (p. 7) and hints that it is somehow misconceived; Nelson acknowledges (pp. 22ff.) that Quine’s conception of evidence allows an important role for experience; Duran describes the female point of view as instinctively coherentist (p. 14). Again, Duran appears to hold that a feminist epistemology should be “naturalistic” in the sense of descriptivist (pp. 204ff.); *and* that it should focus on other conceptions of justification than the epistemological (pp. 12-13); *and* that it should replace androcentric norms with gynocentric ones (pp. 73ff.).

It is all very confusing. Sandra Harding tells us that it is to be expected that feminist epistemology will “contain contradictions,” that it is “multiple and contradictory knowledge” out of which we are “to learn and think” (*Whose Science? Whose Knowledge?* [Ithaca, NY: Cornell University Press, 1991], pp. 180, 285, 275). This is not very reassuring.

4. The critique of Descartes is to be found in Charles S. Peirce, *Collected Papers*, ed. Charles Hartshorne, Paul Weiss, and Arthur Burks (Cambridge, MA, and London: Harvard University Press, 1931-58), 5.213-310; Peirce’s social conception of inquiry is already apparent in perhaps his best-known paper, “The Fixation of Belief,” 5.358-77. See also Susan Haack, “Descartes, Peirce, and the Cognitive Community,” *The Monist*, vol. 65, no. 2 (1982), pp. 156-81, and in Eugene Freeman, ed., *The Relevance of Charles Peirce* (La Salle, IL: Monist Library of Philosophy, 1983), pp. 238-63. For Peirce’s use of “masculine intellect,” see *Collected Papers*, 5.368, and his review of Lady Welby’s *What is Meaning?*, 8.171: “Lady Victoria Welby’s book . . . is a feminine work, and a too masculine mind might think it painfully weak.” Other themes sometimes described as “feminist” are also to be found in Peirce (e.g., a penchant for replacing dichotomies by trichotomies); and different “feminist” themes are to be found in the other pragmatists (e.g., William James’s Will to Believe doctrine, allowing a legitimate cognitive role to “our passional nature”). But, for obvious reasons, I think it inappropriate to attempt to trace “anticipations of feminist epistemology/metaphysics/philosophy of language/etc.” in pragmatism (as in the symposium in *Transactions of the Charles S. Peirce Society*, vol. XXVII, no. 4 [1991]).

For John Stuart Mill, see *A System of Logic* (1843; London: Longman, 1970), and *The Subjection of Women* (1869; Chicago, IL: Phoenix Books, University of Chicago Press, 1970). I say Mill counts as a feminist “if any male philosopher does” to draw attention to Harding’s discussion of the male feminist—“The Monster,” as she calls him (*Whose Science? Whose Knowledge?*, p. 284)—and to note that some writers, though not Harding, suspect that the monster may be mythical, an impossible beast; see Scarlet Friedman and Elizabeth Sarah, eds., *On the Problem of Men* (London: Women’s Press, 1982), and Alice Jardine and Paul Smith, eds., *Men in Feminism* (New York: Methuen, 1987).

For Ayn Rand, see *Introduction to Objectivist Epistemology* (New York: Mentor, 1966).

5. Of course, some of those who describe themselves as “feminist epistemologists” do so only because they are picking up some theme described elsewhere as “feminist”; and some, perhaps, for no better reason than that, since they are female and doing epistemology, what they are doing must be feminist epistemology.

6. Cf. this observation, from p. 1 of Nancy Holland, *Is Women’s Philosophy Possible?* (Savage, MD: Rowman and Littlefield, 1990): “Women’s philosophy seems to entail a healthy skepticism about universal generalizations.” (My thanks to John Nuechterlein for drawing this gem to my attention.)

The tendency for feminists’ generalizations to mirror old stereotypes can hardly escape attention; Andrea Nye’s “feminist critique” of logic (*Words of Power* [New York and London: Routledge, 1990]), mirroring the old cliché that “women are so illogical,” being a striking case in point. Ironically enough, where they are at all plausible Nye’s criticisms of formal logic are familiar from the work of earlier (male) writers who stressed the inadequacy of symbolic logic to represent pragmatic aspects of reasoning. See Ferdinand C. S. Schiller, *Formal Logic: A Scientific and Social Problem* (London: MacMillan, 1912); Peter F. Strawson, *Introduction to Logical Theory* (London: Methuen, 1952); Stephen

Toulmin, *The Uses of Argument* (Cambridge: Cambridge University Press, 1958). And, of course, the notion of "reading" which Nye favors derives from the work of male writers such as Paul de Man.

7. I am skeptical of attempts to establish this by appeal to Object Relations theory, as in, e.g., the paper by Jane Flax in Sandra Harding and Merrill Hintikka, eds., *Discovering Reality: Feminist Perspectives on Epistemology, Metaphysics, Methodology, and Philosophy of Science* (Dordrecht: Reidel, 1983); Evelyn Fox Keller, *Reflections on Gender and Science* (New Haven and London: Yale University Press, 1985). Not only is the theory very speculative, it is also very vague, and its pertinence to the claim that women have different ways of knowing than men is tenuous at best.

Mary Field Belenky et al., *Women's Ways of Knowing* (New York: Basic Books, 1986) purports to offer direct, empirical evidence of "women's ways of knowing." In this, I think, it entirely fails. It reports only studies of women; and these studies do not replicate, with female subjects, the studies already undertaken by William Perry with male subjects (*Forms of Intellectual and Ethical Development in the College Years* [New York: Rinehart and Winston, 1970]). The authors chose to ask their subjects different questions than Perry asked his because they already believed that "there is a masculine bias at the heart of most academic disciplines, methodologies and theories" (p. 8)—a proposition, they claim, "convincingly argued" by feminist academics, among whom they mention Fox Keller and the authors collected in Harding and Hintikka, *Discovering Reality*. The issue here is not the merits or demerits of Perry's categories, but the fact that Belenky et al. make no attempt to study both men and women under one set of categories—surely a minimally necessary condition of discovering whether there are or aren't male and female cognitive styles. The question was begged in the design of the study.

8. And, I should add, that the capacity for original, creative philosophical thought is quite a rare and unusual talent. I recall, in this context, the observation attributed to Peirce by Eric Temple Bell: "There is a kink in my damned brain that prevents me from thinking as other people think" (*The Development of Mathematics* [New York and London: McGraw Hill, 1949], p. 519). It is just such individual idiosyncrasies—not the "group-think" apparently admired by some feminists—that philosophical (and scientific, artistic, etc.) innovation requires.

9. See, e.g., Alison Jaggar, "Love and Knowledge: Emotion in a Feminist Epistemology," in Anne Garry and Marilyn Pearsall, eds., *Women, Knowledge, and Reality* (Boston: Unwin Hyman, 1989), p. 146; Harding, *Whose Science? Whose Knowledge?*, p. 271; Nelson, *Who Knows: From Quine to a Feminist Empiricism*, p. 40. Some, seeing that the "privilege of disadvantage" thesis suggests greater privilege for the more marginalized, claim special epistemological privilege for lesbians (see, e.g., Marilyn Frye's essay in *Women, Knowledge, and Reality*, p. 77).

10. See, e.g., Nancy Hartsock's essay in Harding and Hintikka, *Discovering Reality*; Harding, *Whose Science? Whose Knowledge?*, p. 58.

11. Thomas Kuhn, *The Structure of Scientific Revolutions* (Chicago and London: University of Chicago Press, 1962). I owe to correspondence with Mary Hesse the neat observation that Kuhn is himself such an "outsider" (with respect to the philosophy of science, that is).

12. This labored phrase is necessary in order to make it clear that the issue concerns feminist criticisms focusing on the content of scientific theories, not feminist criticisms of the choice of problems on which scientists work, or of there being relatively few, and mostly relatively junior, women scientists. I am not saying that the latter kinds of criticism are never justified, only that they are not relevant to the line of argument under consideration here.

I should also make it clear that I am using the term "sexist" in such a way that a theory counts as sexist only if it is false. See my review of Harding and Hintikka, eds., *Discovering Reality*, in *Philosophy*, vol. 60 (1985), pp. 265-70.

13. Ruth Bleier's criticisms, in Bleier, ed., *Feminist Approaches to Science* (New York:

Pergamon Press, 1986), of some claims about hormonal determinism are among the most convincing. I have two cents' worth of my own to contribute here: the claim that male dominance is hormonally determined is confidently reiterated by critics of feminism such as Nicholas Davidson and Michael Levin, both of whom cite Steven Goldberg as their source; Goldberg cites a medical researcher called Money. Imagine my astonishment, then, on tracking down Money's work, to find that he says specifically that questions about dominance *were not addressed* in his study of genetic females exposed before birth to high levels of male hormones! For details, see my review of Davidson and Levin, in *International Studies in Philosophy*, vol. 23, no. 1 (1991), pp. 107-9.

Other feminist criticisms of sexism in scientific theorizing are to be found in, e.g., Anne Fausto-Sterling, *Myths of Gender: Biological Theories about Women and Men* (New York: Basic Books, 1986), and Helen Longino and Ruth Doell, "Body, Bias, and Behavior: a Comparative Analysis of Reasoning in Two Areas of Science," in Jean O'Barr and Sandra Harding, eds., *Sex and Scientific Inquiry* (Chicago: University of Chicago Press, 1989).

Let me make it as clear as I can that my view is that each feminist critique of this or that bit of scientific theorizing has to be considered on its own merits; of course, in some instances it may be difficult for someone outside the field to determine what those merits are. But I should also say that I am skeptical of the idea that sexism infects theorizing not only in the social sciences and biology, but also in the physical sciences; at any rate, I have never encountered a convincing example.

14. This seems an appropriate time for a comment about the use of the term "feminist empiricism," which is potentially confusing. In both *The Science Question in Feminism* (Ithaca, NY: Cornell University Press, 1986) and *Whose Science? Whose Knowledge?*, Sandra Harding distinguishes three positions within feminist epistemology: feminist empiricism, feminist standpoint theories, and feminist postmodernism; and she characterizes "feminist empiricism" as holding that feminist criticisms of sexism in scientific theorizing are criticisms of "bad science" (her scare quotes), not requiring any change in the appraisal of "science as usual." As Helen Longino observes ("Science, Objectivity, and Feminist Values," *Feminist Studies*, vol. 14, no. 3 [1988], p. 571), *this* "feminist empiricism" seems to be characterized just so as to be a foil to the feminist standpoint theories Harding favors; as I would say, "feminist" in "feminist empiricism" seems redundant. In this sense, Stephen Jay Gould, or myself, qualify as "feminist empiricists," even though we both deny that a specifically feminist epistemology is required. (See Gould's review of Ruth Bleier, ed., *Feminist Approaches to Science*, in *New York Times Book Review*, August 12, 1984, p. 7.)

But Nelson, who entitles her book *Who Knows: From Quine to a Feminist Empiricism*, is no such pallid creature; hers is a feminist empiricism which insists that feminist political considerations should determine theory choice.

15. My description is, of course, very simplified. But I think it is true to the spirit of the shift.

16. Helen Longino, "Can There Be a Feminist Science?" in Garry and Pearsall, eds., *Women, Knowledge, and Reality*, p. 206; Nelson, *Who Knows: From Quine to a Feminist Empiricism*, pp. 173-74, 187-88, 248. I have the impression that Longino favors the first of the two versions of the argument distinguished below, Nelson the second.

17. Willard Van Orman Quine, "Empirically Equivalent Theories of the World," *Erkenntnis*, vol. 9 (1975), pp. 313-28, and "Empirical Content," in Quine, *Theories and Things* (Cambridge, MA and London: Belknap Press of Harvard University Press, 1981), pp. 24-30. This passage from the latter (pp. 29-30) is unambiguous enough:

Being incompatible, the two theory formulations that we are imagining must evaluate some sentence oppositely. Since they are nevertheless empirically equivalent, that sentence must contain terms that are short on observational criteria. But then we can . . . pick out one of those terms and treat it as if it were two independent words, one in one theory formulation and another in the other. We can mark this by changing the spelling of the word in one of the two theory formulations.

Pressing this trivial expedient, we can resolve all conflict between the two theory formulations. . . .

Theories and Things appears in Nelson's bibliography, but I have not been able to find any discussion of this passage from "Empirical Content."

What I have said here, of course, falls way short of a thorough discussion of the underdetermination thesis, which would require, *inter alia*, consideration of the status of such pragmatic values as simplicity in theory choice. Two recent discussions which illustrate the complexities of the issues here are Laurens Laudan, "Demystifying Underdetermination," in *Scientific Theories*, ed. C. Wade Savage (Minneapolis, MN: University of Minnesota Press, 1990), pp. 267-97, and Brian Ellis, "What Science Aims to Do," in Paul Churchland and Christopher Hooker, eds., *Images of Science* (Chicago: University of Chicago Press, 1985), pp. 48-74.

18. Nelson, *From Quine to a Feminist Empiricism*, p. 248. See also Longino, "Can There Be a Feminist Science?" Once again, my impression is that Nelson favors the in-principle version of the argument, Longino the in-practice variant. See also Harding, *Whose Science? Whose Knowledge?*, pp. 57ff.

19. Or, more strictly speaking, whether the statement that *p* ought [not] to be the case could be evidence that *p* is [not] the case.

20. "[L]et us remember how common the folly is, of going from one faulty extreme into the opposite" (Thomas Reid, *Essays on the Intellectual Powers* [1785], in Thomas Reid, *Inquiry and Essays*, ed. R. E. Beanblossom and K. Lehrer [Indianapolis: Hackett, 1983], Essay VI, ch. 4, p. 262).

21. After Peirce, Michael Polanyi seems to me to have best understood these issues. See "The Republic of Science," in Marjorie Grene, ed., *Knowing and Being* (Chicago: University of Chicago Press, 1969), pp. 49-62. I think one might attribute Polanyi's insights in part to his having worked as a scientist, at different stages of his career, on both sides of the Iron Curtain, an experience which left him acutely aware of the dangers of politicizing science.

22. Reliabilists, however, confuse the two projects. Cf. chapter 10 of Susan Haack, *Evidence and Inquiry: Towards Reconstruction in Epistemology* (Oxford: Blackwell, 1993) for a more careful articulation of the differences between them. Note that I there argue that the "conduct of inquiry" project is more hospitable to pluralism, and to the social aspects of epistemology, than the "criteria of justification" project.

23. Implicit in this is a deflationary interpretation of the grain of truth in the "multiple standpoints" account of objectivity suggested by Harding in *Whose Science? Whose Knowledge?*

24. *Contra* Harding, *Whose Science? Whose Knowledge?*, p. 38: "Issues of access for women in the practices of science turn out to have . . . radical consequences for the logic of inquiry and explanation."

25. "Do not block the way of inquiry" is, according to Peirce, a proposition that "deserves to be written on every wall of the city of philosophy" (*Collected Papers*, 1.135).

26. *Webster's*: "Inquiry: search for truth, information or knowledge."

See Susan Haack, "The First Rule of Reason," paper delivered at a conference on New Topics in the Philosophy of C. S. Peirce, Toronto, October 1992 (forthcoming in a volume in memory of David Savan edited by Jacqueline Brunning and Paul Forester, to be published by University of Toronto Press) for a detailed defense of the claims made in this paragraph. The term "sham reasoning," and its characterization, are both due to Peirce.

In this paper I also suggest a diagnosis of the organizational pressures which encourage the fashion in contemporary philosophy for exaggerated claims (that developments in neurophysiology show epistemology misconceived, that feminism requires a radically new epistemology, etc., etc.). I agree with Longino, by the way, that to improve the condition of science would probably require changes in the ways in which it is presently organized and funded—though not, of course, that more politicization, provided it was of the "right" sort,

would constitute improvement.

27. Some admit this unambiguously, e.g., Elizabeth Gross, who writes: “[F]eminist theory . . . is not a true discourse. . . . It could be appropriately seen, rather, as a *strategy*, . . . [an] intervention with definite political . . . aims . . . intellectual guerrilla warfare” (“What is Feminist Theory?” in *Feminist Challenges*, eds. Carole Pateman and Elizabeth Gross [Sydney, London, and Boston: Allen and Unwin, 1986], p. 177; cited in David Stove, “A Farewell to Arts,” *Quadrant*, May 1986, pp. 8-11).

Consider also this passage from Nelson, *Who Knows: From Quine to a Feminist Empiricism*, p. 102:

‘Nazi Science’ [sic] indicates that . . . a mix of science and politics can enable cruelty and suffering. . . . But while the dangers are real, . . . the ‘noble lie’ [that politics can and should be kept out of science] is far more dangerous.

Others are more equivocal: e.g., Harding, who, after stating boldly that “[t]he truth—whatever that is—cannot set us free” (*Whose Science? Whose Knowledge?*, p. xi), suggests that feminist theorizing could be, if not “true,” “less false” (pp. 58, 185). The impression I get from *Whose Science? Whose Knowledge?* is that Harding’s view is that the notion of a theory’s being true is unintelligible, but the notion of one theory’s being less false than another is intelligible. This is pretty puzzling. However, in “Who Knows? Identities and Feminist Epistemology,” in Joan E. Hartman and Ellen Messer-Davidow, eds., (*Engendering Knowledge* (Knoxville: University of Tennessee Press, 1991), pp. 100-115, Harding suggests, instead, the much less startling thesis that scientists claim only that this or that theory is better supported by the evidence, not that this or that theory is true. (My thanks to Ruth Manor for drawing this paper to my attention.) This isn’t nearly so puzzling; it is, however, at odds with Harding’s insistence, both in *The Science Question in Feminism* and in *Whose Science? Whose Knowledge?*, that feminist criticisms of sexism in science lead inevitably to revolutionary epistemological conclusions.

28. Harding, *Whose Science? Whose Knowledge?*, p. 98: “The model for good science should be research programs directed by liberatory political goals.” And, p. 280: “The authority to say what is theoretically and politically adequate research and scholarship must remain [sic] in the hands of the marginalized.”

Duran, *Toward a Feminist Epistemology*, pp. 145-46: “[W]ould a model like the . . . computational model [of mind], be the result of politically incorrect theorizing that is, apart from being grossly androcentric, also the very sort of thing feminists have labeled oppressive to minorities, Third World points of view, and, indeed, to anyone who is not white, male and well-educated?” And now consider Conor Cruise O’Brien’s shrewd account of the insidiousness of political pressures within the academy:

Young scholars in . . . sensitive fields are likely to believe that if they write with excessive candor about certain realities . . . doors will close to them: certain grants will be out of reach, participation in certain organized research programs denied, influential people alienated, the view propagated that the young man is unbalanced or unsound. These fears may be exaggerated . . . but they are not without foundation. . . . Inevitably some young men . . . will adapt to this situation with such concessions as they believe are necessary. And the scholars who adapt successfully are likely to be highly influential in their fields in the next generation.

(“Politics and the Morality of Scholarship,” in *Morality and Scholarship*, ed. Max Black [Ithaca, NY: Cornell University Press, 1967], p. 73.) I invite you to enjoy the irony of O’Brien’s unselfconscious assumption that “young scholars” are “young men.”

29. George Orwell, *NineteenEighty-Four* (1949; Harmondsworth, Middlesex, UK: Penguin Books, 1954), pp. 184, 198.

30. I would like to thank my colleagues Edward Erwin, Leonard Carrier, Alan Goldman, Howard Pospesil, and Harvey Siegel for helpful discussion of a draft of this paper, and Adrian Lerner, Ralph Sleeper, and David Stove for helpful correspondence.

the review of
metaphysics

a philosophical quarterly

ISSN 0034-6632

SEPTEMBER 1993 | VOL. XLVII, No. 1 | ISSUE No. 185 | \$11.00

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WHO KNOWS? WHAT CAN THEY KNOW? AND WHEN?

Lynn Hankinson Nelson
Rowan College of New Jersey

At a recent symposium on feminism and science, several participants discussed feminist criticism of androcentric bias in developmental psychology.¹ Granting that many of the criticisms were warranted, a psychologist balked at the relationships others found between them and feminism. In reference to one of the issues under discussion, he argued, "*Anyone can see* that you can't build a theory about psychological development from studies limited to males. There is no need to assume there's a relationship between feminism and the ability to see that." I waited for someone on the podium to ask the obvious question: if the problem with an empirical base limited to males—a common limitation in developmental psychology—was obvious, then *why*, prior to the advent of feminist science criticism, hadn't developmental psychologists seen it?²

Maintaining that the problem is and *was* obvious may save some of the assumptions many scientists (and some epistemologists) still hold dear: for example, that evidence wears its identity as evidence (and for what) on its sleeve; that science is a transparent, unproblematic (if difficult) endeavor; and that good science has nothing to do with either gender or politics—views implicit in physicist Sheldon Glashow's self-described article of faith that "any intelligent alien anywhere would have come upon the same logical system as we have to explain the structure of protons."³

But the maneuver has a substantial cost. If the choice of an empirical base in the above case was obviously wrongheaded, then we must conclude either that what is obvious is anything but obvious (except perhaps in retrospect) or that many developmental psychologists *set out* to construct

androcentric theories. Alternatively, we might conclude that feminists are more attuned to what is obvious, are better observers, or are otherwise just better scientists. These are possible but improbable explanations. Indeed, the interesting instances of androcentrism are precisely those in which no scientist missed the obvious, or consciously manipulated or misconstrued the data, or was just less bright than his or her feminist colleagues or critics. Given that there are such cases, and surely we agree that there are, it strains all credibility to assume there is no relationship between feminist politics and the ability to recognize androcentric assumptions, methods, and models—or between androcentric models and theories, and the social and political contexts within which science has been practiced. If our favored views about knowers and evidence deny such relationships, then it is incumbent on us to ask afresh: “Who knows?” “What can they know?” and “When?”

These questions are of current interest at what Linda Alcoff and Elizabeth Potter describe as “the intersections of feminist theory and epistemology ‘proper’,” as well as in feminist theory more broadly.⁴ As such, the questions serve as an appropriate topic of discussion for this symposium. As much to the point, this symposium itself—both in terms of a perceived need to reconsider feminist philosophy and in terms of what we as participants say in it—will have implications for answers to the questions.

In addressing the questions, I start with what seems most obvious to me, namely that the answers to them will not be obvious. They will be theory based, emerging concomitantly with answers to other questions we come to ask in the course of organizing, explaining, and predicting our experience. Alternatively put, these questions emerge—or, better, persistently reemerge—in the middle of things; they are questions asked from here. Today, you and I might agree that answers to them will draw at least on neuroscience, evolutionary biology, sociology and history, and sociological and historical studies of science. And some of us would agree that the answers will draw on the various arenas, including feminist scholarship and politics, in which experiences and knowledge traditionally omitted or devalued are beginning to be considered and theorized about, and in which the implications of their omission or devaluation *and* their current interest are being considered. We don’t need to agree on the details of the above list to agree that answers to the questions before us are not and will not be obvious.

It is also obvious that in addressing these or any other questions, we should not be limited to or by the dictates of what *has* seemed obvious. Subjecting received views to scrutiny, including those we favor, is at least a necessary requirement of objectivity—a point that holds no less for so-called common sense and philosophy, including epistemology, than it does for high-energy physics and economic theory. The general view I will endorse is that we should demand that all accounts of experience offered by feminist

theorists or philosophers (or anyone else) either be compatible with our present understandings of our experiences or offer coherent, if different understandings of them. Support for this view, and a view concerning what might warrant such reconstructions and to what they might appeal, will emerge in my discussion of the questions at hand.

“Who knows?” is a question about epistemology’s agents, a query about the identity of knowers. It need not be a question only about which individuals within a pre-agreed-upon domain of proposed knowers meet our criteria. It can also be a query about the domain itself: whether, for example, it is empty (as some postmodernists, including feminist postmodernists, argue) and, if not, whether it contains individuals—and then whether such individuals are virtually interchangeable (as epistemologists long assumed), or whether they are historically and culturally specific and, at present, gendered (as some feminists argue); or alternatively, as I have argued in another place, whether the elements in the domain are not individuals at all, but groups or communities—and then whether, in specific historical and cultural contexts, such communities are characterized by social relations of epistemological consequence, including, for example, gender, race, and class.⁵

“What can they know?” and “When?” also invite talk of agents, but they are as fundamentally queries about evidence. As this comment reminds us, these three questions are deeply connected; our approaches or answers to one will bear on and be borne upon by those we offer to the others. Consider, for example, the view of evidence implicit in Sheldon Glashow’s article of faith: the view that evidence is wholly independent of us and, at some level, definitive and self-announcing. If evidence were so, we would need demand no more of knowers (at least good knowers) than that they be collectors (and perhaps even just absorbers) of it. Relatedly, if we understand evidence to be something that only individuals can gather and hold, we may find it appropriate to construe the agents of epistemology as individuals, perhaps defending this understanding by reference to the fact that sensory receptors, which serve as our only access to the world, are features of individuals and not, *per se*, of groups.⁶

To be sure, we would need to find a way of accommodating cases in which both the standards and the evidence the standards allow are *obviously* esoteric and *obviously* historically and community specific—consider, for example, the evidence provided for new subatomic particles by electromagnetic tracks in \$65 million collision-detectors, or that provided for evolution by “imperfections,” or, indeed, that which underwrites current claims about proton structure. Were we of a mind to save Glashow’s view of evidence, we might relativize the standards and evidence in such cases to communities of specialists, and work to explicate the notion of their “obviousness” by means of a long (and one would expect complicated but at each step obvious) account of how even such standards and evidence can be

traced (at least in principle) to more immediate events and experiences, accessible (at least in principle) to anyone with the appropriate sensory organs and neurobiology. But I remind us that questions about evidence are always asked *from here*. We have learned, or perhaps relearned, much about evidence in the last four decades that indicates that the view of evidence just outlined is doomed—so we have learned much that is relevant to any current effort we undertake to answer the questions at hand.

We now recognize, for example, that what we say and believe about the social and natural worlds within which we function and of which we are part, far exceeds all the evidence we have or ever will have.⁷ There is “slack,” to use Quine’s term, between *all* of our theories and the evidence we have for them or ever will have.⁸ Alternatively said, it is commensurate with our collective experience that we will eventually abandon our current theories (though not, of course, all at once) for theories that are commensurate with much of our experience to date but incompatible with our present theories.

We have also learned that indefinitely many theories might equally well organize and explain what we experience: that we are not warranted in assuming there is a unique, true (or even most probable) theory of nature awaiting discovery. Put another way, it is commensurate with our collective experience that an alternative theory of nature that did not include Boyle’s Ideal Gas Law (or, for that matter, any “law”), a theory that organized things differently, might equally well explain and predict what we experience.⁹ This is not to say that alternatives are currently viable; Boyle’s Law, for example, is deeply embedded in our current best theories. It is to say that science might have evolved differently.

Another lesson of the last forty years is that there is nothing in our collective experience to warrant the assumption that our sensory organs are sufficiently refined to discriminate a “best” theory or a “most probable” theory (if, indeed, there is such a thing) from alternative candidates. It is commensurate with that experience and with our knowledge that our sensory organs are refined to a degree that (so far) they enable us to survive by organizing and predicting relevant future experience. But there is nothing to warrant the inference that they are adequate to the task of encompassing *all* that goes on—all the rhythms and order, or perhaps an even more basic disorder, of nature.

A fourth lesson about evidence is that the experience and knowledge we bring to bear on the theorizing we undertake in philosophy, science, and other arenas, including, of course, common sense, will *include* experience and knowledge shaped by the social relations of gender, race, and class that currently characterize our society. And, as many of us have argued, we cannot take the lesson of, say, feminist science criticism to be that stricter methodological controls are needed to “filter out” these factors and relationships in science, for the factors and relationships are surely

present in feminist science critiques.¹⁰

One can view these lessons as the bad news. The first three underscore the Hobbesian view that the inn of evidence, like that of truth, has no signpost. The various theories we construct to organize, to explain, and to predict experience are, as Quine makes the point, "bridges of our own making," underdetermined by all the evidence we have or ever will have. The fourth lesson broadens the factors relevant to our construction of knowledge, including that undertaken in science communities, to encompass social relations, politics, values, and other factors long regarded as a threat to objectivity, if not its death knell.

But denying these lessons, holding on to the view that there is one most probable theory or that there are real boundaries between "serious" knowledge and the social and political relations that characterize our society, would be—from here—at best an article of faith, no more warranted, no more defensible, than any other article of faith.¹¹ It is far more reasonable to reconsider those aspects of our views, including those concerning agents and evidence, that were predicated on assumptions that we are now in a position to recognize as untenable.

I also note that although we no longer have the option of believing that knowledge will someday be complete or of denying that gender and politics have anything to do with serious science and philosophy, what we make of either or both of these lessons remains an *open* issue—deeply contested in feminist theory, including work at the intersections of feminism and philosophy, as well as in so-called "mainstream epistemology." To maintain that knowledge is socially constructed, and that gender and other social relations are somehow related to that construction, is not to answer the question of what, if any, empirical constraints govern the building of knowledge; nor is it to specify the nature of any such constraints. To hold, for example, that gender is related to science leaves open the question of whether the relationship lately discovered is appropriately construed as one between, say, scientific practice and an attribute of individual scientists (as some, but by no means all, feminists argue); or, as I have argued elsewhere, between scientific practice and a complex web of historically specific social relations; or, as some feminists and postmoderns argue, between scientific practice and a category so deeply a matter of social construction as to be of little theoretical use.¹² In short, maintaining that knowledge is socially constructed and that social relations are of epistemological significance does not itself constitute a theory of evidence or a substantive refutation of the notion that we need such a theory. So we return to our more immediate topic, the reemergence of the questions, "Who knows?" "What can they know?" and "When?" But we now approach these questions, I hope, with the understanding that our theories, including epistemology, evolve in response to our experiences, and that it is time, based on the experiences of the last four decades, to rethink traditional epistemological stances.

In the space remaining I will sketch, in broad outline, the approach I would take to the specific question with which my discussion began, of whether it was or is obvious that basing a general theory of psychological development on studies limited to men is wrongheaded, and I will relate my approach to some others discernible in feminist discussions. It should go without saying that many feminists will disagree with the frame I have attempted to put on the three questions before us, as well as with my interpretation of their own work.¹³

My answer to the above question is, of course, "No, it was not obvious that limiting the empirical base to males would produce at best partial, at worst distorted results." The answer is underwritten by a view of evidence which builds on the developments I sketched earlier and on Quine's arguments for holism.¹⁴ There is, on this view, no reason to posit a discrete piece of evidence missed by developmental psychologists and lately discovered by feminists in that field.

Underwriting the research in question was a larger body of psychological theory, with its own methodology, standards, and history. This containing body of theory and accepted practice constituted part of the evidence for the general notion of psychological maturity, for specific models thereof, and for the assumption of discrete developmental stages. Within this containing theory and the psychological tradition, feminist scholarship has revealed, there was a tacit and consequential assumption that men can serve as the norm or model for the species. This assumption underwrote the methodology now criticized and made it reasonable in testing a theory of psychological development to either ignore or discount what seems to us obvious counterevidence—the women who didn't fit the model—or to conclude that women's development is truncated or deviant.

If psychology had been the only discipline making this assumption, it might have been plausible, if not obvious, that something was badly amiss. But, to a large extent, developmental psychology derived (as it will always derive) its empirical significance, explanatory power, and plausibility by being doubly embedded, in a broader psychological theory and an even broader system of going theories and standards. And, it turns out, a general assumption that males can serve as the norm for a species was tacitly made by many other sciences and disciplines: it underwrote organizing principles and research questions; it was interwoven in various theories; and it has been, of course, implicit in much of so-called common sense, supported by and reinforcing social and political relations and practices.¹⁵

It would be a mistake to conclude that the only support for the developmental theories in question derived from their coherence with a larger system of theories and practices within which they were embedded. These developmental theories did make room for and indeed claimed to be based on experience: they both organized and were compatible with experiences, and they had explanatory power—they allowed for explanations

and predictions about some of what happens. The problem, of course, was that the experiences on which they were based and against which they were tested, represented, from the outset, an unrepresentative subset of human experiences—not only in terms of gender, but also in terms of class, race, and culture. Moreover, when we evaluate the experiential base today, many of us bring to bear *the fruits* of changing social and political relations of the last three decades, including feminist theory broadly and feminist science criticism in particular. In short, the experiences and judgments that are now *possible* and *relevant* to claims about psychological development were not always even possible.

The thesis I have been trying to illustrate can now be simply stated: our evolving theories, standards, and practices, narrow and broad, shape and mediate the range and nature of the evidence available to us. Which experiences are relevant to our current investigations, what assumptions and claims are obvious, what objections are relevant, are thus also so mediated and shaped. Accept this thesis and it becomes obvious that what is *very obvious today* can easily have been *anything but obvious* ten or twenty years ago. We need not convict earlier researchers of either conscious biases or the practice of bad science, as the latter was traditionally understood, to account for our being able to see clearly what they were blind to.¹⁶ From this it follows that reevaluation is almost always in order. (It also follows, of course, that it is no more in order for feminist scholarship than for any other area.)

My approach has much in common with those of other feminists, including feminist empiricists, standpoint epistemologists, and pragmatists. In terms of the first two views I will note, it also has much in common with other current approaches in epistemology and philosophy of science, particularly Quine's approach. The most general shared view is that the limitations and the inclusiveness revealed in the last four decades are immanent—products of our own efforts to explain things—so that, as I would put the point, evidence remains a substantial concept, to be explicated, at least in part, in terms of the relationships between experience and knowledge. A second common view, supported by the development and evolution in feminist scholarship but also by the history of science, is that general and specific standards of evidence, and hence what we will countenance as evidence, emerge concomitantly with our efforts to explain and predict experience. They are neither self-evident nor transcendently derived.

From these two views, it follows that the picture of knowers as solitary absorbers of evidence is untenable, its collapse fundamentally related to the collapse of the view that evidence is self-announcing and wholly independent of our efforts to explain our experience. Many feminists grant knowers an active role in the generation of knowledge; of equal importance, many insist that knowers are situated—historically, culturally, and in relation to community-specific standards, practices, relations, and knowl-

edge, including (but not exhausted by) political views, relations, and practices—and we insist that experience is made possible and shaped by such standards, relations, and knowledge.

One view of the question, “Who knows?” then, discernible in recent feminist discussions, is that acceptable answers include “Everyone,” “*Some of us*,” “All of *us*,” but only very problematically, “Only me.” What you or I know depends inextricably on the knowledge, standards, and practices of the various epistemic communities of which we are members, and these and the experiences they permit will form the basis upon which both you and I and our respective communities will judge our claims, as well as those of others. And it is on the basis of our current standards and knowledge, and the experiences they make possible, that we will—as philosophers or feminists or both, as feminists or developmental psychologists or both—reconstruct our prior understandings of our own or others’ experiences to make the most overall sense—revising, if need be, our views about who knows, what they know, and how.

The disagreements I have mentioned and the reconstructions I have advocated need not conjure up the demon of incommensurability. Those who disagree with parts or all of my analysis, for example, can understand what I have said, and at some level we can know what it is we disagree about and why; for in addition to those views and assumptions about which we may disagree, there are many more we share (e.g., physical-object theory, a heliocentric view, and so on). Both these, and our future experiences, will shape our future interest in and answers to the questions before us and others. Alternatively said, although feminists and nonfeminists within various academic fields and sciences disagree about many things, indeed although feminists disagree about many things, these groups do not disagree about everything. Feminist communities and academic and scientific communities are subcommunities of larger, more inclusive epistemic communities; moreover, there are overlaps (i.e., feminist philosophers).

Relatedly, such disagreements and reconstructions need not conjure up the demon of relativism, here understood as the view that all claims are equally warranted. There are two general constraints on knowledge and claims: experience, and larger systems of knowledge and standards.¹⁷ As the case we have considered indicates, not all theories or methodologies are equally commensurate with what we know and experience.

By now, it may be clear that these several points carry implications for this symposium, and it is to some of these implications that I devote my concluding remarks. There are two ways to understand an invitation to “reconsider” feminist philosophy. Given that there is no monolithic enterprise denoted by that phrase, let alone a completed body of knowledge, perhaps the advocates of the project believe that the reevaluations and reconstructions feminists have undertaken of aspects of philosophy, science, literary theory, common sense, and so on, and those they might in

the future undertake, are *in principle* out of bounds. I assume you and I agree that if this is the motivation for this symposium, it is fundamentally inconsistent with what philosophy professes to be.

An alternative construal of the task envisioned (although belied by the title the planners chose) is that we were being invited to undertake an evaluation of one or several aspects of feminist work in philosophy—say, feminist theories about the philosophy of science or some particular science. Were this the intended project, a more narrowly focused discussion would have been in order. In that discussion, we might have been able to discern some common assumptions underlying the work in question. And in such a context, evaluating the assumptions, questions, and answers discernible in some reasonably defined range of feminist theories about science is *in principle* a reasonable undertaking.

The “in principle” is crucial here. I have argued that a major lesson of the last four decades is that all questions are asked and answered *in medias res*: that the criteria by which to judge their reasonableness, as well as answers proposed to them, will always be relative to a going body of knowledge, standards, and practices, and the experience these shape and allow. In terms of the questions I have discussed, for example, we have found that answers to them are not starting points but radically interdependent with other things we know and other projects we undertake.

Hence, it is incumbent upon those who would have us reconsider some aspect of feminist theory, to make clear—and the planners of this symposium have not—where the proposed reconsideration is *to issue from*. Are we, for example, to reconsider feminist critiques of the philosophy of science from the vantage point of traditional empiricism or positivism? The rationale for and the worthiness of the reconsideration, the relevant criteria, and the obstacles to understanding would be quite different from a reconsideration that started out from a view of empiricism along the lines that Quine advocates, or van Fraassen, or Kuhn, or from a postmodernist perspective, or from the vantage point of critical theory. Those who would engage us in a reconsideration of some aspect of feminist scholarship, or who would interest us in their reconsiderations, need to tell us from where—with what questions, against which standards and knowledge, and with what understandings of evidence—our deliberations are to begin, so that we may judge whether the project is worthwhile.

My own sense, given that the answers to the questions on which I have focused are both central to our efforts and neither obvious nor self-evident, is that the only *wholesale* appraisal of the work being undertaken at the intersections of feminism and philosophy worth paying attention to will be provided by the long-term success or failure of feminist approaches to these questions: their coherence with what we come to know and experience, and their explanatory power.

December 28, 1992

Postscript: The Hard Work of Epistemology

There are several substantive issues which divide Professor Haack and myself that are well worth discussing. These include whether it is individuals or groups who are the primary acquirers and bearers of knowledge, whether the underdetermination of theories is a substantial doctrine which has as a consequence that there is no one true theory, whether epistemology shares a radical interdependence with our other best going theories, whether the notion of a value-free science is either coherent or desirable, and the consequences of a strict fact/value distinction for value theory.

Unfortunately, attention has been paid to issues which are not worth debating and on which Professor Haack and I are in agreement, her belief to the contrary notwithstanding. These include the centrality of evidence to scientific investigation and the centrality of experience to evidence,¹⁸ the undesirability of letting politics be the arbiter when available evidence is inconclusive,¹⁹ the lack of evidence for sex-differentiated cognitive abilities,²⁰ and the absence of any clear viable alternative to empiricism.²¹

Were we to discuss the issues worth discussing, we could perhaps come to agree on them—or at least come to an understanding of what actually divides us—and we could perhaps come to agree—or at least come to understand why we cannot agree—about whether feminist empiricism is, as I contend, a significant form of empiricism, or, as Haack suggests, pseudo-empiricism.

For the present, it must suffice to insist that reasonable judgments as to the viability or lack thereof of the several and diverse research projects at the intersections of feminism and epistemology require just as much hard work as do serious judgments in other areas of epistemology.²²

March 24, 1993

1. "Colloquium on Science, Technology, and Culture," sponsored by The Center for the Critical Analysis of Contemporary Culture, Oct. 22, 1991, Douglass College.

2. I have chosen a rather straightforward example; the androcentrism implicit in research methodologies and theories revealed by feminist criticism is often far more subtle. Even in this case, the problem was deeper than my comments here indicate. When girls and women were studied using the models generated by the studies under discussion and did not "fit" the models, developmental psychologists often concluded that their development was truncated or deviant. See Carol Gilligan, *In a Different Voice: Psychological Theory and Women's Development* (Cambridge, MA: Harvard University Press, 1982); Sandra Harding, *The Science Question in Feminism* (Ithaca, NY: Cornell University Press, 1986); and Lynn

Hankinson Nelson, *Who Knows: From Quine to a Feminist Empiricism* (Philadelphia, PA: Temple University Press, 1990).

3. Quoted in "Does Ideology Stop at the Laboratory Door? A Debate on Science and the Real World," *The New York Times*, Oct. 22, 1989, Section 4, p. 24. Ironically, Glashow's version of "science's credo" is inconsistent with the more sophisticated views outlined in recent publications by professional science associations. See, for example, Committee on the Conduct of Science of the National Academy of Sciences, *On Being a Scientist* (Washington, DC: National Academy Press, 1989).

4. Linda Alcoff and Elizabeth Potter, eds., *Feminist Epistemologies* (New York and London: Routledge, 1993), Introduction.

5. Nelson, *Who Knows*. See also Helen E. Longino, *Science as Social Knowledge: Values and Objectivity in Scientific Inquiry* (Princeton, NJ: Princeton University Press, 1990); and the essays in Alcoff and Potter, *Feminist Epistemologies*.

6. One might also argue that abandoning individualism either severs the connection between claims about that world and the evidence it provides, or puts off its explication unnecessarily (e.g., Philip Kitcher, "Socializing knowledge," delivered at the American Philosophical Association meeting, New York, 1991). I have argued against both views in Lynn Hankinson Nelson, "Epistemological Communities," in Alcoff and Potter, *Feminist Epistemologies*, pp. 121-59; and in my *Who Knows*.

7. The next several paragraphs parallel arguments I offer in Nelson, "Epistemological Communities."

8. W. V. Quine, "Posits and Reality," *The Ways of Paradox and Other Essays* (New York: Random House, 1966), p. 241.

9. The claim is, of course, a consequence of underdetermination, not of Quine's indeterminacy thesis. W. V. Quine, *Word and Object* (Cambridge, MA: MIT Press, 1960); Elizabeth Potter, "Gender and Epistemic Negotiation," in *Feminist Epistemologies*, pp. 161-86; and Nelson, "Epistemological Communities."

10. The literature revealing these relationships and exploring their epistemological implications is extensive and heterogeneous. See the works listed in nn. 2 and 5.

11. Nelson, "Epistemological Communities."

12. Several recent issues of *Hypatia* are devoted to the nature and viability of the analytic category gender. Unfortunately, some critics of feminist philosophy fail to distinguish the different projects, assumptions, and claims that work in this area encompasses.

13. It should go without saying and I regret that it does not.

14. See also Nelson, *Who Knows*, and "Epistemological Communities," and Lynn Hankinson Nelson, "A Question of Evidence," *Hypatia*, vol. 8, no. 1 (April 1993).

15. The works listed in nn. 2 and 5 provide overviews of the literature documenting the pervasiveness of the assumption and its consequences.

16. The phrase "bad science as traditionally understood" is meant to capture the demands long taken to be not only necessary to, but sufficient for, good scientific practice. I argue in *Who Knows* that one implication of feminist science criticism is that these demands need to be supplemented with self-conscious and rigorous attention to the ways in which so-called common-sense experience, values, and politics shape and are shaped by scientific practice.

17. I explicate and support Quine's arguments for a "coherence account of evidence" in Nelson, *Who Knows*, pp. 20-29, 108-18, 244-54; "Epistemological Communities," pp. 129-42; and "A Question of Evidence." I do not argue, as Professor Haack claims, that Quine advocates a "coherentist" account. In *Who Knows*, I argue:

Coherence emerges as an overarching criterion of evidence in Quine's positions and, as explicated and implied in these, it is a dual constraint. Theories and beliefs need to be consistent with our experiences of the world and with other going theories. The first constraint distinguishes Quine's criterion of "coherence" from idealist or skeptical "coherence" accounts and, specifically, from "coherence theories of truth." Simply put, the world matters. The second constraint incorporates Quine's view that episte-

mology is one theory in a larger network of going theories. (pp. 25-26)

This account of evidence is, of course, part and parcel of Quine's work from "Two Dogmas" to *The Pursuit of Truth*.

18. Nelson, *Who Knows*, pp. 1-42, 82-124, 244-49, 271-75; "Epistemological Communities," pp. 129-42; and "A Question of Evidence."

19. Nelson, *Who Knows*, pp. 145-66, 238-49, 270-75, 305-9; "Epistemological Communities," pp. 142-51; and "A Question of Evidence."

20. Nelson, *Who Knows*, pp. 193-205; and "A Question of Evidence."

21. Nelson, *Who Knows*, pp. 1-42, 82-136, 222-54, 270-75, 309-17; and "A Question of Evidence."

22. A Rowan College Faculty Research Grant supported the writing of this paper. Howard Cell and Jack Nelson read earlier versions and offered constructive criticisms. The paper also benefited from discussions with Linda Alcoff, Sibyl Cohen, Elizabeth Potter, and Nancy Tuana, and the support of my colleagues at Rowan College and of my family.

CRITICIZING THE FEMINIST CRITIQUE OF OBJECTIVITY

E. R. Klein
University of North Florida

Science, it would seem is not sexless; she is a man, a father and infected too.
— Virginia Woolf¹

1. Introduction

This quotation has become the battle cry of feminist philosophers of science. It has led many a feminist to search for, and uncover, vast numbers of historical (and contemporary) examples of sexism surrounding the scientific enterprise.

Most feminist critiques focus on the *practice* of science. That is, they criticize both “the ways in which women are inhibited from entering into science professions”² and the ways in which science has, and is, being used (by men) to oppress women.

Some feminist philosophers of science, however, focus on the scientific *method* itself by criticizing the classical desiderata of the scientific method. Special focus is paid to the notion of objectivity. Objectivity, claim some, is only “ostensibly [the] non-involved stance.”³ In actuality, it is the male stance. Therefore, the story goes, our respect for the scientific method is simply an outcome of our traditional (sexist, hence, male-biased) political inclinations.

Practice-critiques, then, claim only to demonstrate that *men* in the sciences are sexist; that *they* are infected. But method-critiques are intended to show something far more provocative: namely, that science is, *essentially*, sexist; that *it* is infected.

This paper concentrates on the method-critiques of feminist philosophers and attempts to demonstrate that their case—that science is essentially male-biased, via their critiques of objectivity—has not been made. In addition, I will show that had it been made, and the call to *feminize* science answered, such changes would, ultimately, hurt women.

2. Interpretations of Objectivity

The concept of objectivity is fleshed out in a number of different ways by a number of different feminists. For Ruth Bleier and Catharine MacKinnon, ‘objectivity’ is synonymous with a “value-free stance,”⁴ and the “non-involved stance,”⁵ respectively. Evelyn Fox Keller states that the objectivist ideology proclaims “disinterest,”⁶ a characterization similar to Jean Grimshaw’s understanding of objectivity as “impartiality.”⁷ And Sandra Harding has an entirely different take on the concept of objectivity. She claims that objectivity “is not maximized through value-neutrality”;⁸ for, according to Harding,

the paradigm models of objective science are those studies explicitly directed by morally and politically emancipatory interests—that is, by interests in eliminating sexist, racist, classist, and culturally coercive understandings of nature and social life.⁹

I will examine each of the three different interpretations of objectivity—(1) politically emancipatory, (2) value-free or non-involved, and (3) impartiality or disinterest—in order to show: (1) that the first interpretation is too unconventional to take seriously as a target for philosophical criticism from either feminist or nonfeminist camps; (2) that the second caricatures the concept of objectivity held by most scientists and philosophers of science and, therefore, need not be defended from feminist criticism; and (3) that only the third interpretation properly characterizes objectivity and, thus, only it is a worthy target of feminist criticism; but that the criticisms leveled against it—fleshed out in terms of impartiality and disinterest—are not sufficient for claiming that science, itself, is sexist.

A. *Objectivity as emancipatory*

Harding’s account of objectivity has, I think, already been thoroughly criticized by Kristin Shrader-Frechette.¹⁰ Therefore, I will merely point out the relevant passage in her critique.

Shrader-Frechette states that because

Harding is not employing the term ‘objectivity’ in its ordinary

sense . . . her use is question-begging both because she has not defended it, and because this sense of the term is highly stipulative . . . [that is,] she does not explain how scientific work becomes more objective by being directed by moral and political *interests* . . . how work expressing moral and political *values* lays claim to objectivity.¹¹

Clearly, Harding must either develop this unusual account of objectivity more fully or retreat to one of the more ordinary senses described above. Until she has done this, her account is neither worthy of criticism from classical¹² philosophers of science, nor deserving of defense by feminists.¹³

B. Objectivity as value-free

The form of the feminist argument against objectivity *qua* a value-free stance is quite simple: A value-free stance is *essential* to the scientific method; the desire to achieve a value-free stance is an *androcentric* goal; therefore, "science is a masculine project."¹⁴

Unfortunately for the feminists, this first premise is false—a value-free stance is not essential to science or the scientific method; therefore, the second premise, even if true, speaks to a straw account.

Most "postmodern"¹⁵ scientists (and philosophers of science) recognize that "nature is no longer at arm's length."¹⁶ As Stephen Toulmin has pointed out,

we now realize, [that] the interaction between scientists and their objects of study is a *two-way* affair. . . . Even in fundamental physics, for instance, the fact that subatomic particles are under observation will make the influence of the physicists' instruments a significant element in the phenomena themselves... [T]he scientific observer is now—willy-nilly—also a *participant*.¹⁷

This is not an acceptance of subjectivity; that would be going too far (see below). Toulmin has only restructured the classical concept of objectivity in a way that acknowledges that we can no longer treat objects of scientific study (be they other people or electrons) in *purely* objectified ways.

Such restructuring does not depend on the notion of a value-free stance; however, it does maintain the spirit of classical objectivity by stressing the desire and attempt to remain *unbiased*.

Examples of not-quite-value-free-but-nonetheless-unbiased acts abound. They occur, for example, any time we adjudicate philosophical disputes at conferences, moderate philosophical analyses in the classroom, or evaluate the work of our students. To quote Toulmin again:

In all these cases, to be objective does not require us to be *uninterested*, that is, devoid of interests or feelings; it requires us only to acknowledge those interests and feelings, to discount any resulting biases and prejudices, and to do our best to act in a *disinterested* way.¹⁸

Feminist criticism which is aimed at objectivity qua a value-free stance, value-neutrality, non-involvedness, or uninterestedness simply misses the point.

C. *Objectivity as disinterest*

Some feminist critics of science and scientific methodology do address the concept of objectivity in its more sophisticated form—via the notion of a disinterested or unbiased stance—while still claiming that the classical concept is sexist. Two different kinds of criticisms are offered.

The first focuses on the hermeneutical rendering of the texts of science as androcentric; the second focuses on the claim that “humans cannot be impartial or objective recorders of the world.”¹⁹ Both are problematic.

1. *The hermeneutical fallacy.* The first kind of criticism focuses on the fact that objectivity has been genderized male, while subjectivity has been genderized female.

Such genderization is obvious (to many feminists) from a number of avenues: feminist historical interpretation, literary criticism, and psychoanalysis, just to name a few. It is stated that there are ways to “‘read science as a text’ [which] reveal the social meanings—the hidden symbolic and cultural agendas—of purportedly [disinterested]²⁰ claims and practices.”²¹ This “reading” of text has demonstrated (to feminists) that science is “inextricably connected with specific masculine . . . needs and desires.”²²

This kind of hermeneutical evidence is illegitimate because it presupposes precisely what is being challenged; namely, that the concept of ‘disinterested stance’ is itself male-biased. To simply adopt an androcentric interpretation without offering some justification for such an adoption is to beg the question.

2. *No such thing as objectivity.* The hermeneutical “reason” is not the only justification feminist critics supply for rejecting the classical notion of objectivity. Their other, stronger claim is that we can never act in a disinterested way.

Why not? Is this a fact of human psychology or the logical/epistemological outcome of the fact that there is no disinterested stance to be had?

a. *The psychological point.* If feminist critics mean the former, then their claim—that “human beings can never act in a disinterested way”—is in the same kind of trouble that surrounds the psychological egoist’s claim that “human beings can never act except in their own best interest.” As an

empirical thesis, the egoist's claim is either false (e.g., Mother Theresa) or unfalsifiable.

The argument against the claim that "human beings can never act in a disinterested way" follows suit—as an empirical thesis, it is either false (e.g., when we rationally *decide*, not merely arbitrarily *choose*, which of our students earned an "A") or unfalsifiable.

b. The epistemological point. The psychological interpretation is probably not what feminist critics have in mind. The point is not that there are shortcomings in the human psychological mechanism which prevent one from being disinterested, but that there is no unbiased stance to be had.

If the only stance is a biased stance, then, given science and its history of male-domination, this bias translates into the idea that the male stance is the only stance.

Unfortunately, feminists (in the literature) do not directly argue for the no-unbiased-stance claim. Instead, they often appeal to the (male) authority Thomas Kuhn. They claim that the

Kuhnian strategy of arguing that observations are theory-laden, theories are paradigm-laden, and paradigms are culture-laden... [demonstrates that] there are and can be no such things as . . . objective²³ facts.²⁴

And without objective facts there can be no objective, i.e., unbiased, stance.

Of course, relying upon Kuhn leaves an important question open for debate: Is he right? Although a thorough discussion of Kuhn's arguments against objectivity would fall outside the scope of this paper, suffice it to say that at best there is vast body of philosophical literature which claims that he has *not* made his case against objectivity.²⁵ At worst, he is wrong.

Briefly, Kuhn's concept of incommensurability (which is at the heart of his version of relativism) is caught between the horns of a dilemma. Either it supports radical incommensurability which entails unintelligibility on the one hand; or it allows for intelligibility and therefore objectivity on the other. As Israel Scheffler has pointed out, "[o]bjectivity requires simply the possibility of intelligible debate over the comparative merits of rival paradigms."²⁶

Although it is not clear whether Kuhn himself actually supports the radical reading of the incommensurability claim,²⁷ it is certain that the feminists cannot simply rest on their Kuhnian laurels. If Kuhn is a radical incommensurabilist, then feminist critics of science must take the vast body of criticism of (Kuhnian) relativism seriously and attempt a rejoinder. If, on the other hand, Kuhn is not a radical incommensurabilist, then these particular feminist arguments against objectivity cannot be based on his work. In either case, it seems, the feminists will have to develop a completely Kuhn-independent attack on objectivity.

3. Is the Feminist Project Committed to Relativism?

A. *The abandonment of science*

Even if the Kuhnian arguments with respect to the critique of objectivity were correct, what follows for the feminists is unclear; for if there is no disinterested (unbiased) stance to be had, then the only stance would be a stance biased by someone (or some culture, sex, or whatever).

Under such a relativistic interpretation, scientific theories are never about the "way things are," for there is no "way²⁸ things are." Scientific theories are about the way things are for *this culture, that sex, you, or me*. Such an interpretation, however, does not entail the need for a feminist interpretation of the scientific method, but rather an abandonment of the enterprise of science itself. If objectivity is at the heart of the scientific method, then its removal would be fatal.²⁹

B. *Feminism and relativism*

Before proceeding with the pragmatic problems of such a relativistic interpretation, it is important to note that most feminists, including Harding, have never been comfortable with the brand "relativism." Harding, especially, has tried to tackle the issue.

1. "Old" Harding. In *The Science Question*, Harding claims that "the leap to relativism misgrasps feminist projects."³⁰

This "leap" is unjustified, she argues, because

feminist inquirers are never saying that sexist and antisexist claims are equally plausible. . . . [E]vidence for feminist vs. non-feminist claims may be inconclusive in some cases. . . . [A]gnosticism and the recognition of the hypothetical character of all scientific claims are quite different epistemological stances from relativism. Moreover, whether or not feminists take a relativistic stance, it is hard to imagine a coherent defense of cognitive relativism when one thinks of the conflicting claims.³¹

So what exactly is Harding's point?

a. *Agnosticism or relativism?* Harding might be making one of three possible claims. The first is that if one believes sexist and antisexist claims are equally plausible, then one is not necessarily committed to relativism. I agree, but this does not help her case, for such a position is, nonetheless, compatible with relativism.

The determination of relativism depends on *why* someone maintains an agnostic position. If one maintains such a position *because* both claims are supported by the evidence equally well, this is compatible with absolutism. Absolutists often maintain positions of agnosticism—a position of equal support for two (even two logically incompatible) theories pending

further evidence. It may be that although one believes that both positions cannot be correct (which may simply be a recognition of the law of non-contradiction), *one is unable, at this time, to rationally choose.*

If, on the other hand, one claims that both sexism and antisexism are equally plausible positions, not because the evidence for both is legitimate but *because* there is no objective stance from which to judge the legitimacy of the evidence at all, then one is committed to relativism.

Harding does not make it clear which *reason* for adopting both sexism and antisexism as plausible she is denying that the feminists maintain; that is, she has not made clear what is motivating feminist agnosticism. The point is only that if the motivation is that there is no objective stance to be had, then feminists are committed to relativism.

If, on the other hand, the motivation is simply to await further evidence, then it is not clear what reasons Harding has left for criticizing the classical concept of objectivity.

b. The hypothetical character of science. Nor is it clear what Harding means when she says feminists are not relativists simply because they recognize the hypothetical character of scientific claims. Does this mean she thinks that scientific claims are only conjectures, postulates, or contingently true? Fine, so do classical scientists and philosophers of science.

Does this mean one avoids relativism by denying that scientific claims are ever wrong? It depends on what one means by 'wrong'. Does 'wrong' mean relatively wrong, or *really* wrong? If the former, then yes, feminists are committed to relativism; if the latter, then feminists are not committed to relativism, but then, again, it is not clear what of interest is left of their criticism. To acknowledge that the claims of science can be wrong, *really* wrong,³² presupposes that there is an objective concept of right, which is precisely what is being denied by the feminist philosophers of science.

Under this interpretation, feminists are either relativists or objectivists.

c. Relativism is an untenable position. Perhaps all Harding is saying is that the feminist position cannot be equated with relativism because "it is hard to imagine a coherent defense of cognitive relativism."³³ But to claim that feminists could not be committed to relativism because relativism is an untenable position is merely a case of wishful thinking.

Furthermore, if feminist philosophers of science are not embracing relativism, it becomes difficult to see why nonfeminist science, via the classical notion of objectivity, is being challenged at all and why Kuhn's account of science is offered in defense.

d. Harding's dilemma. Harding has set herself between the horns of a dilemma. That is, in her attempt to save the feminist account from having to address all the problems of relativism, she has weakened the account. Her efforts have forced the feminist position to be something that classical scientists (and philosophers of science) would find uninteresting and un-

objectionable.³⁴

I conclude, then, that Harding has not made her case that the inference from feminism to relativism misgrasps the feminist project.

2. *"New" Harding*. In her most recent work, however, Harding no longer attempts to show that feminism is not committed to relativism. Her new tack is to claim that feminism is committed to relativism, though only to historical/sociological/cultural (HSC) relativism, not to *judgmental* relativism.

By distinguishing judgmental relativism—"an epistemological relativism that denies the possibility of any reasonable standards for adjudicating between competing claims"³⁵—from HSC relativism, Harding hopes to both embrace relativism and yet avoid its logical and pragmatic pitfalls. She is unsuccessful.

a. Distinction without a difference. First, the judgmental/HSC dichotomy makes a distinction which pulls no epistemic weight, for HSC relativism, at least the way it is presented by Harding, is not an epistemological thesis at all. In *Whose Science? Whose Knowledge?*, she describes HSC relativism as a

respect for historical (or sociological or cultural) relativism [which] is always useful in starting one's thinking. Different social groups tend to have different patterns of practice and belief and different standards for judging them; these practices, beliefs and standards can be explained by different historical interests, values, and agendas. . . . (*WS*, 152)

This account is merely a description of individuals or societies, of what is often called "cultural relativism." The belief that cultural relativism is true is not only *not* equivalent to epistemological relativism, it is compatible with the belief that epistemological relativism is false. Furthermore, HSC relativism is not at issue. The truth (or falsity) of HSC relativism is a purely empirical matter. It is the philosophically provocative thesis—that there is no way to adjudicate between the beliefs of different individuals, cultures, etc.—that concerns epistemologists. Unfortunately for Harding, once her position on HSC relativism becomes epistemically relativistic enough to become philosophically interesting, it cannot be distinguished from judgmental relativism and, therefore, is susceptible to all of the latter's problems.

b. Harding: Not really a relativist. Maybe Harding wants to avoid judgmental relativism because she is not a relativist at all. She does claim

that not all social values and interests have the same bad effects upon the results of research. Some have systematically generated less partial and distorted beliefs than others—or than purport-

edly value-free research. . . . (WS, 144)

If some are not as *bad*, then there must be standards by which to determine which are and which are not. The belief in such standards entails a belief that epistemological relativism is false.

It seems that HSC relativism does not

commit one to the further epistemological claim that there are therefore no rational or scientific grounds for making judgments between various patterns of belief and their originating social practices, values, and consequences (WS, 152)

because HSC relativism is not a form of epistemological relativism. In the final analysis, HSC relativism is Harding's misnomer for her feminist "standpoint epistemology" of old. After all, HSC relativism is, according to Harding, precisely what "standpoint epistemologies call for" (WS, 142). Why she attempts to defend relativism at all, since her account does not necessitate it, is unclear.

c. Judgmental relativism is not a problem. I believe the best answer is that Harding, although she does not want to be liable for the problems of relativism, wants even less to be slapped with the charge of dogmatism. If a "feminist standpoint" is not a form of relativism, then it is epistemologically absolutist. As such, some defense must be offered; if none is, then feminism is simply dogma.

Without the smokescreen of relativism, Harding will have to put forward some argument as to why a feminist epistemological standpoint is at least worthy of consideration. Unfortunately, this kind of positive account would require offering reasons, which in turn requires some commitment to garden-variety, i.e., objective, evidence.

Therefore, in order to maintain consistency with her original objections to objectivity, Harding continues to defend relativism, even real "judgmental" relativism, from attack. In one last-ditch effort, Harding claims that

[j]udgmental relativism is not a problem originating in or justifiable in terms of the lives of marginalized groups [i.e., women]... Relativism arises as a problem only from the perspective of men's lives. (WS, 154)

Furthermore, she claims that "an implicit acceptance of . . . judgmental relativism . . . appears to be the only condition under which women's voices . . . can be heard" (WS, 155). She asks: "Isn't feminism forced to embrace [judgmental] relativism by its condition of being just one among many counter-cultural voices?" (WS, 155).

In other words, Harding was unable to maintain any kind of interest-

ing distinction between HSC relativism and judgmental relativism. In addition, she could not opt for absolutism, because this would make her account either self-refuting or dogmatic. Her only strategy was to admit that feminist critiques of classical epistemology are committed to relativism and then to appeal to the claim that feminists have no other alternative.³⁶

4. Relativism: Not Good for Women

If feminists are relativists, then there are some serious pragmatic problems with which they will have to contend.

With respect to theory choice in science, a feminist (relativistic) scientific method leaves one with the ability to choose evidence or theory in the one way that classical science condemns—taking seriously criteria other than our reasoned decisions based on evidence. To relativize the warrantability of a theory with respect to personal or political motivations is to do precisely what we ought not.

For feminists to adopt such a negative response to objectivity misses the spirit of their original intent—to make the sciences less sexist. Their political point is that science has misused its power and has hurt women in the process. However, the ability to say that science has been wrong requires that one forgo relativism and develop an account of science which can take feminist criticism seriously.³⁷ At the very least, this requires one to be able to point to objective evidence—not evidence *for feminists* or evidence *for men*, but evidence simpliciter. To make sense of the fact that someone misuses evidence, or brings political and personal desires into play when deciding on the worth of a theory, requires, at some level, a commitment to objectivity.³⁸

Furthermore, it is important for feminists to realize that insofar as they have been able to track sexism—make sense of where it is coming from and why—and defend the position that specific men or specific research projects are sexist, feminists have appealed to the very same objective criteria which they deny exist or claim exist only for men.

If feminists accept relativism, they must realize that decision making, by their own lights, will be left to either providence or politics. If they leave decision making to the former, their chances for emancipation are at best fifty-fifty. If they leave it to the latter, the odds against are even greater. For men hold all the cards.

The only hope for this account with respect to theory choice in science is to presuppose a feminist political agenda and then develop those (and only those) scientific theories which are consistent with feminist goals. This may offer political and personal gains, but only at the cost of trivializing the very position which allowed feminists to initiate the serious criticism that science is sexist. By presupposing feminist goals, science will

remain sexist; it will cease to be *androcentric* only because it will have become *gyno*centric.

Feminists must make peace with the concept of objectivity. This does not mean the acceptance of any specific account of objectivity, only a commitment to its underlying spirit—to do one's best to act in an unbiased way.

5. Conclusion

To sum up, I have argued that the feminist case against science—that *it* is infected—has not been made.

Insofar as the interpretation of the classical concept of objectivity is developed in terms of a value-free stance, it caricatures the classical concept. Insofar as it is developed in terms of disinterestedness, appeals to Kuhn are unhelpful and a Kuhn-independent case has not been made.

Finally, I have attempted to show that it is in the best interest of women to give up the feminist³⁹ fight against objectivity. They should cease defending the political party line, "Science is a man, science is infected," and, instead, make good use of the classical concept of objectivity to cleanse science of its sexist practices. Although such an enterprise would not be particularly feminist, it would, nevertheless, be good, especially for women.⁴⁰

1. Virginia Woolf, *Three Guineas* (New York: Harcourt, Brace, and World, 1938).
2. Nancy Tuana, "Review of *Sex and Scientific Inquiry*," *APA Newsletter on Feminism*, vol. 89, no. 2 (1990), pp. 61-62; see p. 61.
3. Catharine MacKinnon, "Feminism, Marxism, Method, and the State: An Agenda for Theory," *Signs*, vol. 7 (1982), pp. 515-44; see p. 538.
4. Ruth Bleier, *Science and Gender* (New York: Paragon Press, 1984), p. 4.
5. MacKinnon, "Feminism, Marxism, Method, and the State," p. 538.
6. Evelyn Fox Keller, *Reflections on Gender and Science* (New Haven: Yale University Press, 1985), p. 12.
7. Jean Grimshaw, *Philosophy and Feminist Thinking* (Minneapolis: University of Minnesota Press, 1986), p. 83.
8. Sandra Harding, *The Science Question in Feminism* (Ithaca, NY: Cornell University Press, 1986), p. 249.
9. *Ibid.*, pp. 249-50.
10. Kristin Shrader-Frechette, "Review of *The Science Question in Feminism*," *Synthese*, vol. 76 (1988), pp. 441-46; see p. 444.
11. *Ibid.*, p. 444.

12. I use the term 'classical' instead of 'traditional', since I believe that the latter term is too easy a target for feminist criticism.

13. Actually, Harding wavers on this point. In Sandra Harding, "Starting from Women's Lives: Eight Resources for Maximizing Objectivity," *Journal of Social Philosophy*, vol. 21 (1991), pp. 140-49, she claims that

[m]aximizing objectivity requires critically examining not only those beliefs that differ between individuals . . . but also those that are held by virtually everyone who gets to count as inside the "scientific community." (p. 149)

This move, though, I will argue below, only serves to make the feminist objection impotent and uninteresting, for it restates what the classical account has always been committed to.

Furthermore, in her most recent book, *Whose Science? Whose Knowledge?* (Ithaca, NY: Cornell University Press, 1991), Harding goes back to the more radical position of *The Science Question*. She ostensibly supports 'objectivity', but only after distinguishing what she purposely misnames "weak" objectivity—the desire for unbiased research—from "strong" objectivity—research biased by emancipatory desires. Then, by supporting only "strong" objectivity, she is clearly employing the term 'objectivity' to mean something radically different from what everyone else does. Shrader-Frechette's criticism still holds.

14. Harding, *The Science Question*, p. 177.

15. By this phrase I mean any scientist or philosopher of science since the development of subatomic physics.

16. Stephen Toulmin, "The Construal of Reality: Criticism in Modern and Postmodern Science," in *The Politics of Interpretation*, ed. W. J. T. Mitchell (Chicago: University of Chicago Press, 1983), p. 112.

17. *Ibid.*, p. 103.

18. *Ibid.*, p. 112.

19. Harding, *The Science Question*, p. 83.

20. The original actually reads "value-neutral." I am giving the case its most sympathetic reading.

21. Harding, *The Science Question*, p. 23.

22. *Ibid.*

23. Harding actually equates 'value-neutrality' with 'objective' here. This tells me that she too reads the majority of feminists' criticisms of the classical concept of objectivity as directed to the straw notion of value-neutrality.

24. *Ibid.*, p. 102.

25. Just to name a few: Israel Scheffler, *Science and Subjectivity* (Indianapolis, IN: Bobbs-Merrill, 1967); Carl R. Kordig, *The Justification of Scientific Change* (Dordrecht: Reidel, 1971); W. H. Newton-Smith, *The Rationality of Science* (London: Routledge and Kegan Paul, 1981); and Harvey Siegel, *Relativism Refuted* (Dordrecht: Reidel, 1987).

26. Israel Scheffler, "Vision and Revolution: A Postscript to Kuhn," *Philosophy of Science*, vol. 39 (1972), pp. 366-74; see p. 369.

27. Steven Yates, for example, believes that Kuhn rejects the radical reading, citing Kuhn's "Commensurability, Comparability, Communicability," *Philosophy of Science Association* (1982), vol. 2, ed. Peter Asquith and Thomas Nickles (East Lansing: Philosophy of Science Association, 1983), pp. 669-88. Yates claims that Kuhn's ideas are actually quite similar to Scheffler's and that their real difference lies in the rhetoric, not the substance, of their work. Because of this, he claims that "there is nothing for the feminists to exploit in any accurate reading of Kuhn; they simply do not understand him." (Personal correspondence, August 1992.)

28. Or even *ways* things are. Feminist criticism must be more than just an acknowledgment of pluralism, for pluralism is compatible with classical science and philosophy of science.

29. This point has been recognized by some feminist philosophers of science. Elizabeth Fee, for example, claims that a rejection of objectivity "need not . . . go so far as to reject the whole human effort to comprehend the world in rational terms, nor the idea that forms of

knowledge can be subjected to critical evaluation and empirical testing. . . . [T]hese are aspects of scientific objectivity which should be preserved and defended" (Elizabeth Fee, "A Feminist Critique of Scientific Objectivity," *Science for the People*, July/August 1982, pp. 5-33; see p. 7). Unfortunately, as will be shown below, once such a concession is made, it is not clear what is interesting or provocative about the feminist project.

30. Harding, *The Science Question*, p. 138.

31. *Ibid.*, p. 27.

32. There is also the implicit denial of skepticism, that is, a presupposition that what is right or wrong can be known at all.

33. Harding, *The Science Question*, p. 27.

34. In informal discussion with Harding over the phone (in 1989), I questioned her directly on this dilemma. Her response was that I was to read her book more carefully. Later in 1991, at Johns Hopkins University—where she was a guest lecturer—I posed the same dilemma. Her response was indirect and unsatisfactory.

35. Harding, *Whose Science? Whose Knowledge?* (see n. 13 above), p. 139; subsequent references to this book (hereafter *WS*) will be given in parentheses in the text.

36. A similar "tension" has been pointed out by Margareta Halberg, "Feminist Epistemology: An Impossible Project," *Radical Philosophy*, vol. 53 (1989), p. 6.

37. This point has been appreciated by some feminists. See, for example, Lorraine Code, *What Can She Know?* (Ithaca, NY: Cornell University Press, 1991), pp. 45, 255, 319-20.

38. Steven Yates, in "Multiculturalism and Epistemology," *Public Affairs Quarterly*, vol. 6, no. 4 (1992), argues a generalized version of this same point.

39. This is reminiscent of a point often made by Christina Sommers; that is, what is good for women is not always entailed by (or even compatible with) what is being pushed by mainstream academic feminists.

40. Special thanks to Harvey Siegel, Kristin Shrader-Frechette, Christina Sommers, Steven Yates, and David Fenner for their helpful comments and encouragement.

Introduction

This symposium is devoted to a book which promises to be one of the most important works on political philosophy in the 1990s. Douglas B. Rasmussen and Douglas J. Den Uyl's *Liberty and Nature: An Aristotelian Defense of Liberal Order* offers a new defense of classical-liberal, neo-Lockean political theory, a viewpoint which has been widely discussed by academic political philosophers during the past twenty years, after being popularized by Robert Nozick's *Anarchy, State, and Utopia*. The book has two features which are especially noteworthy.

First, as its subtitle suggests, the book seeks to plant a liberal theory of rights in neo-Aristotelian soil. In this, its authors part company with other recent attempts to find a ground for rights: whether on a neo-Kantian deontological foundation, or on the alleged requirements of human agency as such, or on an indirect consequentialist basis, or on some form of social contract. Rasmussen and Den Uyl argue that Aristotle's insights concerning human nature and the human good can be extracted from the obsolete dross of his philosophy, and that these insights can withstand the criticisms of modern philosophers. However, they depart from traditional Aristotelianism in emphasizing the diversity and individuality of human activity that can be encompassed under the heading of flourishing, and in arguing that autonomy or self-directedness is the essential form of human flourishing.

The second distinctive feature of this book is its original analysis of rights. The authors argue that rights should not be understood as normative principles on a par with the principles that guide individuals regarding what is good for them or how they should conduct themselves. Hence, the attempt to demonstrate that a self-interested individual has, as such, an obligation to respect the rights of others, is on their view totally misguided. For rights are not directly or primarily concerned with achieving the moral good or with securing right conduct; rather, rights are meta-normative. That is, they provide moral guidance in the creation, implementation, and justification of a legal system whose purpose is to secure a social and political framework within which individuals can apply normative principles to their personal conduct and cooperative endeavors.

The argumentative burden of *Liberty and Nature* is, therefore, to defend a neo-Aristotelian ethical theory and to argue that this theory provides a sufficient justification for a regime of rights which will protect the self-directedness of individuals. In developing this argument, the book offers valuable discussions of many topics, including a defense of the natural right to private property and an argument that the Aristotelian conception of the common good is congruent with natural rights. The final chapter argues that the Aristotelian virtue of friendship can provide the moral basis for "capitalist acts between consenting adults," and concludes that Aristotle's legislative science can be allied with the contractarian theory of constitutions developed by James M. Buchanan so as to provide a rationale for framing a classical-liberal political system.

The first three essays published here were originally presented with a reply by Rasmussen and Den Uyl at a December 1992 meeting of the American Association for the Philosophic Study of Society in Washington, DC, chaired by Tibor Machan, Professor of Philosophy at Auburn University.

Symposium:

Liberty and Nature: An Aristotelian Defense of Liberal Order by Douglas B. Rasmussen and Douglas J. Den Uyl

ARISTOTELIAN ETHICS AND
NATURAL RIGHTS: A CRITIQUE

Martin P. Golding
Duke University

The Aristotelian defense of liberal order presented by Rasmussen and Den Uyl in their book *Liberty and Nature (LN)* resonates with me.¹ Important issues are discussed in an impressively clear way, and I am sympathetic to many of their conclusions. *LN* is the sort of book I enjoy reading; whenever I thought I had a knock-down, drag-out criticism, I found that it wasn't long before the authors took it up and made a response to it. Some questions do remain in my mind, however, and if I focus on them here it should not be thought that I do not appreciate their impressive contribution to the literature. In the brief space allotted me I want to consider the heart of the book, the derivation of natural rights from Aristotelian ethics, and a few other issues that spin off from it. Inevitably, some space will have to be devoted to exposition.

As *LN* points out, the orthodox understanding of Aristotle (and my understanding, too) sees his position as incompatible with a Lockean natural rights doctrine and the liberal (or libertarian) conception of the political order that Rasmussen and Den Uyl support. There is, of course, no explicit rejection of natural rights in Aristotle, nor could there be, since, as I believe, the idea of natural or moral rights had not yet crystallized. The authors nevertheless offer an interpretation of Aristotle's ethical theory that, it is claimed, not only removes the incompatibility but also allows for a derivation of natural rights from it. I shall try to get a handle on the topic by starting with their response to one of Alan Gewirth's criticisms of

Aristotle, though it will be impossible to take up all the details of Rasmussen and Den Uyl's excellent discussion of Aristotle's ethics and metaphysics.

Very briefly stated, Gewirth argues that Aristotle's notion of human nature is too indefinite to serve as a basis for ethics. And because it is too indefinite, it is insufficient. In one sense of the term "natural," anything human beings might do or become is natural to man, and reason alone is inadequate to determine what comports with human nature and what is incompatible with it, and consequently what comports with and what is incompatible with the human good. In essence, this sort of criticism has been raised against self-realization theorists from Aristotle to the British Idealists and John Dewey.

Now Rasmussen and Den Uyl agree that the good cannot be straightforwardly read off from human nature, but as good Aristotelians they of course must reject the proposition that any particular behavior of a person with a rational nature is just as natural as any other, or that the actualization of just any human potentiality is a constituent of flourishing. The trouble with Gewirth, they say, is that he understands "nature" in Aristotle without natural teleology, a subject they discuss in detail. Human nature can be known, if not fully known. Reason is not merely reasoning, but intelligence; man's final end is to live intelligently. On the other hand, Rasmussen and Den Uyl also maintain that the indefiniteness of the concept of human nature is in fact a virtue, for it allows eudaimonia to consist of a plurality of ends; the good life is always a good life *for* some individual, and there is no single form that it necessarily takes. Different mixtures are possible, and much will depend on individual capacity and circumstance. Most importantly, human nature is sufficient for determining the minimum boundaries governing social interaction, i.e., for drawing the basic topography of human interaction in terms of Lockean, negative rights.

A few other steps, however, are necessary for the derivation of natural rights, and the authors' next step is one that begins to mark their departure from Aristotle, I think. Rasmussen and Den Uyl convincingly argue that rational choice and decision are necessary for flourishing, and they demonstrate Aristotle's agreement with that proposition. They then argue that rational choice must always be autonomous choice, and further that coerced action has no moral value. In this way they arrive at their second step, the primacy of autonomy or self-direction, a step that smoothly fits the individualistic outlook that characterizes their project and their pluralistic conception of human flourishing. But what they have not done, as far as I can tell, is to provide any way of distinguishing between desire and right desire, a distinction that is essential to an Aristotelian approach.

In fact, Rasmussen and Den Uyl's account of value only exacerbates the difficulties of making the distinction. They argue, quite correctly in my opinion, that valuing is an activity that is natural to man, but they seem to

be going too far in claiming that the moral good consists in deliberate choice. Perhaps it would make no sense to speak of moral goodness unless deliberate choice were a genuine possibility; but it cannot be maintained that the object of such choices is ipso facto morally good. And of course, Rasmussen and Den Uyl do not want to say that it is. But it is precisely here that it is essential to provide a way of distinguishing desire and right desire. To make that distinction in terms of the needs of intelligent living, as is suggested in the book, is insufficient, given the authors' account of valuation and their value pluralism. It is hard to see how they could rule out, as Aristotle rules out, the life of wealth-seeking or honor-seeking as representing genuine flourishing.

Although the authors' preferred view of the good life, with its reference to friendship and the virtues, draws on Aristotle, the root of *LN*'s departure from him is that he has a much more substantial and concrete picture of the good life than any that Rasmussen and Den Uyl's pluralism can allow them to present. Aristotle's description clearly is not a value-neutral conception that he just reads off from human nature. This assertion can, I think, be demonstrated by appeal to the text and also by examination of Aristotle's discussion of contemplation as the highest form of the good life. (Incidentally, I don't recall any discussion of the contemplative —life—the life of the college professor?—in *LN*.) What Rasmussen and Den Uyl have is a minimalist Aristotle.

Why is this issue important? After all, the authors are free to adapt Aristotle to their own purposes and to depart from him when necessary to their argument. It is important, however, because it shows that autonomy could assume different dimensions, and have different moral weights, depending on the concrete pictures of human flourishing that are given. Though it could remain true that each individual must achieve the good life for himself, since there is no good that is not a good for someone and effort is required to obtain it, the value of the autonomous exercise of choice could depend on the total picture comprised of all the constituent ends whose pursuit it mandates.

Rasmussen and Den Uyl do admit that possession of autonomy does not guarantee that one will live a good life (*LN*, 73). But they also hold that "a world in which human beings are self-directed but fail to do the morally proper thing is better than a world in which human beings are prevented from being self-directed but whose actions conform to what would be right if they had chosen those actions for themselves" (*LN*, 95; emphasis in original). There are, however, many other possible combinations; these two are not the only alternatives. We just don't know how autonomy stacks up until we see it in a variety of possible concrete pictures of eudaimonia. (If we can't tell whether a man has been happy until he is dead, maybe we can't tell what happiness is until the alternatives are laid out.) To say this is not to engage in possible-world ethics: there are loads

of such pictures in the philosophical literature and in the varied lives that people lead. (In my first semester of high school geometry, I learned that parallel lines never meet. In the second semester, I was told that geometries are possible in which parallel lines meet at infinity. I couldn't form an image of that circumstance, but I had to concede that all sorts of unimaginable things could happen way out there at infinity, including the meeting of parallel lines. The point I am making here is not dependent on unimaginables.) While Rasmussen and Den Uyl do convincingly demonstrate that autonomy or self-directedness is a basic value, I am not persuaded that it is entitled to the centrality that they accord it. Disrespect for autonomy is not intended, of course, but I shall later suggest that Rasmussen and Den Uyl do not respect it enough.

None of these cranky remarks, however, are sufficient to refute the existence of natural rights, which I don't think could be done anyway. The question is, what, if anything, justifies us in according a natural right to someone—what justifies speaking of our social-moral relations in terms of natural rights? Showing the existence or nonexistence of natural rights is not like discovering the existence or nonexistence (which is always much harder to show) of unicorns or black holes (cf. *LN*, 88). Without stopping now to quibble over Rasmussen and Den Uyl's characterization of natural rights, I move on to their argument for them. In this connection Rasmussen and Den Uyl refer to a 1984 piece by me, "The Primacy of Welfare Rights."²

One of the subjects I have been interested in for a while, many aspects of which are taken up in *LN*, is the significance of rights language: What gap did it fill in moral discourse? What role is distinctive to it? In what sphere of social relations is its use most appropriate? What troubles can it get us into? Do we really need rights language? As to the issue of justification, I have imagined myself in the position of someone from whom somebody is claiming something as a matter of a right (be it a thing, an action, or a forbearance). Why should I concede his claim? It has seemed to me that there are two questions I would ask: Is the claimed object an element in that individual's personal good? And is it a genuine good, something that I recognize to be a genuine good, not merely a good in a value-neutral sense, i.e., as something that happens to be valued? There also are other questions, but these are enough for now. The important point is that having recognized the object, his personal good, as a genuine good, I have a reason for providing it, even if it is not an element in my personal good. His end has become my end, so to speak, and I have made the first move in recognizing it as a right of the claimant. And it does not seem to matter whether the object of the claim is "negative," that is, a claim to an act of forbearance on my part, or "positive." Now in all of this I have not been concerned with natural rights specifically but rather with moral rights generally.

LN more or less takes off from my discussion, but Rasmussen and Den Uyl are concerned with natural rights. So they ask, what is that genuine or objective good that can be the foundation of natural rights? The answer is not far to find. Since nothing can be a natural right for one person, without also being a natural right for everyone (as used to be said, this is analytic to the concept of a natural right), the good in question must be a universal good, though one that is never separate from an individual's own good, as if it were some Platonic form. And, in line with their earlier treatment, that good is self-directedness or autonomy. So there is a natural right of self-direction, and it is a negative right, a right to noninterference; it stakes out one's legitimate moral territory. The concept of natural rights functions as a meta-normative principle in setting limits to state power in the construction of a political order.

My reaction to the authors' by now obvious move should also be obvious. I am not convinced that autonomy is an unqualified good; its moral weight can vary from individual to individual, and its value must be gauged within the context of a life-picture. Self-directedness as such may be something we admire, even in a villain. But its moral value is dependent on the kind of life in which it is embedded.

Go back to my imaginings a few paragraphs ago. Will I concede to someone his right to noninterference, as long as he isn't intruding on someone else's moral territory? Of course, in a general and abstract way I account self-directedness as a genuine good, but it might not be one in the context; or it might be one that has a diminished status in the context, when balanced against his other genuine interests. So while I might concede his claim out of expediency or some other consideration, I would not necessarily concede it as a matter of rights. But don't *I* claim a right to autonomy? And can I make this claim without being willing to grant the selfsame right to others? The answer is that I do not claim such a right for myself in an unrestricted way, but only in context. I realize, of course, that others are not so minded.

It is pretty clear that no one has a claim-right to flourishing, to the human good, as such; after all, no one can *give* you eudaimonia. But self-direction or autonomy is a special sort of ingredient of flourishing which it makes sense to speak of as a right. It is, as Rasmussen and Den Uyl say, a negative right. However, just where authors of a very different bent would now move to argue for certain limited positive rights to the minimum conditions of flourishing, the sorts of things that can be provided, Rasmussen and Den Uyl decline the invitation. In distinguishing between the good life and the indispensable conditions for possessing it, the authors again draw upon Aristotle. "For there is a distinction," says Aristotle, "between health and the things that are indispensable conditions of health . . . also to live finely is not the same as the things without which living finely is impossible" (*Eudemian Ethics*, 1214b12-17). This is an important distinction, but

I don't think it has the significance that Rasmussen and Den Uyl give it. Aristotle is worried about the error that many of us commit when we confuse the two and take a condition for the real thing: because wealth is a condition of the good life, or because pleasure is its natural accompaniment, we take wealth or pleasure as our prime end and devote ourselves to its pursuit. Rasmussen and Den Uyl seem to be worried by something else, a sort of theory-driven worry.

They are worried about rights to the minimum conditions of flourishing because these entail positive or welfare rights. And their worries are real. For once we allow for positive or welfare rights, we are in trouble. It is difficult, and perhaps impossible, to work out a consistent system of positive rights, especially one that does not involve intruding on individual autonomy. Negative rights, on the other hand, are a *compossible* system of rights. Nevertheless, it seems to me that pretty much the same moral considerations that justify recognizing a right of self-direction also justify these minimum positive rights. If this means that our common morality is logically incoherent, so be it. Why should we expect otherwise? Isaiah Berlin's brand of value pluralism, which acknowledges irreducible conflicts of values, seems a plausible position. But perhaps one needn't go that far, if the method of reflective equilibrium is of any help.

Finally, I would like to suggest that Rasmussen and Den Uyl are not as sufficiently respectful of autonomy as they sound. For they do not seem to recognize any rights to conditions that make for fair opportunities for self-directedness. These would be positive rights, basically rights to assistance of some kind, a leg up perhaps. I am not arguing for the anti-liberal notion of equality of condition or result, or for the problematic notion of positive freedom. But it does seem to me that some people are in a better position to exercise self-direction than others, which is a situation from which we have much to learn.

It may be granted that people who lack the material conditions of a fair opportunity for self-directedness often can go farther than they in fact do go toward achieving a good life for themselves, insofar as eudaimonia involves the moral virtues. After all, even if they cannot attain and exercise the virtues of magnificence (*megaloprepeia*) and magnanimity or high-mindedness (*megalopsychia*), there are many other virtues for them to attain and exercise. For some such individuals, frugality will be a crucial virtue to have, and their lives will be all the better for it. But having a cheery disposition, assuming it to be a virtue, may be much harder to achieve. So while many people who live under miserable material conditions may, and should, do better for themselves, their life often will not be able to approach anything that would be recognized as one of flourishing. Aristotle, I think, regarded the promotion of the material conditions of well-being as a function of the statesman. But he does not recognize a natural right to such conditions any more than he would recognize a college professor's

natural right to the leisure necessary for the contemplative life. Aristotle, however, did not have the concept of a natural right; but Rasmussen and Den Uyl do. And I suggest that they should take the possibility of rights to minimum material conditions of a fair opportunity for self-directedness more seriously.

In any event, I doubt that it really is the case that one has a fair opportunity for self-directedness merely if one's moral territory, however that is to be staked out (and I am not clear on how), is not intruded upon, as important as that usually is. The conditions of moral agency may be more complex than the absence of external coercion alone.

Because of space limitations, in these comments I have chosen to focus on what seems to me the central theme of *LN*. There are many other interesting topics that warrant discussion: the treatment of the right of property, natural rights as a meta-normative principle, and the wonderful discussion of friendship. *LN* is one of the most stimulating books on ethics and political philosophy that I have read in many years.

1. Douglas B. Rasmussen and Douglas J. Den Uyl, *Liberty and Nature: An Aristotelian Defense of Liberal Order* (La Salle: Open Court, 1991).
2. Martin P. Golding, "The Primacy of Welfare Rights," *Social Philosophy & Policy*, vol. 1, no. 2 (Spring 1984), pp. 119-36.

DOES LIBERALISM NEED NATURAL RIGHTS?

Russell Hittinger
The Catholic University of America

1.

A conspicuous aspect of mainline “liberal” political theory is anti-perfectionism. Although liberal theorists like Ronald Dworkin, Bruce Ackerman, and John Rawls have articulated different versions of anti-perfectionism, Joseph Raz has given the clearest summary of what the principle entails:

Excluding conceptions of the good from politics means, at its simplest and most comprehensive, that the fact that some conception of the good is true or valid or sound or reasonable, etc., should never serve as a reason for any political action. Nor should the fact that a conception of the good is false, invalid, unsound, unreasonable, etc., be allowed to be a reason for a political action. Notice that the exclusion is of the valid as well as of the invalid. Again, there is no need for a principle instructing the government or anyone else to base their actions on valid conceptions of the good and to disregard invalid ones. It is the exclusion of both valid and invalid, the prescription that political action should be value-blind, which gives the principle its distinctive flavour. It makes it a principle of restraint.¹

Raz notes that “when anti-perfectionist principles are used to provide the foundation of a political theory they can be regarded as attempts to capture the core sense of the liberal ethos.”²

The question for liberals is whether such a severe principle of restraint is needed either (i) to explain the grounds of limited government, or (ii) to make sense of the “core sense of the liberal ethos.” Raz thinks not. Sound principles of limited government, the ideal of individual autonomy, and morally pluralistic political culture, he argues, are compatible with perfectionism in political and legal theory.³ Other liberal theorists, including William Galston and Charles Taylor, have also argued that anti-perfectionism is unnecessary to a defense of the liberal polity.⁴

In *Liberty and Nature*,⁵ Douglas Rasmussen and Douglas Den Uyl stake their own claim in this disputed issue. They argue that a teleological conception of the human good is compatible with, and indeed required by, “liberal” and “libertarian” understandings of political institutions. “Thick” theories of the human good, they conclude, do not necessarily entail “thick” theories of the political common good (*LN*, 224). Despite the almost phobic antipathy of mainline liberal theorists to perfectionism in matters legal and political, Rasmussen and Den Uyl set out to demonstrate that individual liberty, natural rights, and limited government are defensible in terms of a perfectionist analysis of the human good. The authors’ effort to provide an ontologically grounded account of the human good, and their adaptation of Aristotelian principles to this end, represent a fresh and potentially useful approach to the problem of articulating a perfectionist liberalism.

Of particular note is their effort throughout *Liberty and Nature* to tame the rhetoric of “autonomy.” For Rasmussen and Den Uyl, the ideal of autonomy is to be wrested from the self-creation thesis of existentialists, as well as from the notion that free choice is valuable even while prescinding from any understanding of what is being perfected in and through choices. Their effort to align autonomy with the Aristotelian conception of eudaimonia, while at the same time retaining the distinctively modern notion that individuals have a “right” to autonomy, is noteworthy. Joseph Raz, for instance, has argued that autonomy is the architectonic ideal of a liberal polity, but he denies that individuals have a right to autonomy.⁶

There is no way here to do justice to the detail and complexity of the arguments in *Liberty and Nature*. The careful reader must attend to the global thesis of the book concerning an Aristotelian defense of individual rights and of limited government, as well as to the many strands of argumentation which are mounted in defense of the overall thesis. In some places, one is arrested by the premise of an argument. For example, I remain to be convinced that “[t]here is no higher moral purpose, no other end to be served than the well-being, the flourishing, of the individual human being” (*LN*, 72). In other places, one might question the conclusion

2.

Let us begin with some of the key premises of the argument. Rasmussen and Den Uyl hold that self-directive liberty is a necessary condition of the perfections of a person qua agent. In this sense, liberty can be said to be a basic and inherent good. One who conceives the good, but who has no liberty to deliberate and choose, is someone who, for all intents and purposes, is not an agent. Moreover, within the Aristotelian tradition, we can say that the agent is under an obligation to perfect himself. All action is conceived and pursued under the *ratio boni* of human flourishing. Because liberty is a necessary condition of the good of action, a government that subverts liberty subverts the moral good by making it impossible to accomplish. Insofar as the goods achieved through agency are rendered impossible (or very difficult) to accomplish, government violates not only an ontological perfection (the natural capacity to act freely) but also a moral perfection (brought about by the individual's obligation to perfect himself through self-directive agency).

Rasmussen and Den Uyl then go on to explain the nature of negative rights:

[T]he negative rights for which we will argue are basic in the sense that they are a type of *moral principle* which is used to create a legal system which protects the social and political conditions necessary for the possibility of human flourishing. Negative rights seek to protect the self-directedness or autonomy of every individual human being in the political community and thereby protect the condition under which human flourishing can occur. (*LN*, 82; emphasis added)

At least some negative rights are natural rights, existing prior to convention or agreement. Natural rights are justified by reference to a human being's natural end, rather than those ends determined by positive law.⁹ They are also said to be "absolute," in the sense that they override or "trump" all other moral considerations when a polity decides what matters of morality shall be matters of legality (*LN*, 83-85). The primary political good is liberty, as defined by the natural right(s) to the condition(s) of self-directed agency.

My chief question is whether the natural right of liberty has been described under sufficient ontological and moral specifications to be of any use to political theory. What kind of "moral principle"—to use Rasmussen and Den Uyl's term—is the right to liberty? Once again, we can agree that liberty is a natural *facultas*, an ontological perfection as it were. Yet, it is an ontological perfection whether self-directed choices prove telic or dystelic, and whether they are morally good or wicked. From the fact that a

person has the capacity for agency, nothing specific can be drawn for showing the moral ground of an individual's duty. Rasmussen and Den Uyl contend that there is no higher moral purpose than the flourishing of an individual. "Nothing else is needed," they say, "to morally justify the existence and actions of the individual human being" (*LN*, p. 72). But to hold that human flourishing is an "ultimate moral purpose," and to observe that liberty is "central to the process" and "important for morality," (*LN*, 73) are not sufficient for making any determinate judgment that an act is morally good or bad. That free, self-directive acts make human flourishing "a moral good," (*LN*, 93) or that such acts constitute a "right activity in itself," (*LN*, 94, 115) only suggest that free acts are to be placed in the species of acts having moral significance.¹⁰ Morality does not require us to justify the fact that humans act freely, but rather whether such and such an act has moral rectitude. Until the specifically moral issue is joined, we have not given a complete ontological picture of agency, much less have we reached specifically moral norms. A prospective agent who grasps that a particular good or end is basic to his perfection, but who has given no consideration to the rectitude of the means to be chosen, is not yet engaged in practical reasoning.

The same standard must apply to a government. Can a government have moral duties simply on the basis of knowing that freedom is a necessary condition of human action? I think not. Of course, it can be admitted that from the ontological fact that a person has the *facultas* of liberty we can derive the duty of government to treat such persons as agents. We can justifiably hold that it would be morally wrong for government to treat self-directive entities as mere objects. That is to say, entities with the *facultas* of liberty ought to be treated as players in the moral ballgame; they are persons to whom reasons and justifications are due when political power is distributed and employed. But, as Raz has argued, this duty to respect persons only suggests that persons ought to be treated according to sound moral considerations:

Is one treating another with respect if one treats him in accordance with sound moral principles, or does respect for persons require ignoring morality (or parts of it) in our relations with others? There can be little doubt that stated in this way the question admits of only one answer.¹¹

This, however, is at best a very general right. Without additional premises and arguments, it will not suffice to show the particular nature of the "sound" moral considerations, much less to justify the notion of a "trump" against government.¹²

I fail to see how any individual or government is duty-bound to respect the trumping right of another person simply on the basis of the

general truth that liberty is a pervasive condition of human flourishing, along with its corollary that self-directive entities should be treated as persons rather than as things. We also need to know (among other things) whether the action protected by the purported right is morally good. Otherwise, we would find ourselves morally bound to respect actions that are not only teleologically valueless, but morally wicked. This "respect" is good neither for the rights claimant nor for those he would bind by his claim. Government would become as unlimited as the rights themselves. Even on a libertarian view of government, the state must adjudicate and enforce the juridical order of rights. How can the juridical office of the state weigh conflicts of rights among citizens when the rights are drawn so generously, not to mention when parties to a suit each fancy their rights to be "trumps"?

In our polity, citizens deliberate in democratic assemblies, legislating and conducting public business on issues they deem important to their lives and well-being. Why, then, should citizens respect a rights claim that purports to "trump" their common business? If they prescind from the question of whether there is any positive law commanding them to recognize a putative "trump," the citizens justifiably will want to know (i) whether the action covered by the right is truly perfective of human beings, (ii) whether it has moral rectitude, and (iii) whether it is sufficiently important to warrant a "trump" on their common business. Surely an "Aristotelian" defense of liberalism would not overlook the force of these questions.

As a token of the problem of rights abstractly formulated, consider the recent judicial dictum in *Planned Parenthood v. Casey*: "At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State."¹³ Even if this grandiose notion of liberty is accepted as containing a roughly hewn truth, it tells us nothing whatsoever about the moral ground of a government's duty. All positive laws take some free choices out of the category of being merely optional. Do all positive laws implicate the government in personicide against human agents? To say that self-directive and self-constitutive liberty is an irreducibly important feature of a very generally conceived obligation of individuals to pursue human perfection is not an adequate answer. It is not adequate because it leaves government without a clue as to how it must use its powers responsibly.¹⁴

Rasmussen and Den Uyl too quickly brush off Henry Veatch's concern about whether one has a right to "deviate from the path of virtue" (*LN*, 109). At stake here is the important question of whether anyone can have a natural right to do moral wrong. Rasmussen and Den Uyl insist that we must distinguish between the normative principles pertaining to personal conduct and the meta-normative principles of rights (*LN*, 113). The authors contend that Veatch fails to see that "a right has broader extension

than doing (or being in pursuit of) what is right" (*LN*, 109). Whatever good sense there is to this distinction, I fail to see how it is relevant to the issue of whether one has a right to do moral wrong. However we divide the public and private aspects of morality, and however we distinguish between actions and conditions of actions, the upshot of a rights claim is that someone else is morally bound to do or to refrain from doing something with respect to the claimant. The question remains, what are the grounds of the duty? While I might misunderstand Rasmussen and Den Uyl's argument, I do not see that they have provided enough information in either the ontological or the moral orders to guide morally responsible action on the part of government.

Of course, it can be granted that someone might enjoy a right to do wrong *per accidens*. For example, as Rasmussen and Den Uyl note, it would be impossible to assess whether each and every exercise of a right to something either generically good or indifferent turns out to be truly good (*LN*, 113). If a multitude of people are to be governed, the laws will need to achieve an adequate level of generality. Neither statutes nor statements of rights can ensure that every protected act is good. We recognize rights to probate a will, or to get married, without supposing that these liberties will always be used to the end of the agent's ontological or moral perfection. Yet, abstractly considered, there is no absolute reason why access to these conditions of liberty forbid government from considering the moral rectitude of such acts, and then restricting or regulating them accordingly. Just because it is neither prudent nor feasible for government to supervise every act that falls under the rubric of a generically good action-type does not mean that government forfeits authority to restrict or regulate some acts falling under said description. In short, the general character of laws need not imply that anyone has a specific right to do wrong.

It can also be the case that one has a rights claim as the implication of a governmental duty, where the duty is grounded independent of the moral merit or demerit of the individual's action. For example, looters might claim a right against government not to have excessive force used against them. This does not imply that they have a right to loot.¹⁵ Moreover, it might be the case that for sound prudential reasons, we do not delegate to government certain powers; in which case, one would have a right that government not act *ultra vires* (beyond its delegated powers). If, for example, the government was not delegated a power to prosecute its own officers for treason, the traitors would not have a right to commit treason, but rather a right not to be prosecuted. Should the government be delegated the power to prosecute the traitors, no natural right would be violated. In short, there can be many ways of speaking of rights against government without supposing that they are species of a natural right to liberty, much less a right to do moral wrong.

Arguments showing that if a government systematically roots out free-

dom, it subverts the conditions of teleologically valuable and morally good choices, do not avail to the end of showing why an action of government disrespects human autonomy in some particular field of choice. We can agree that government would disrespect human autonomy if it so drastically curtailed freedom that the ontological and moral perfections of human action were made either impossible or very difficult to achieve. This kind of argument might be necessary in the case of a totalitarian regime that perpetrates crimes against humanity.

But that is not the question of liberty and nature in a liberal regime. Our question concerns the moral authority of government to discourage or prohibit some choices, and to encourage others. The argument proceeding from an alleged natural right to liberty, where the right is conceived as a negative right to the conditions which persist through any and all choices, regardless of further ontological and moral specifications, is an argument that will necessarily remain too clumsy to handle the question before us. It contains no safeguards against the right to do wrong. And it provides no useful guidance to the government.

Would Rasmussen and Den Uyl agree with Raz, who argues: "Since autonomy is valuable only if it is directed at the good it supplies no reason to provide, nor any reason to protect, worthless let alone bad options"?¹⁶ If so, then they should abandon the notion of a natural right to autonomy, and speak rather of the duties of government to respect the very specific conditions under which valuable and good choices are made by individuals for the purpose of achieving autonomy. There is plenty enough for agents to do without having to claim rights to bad choices. I don't see how this can be gainsaid without supposing that the good of liberty requires being able to choose anything one pleases.

3.

It is characteristic of liberal polities to defer as much as possible to individual liberty, even when such liberty is misused. This, I submit, can be explained and justified in the light of political prudence working within the context of historical experience. We might argue that the specifically moral values of human flourishing are best achieved through constitutionally limited, decentralized government. The strongest case for liberal order, especially a case informed by an Aristotelian conception of eudaimonia, is that individuals are better situated than the state for making and executing choices about human perfection.

This case does not require the dubious notion that "there is no higher value than the individual human being," nor the vulnerable argument that there exists a natural right to liberty sufficient for distinguishing the

rightful and wrongful spheres of governmental power. In summary, there is a case to be made for “thick” accounts of the human good and “thin” conceptions of governmental authority. But the idea of a natural right to liberty will prove to be a very clumsy instrument for dealing with the moral and institutional issues of limited government.

1. Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1986), p. 136.
2. *Ibid.*, p. 108.
3. For an overview of Raz’s criticism of anti-perfectionism, see Robert P. George, “The Unorthodox Liberalism of Joseph Raz,” *Review of Politics*, Fall 1991, pp. 652-71.
4. William A. Galston, *Justice and the Human Good* (Chicago: University of Chicago Press, 1980); Charles Taylor, *Sources of the Self* (Cambridge: Harvard University Press, 1989).
5. Douglas B. Rasmussen and Douglas J. Den Uyl, *Liberty and Nature: An Aristotelian Defense of Liberal Order* (La Salle: Open Court, 1991), hereafter *LN*; page references will be given parenthetically in the text.
6. Raz, *The Morality of Freedom*, p. 247: “A right to autonomy can be had only if the interest of the right-holder justifies holding members of the society at large to be duty-bound to him to provide him with the social environment necessary to give him a chance to have an autonomous life. Assuming that the interest of one person cannot justify holding so many to be subject to potentially burdensome duties, regarding such fundamental aspects of their lives, it follows that there is no right to personal autonomy.”
7. *LN*, p. 85. The Dworkinian idea of rights as “trumps” had its proximate home in Constitutional interpretation, but then gradually seeped into moral and political theory generally. While there might be some point to speaking of certain legal rights as “trumps,” I do not see how the idea is necessarily entailed by the logic of moral rights; except, perhaps, in conjunction with the premise of individualism: viz., that the well-being of the individual(s) is the only intrinsically valuable state of affairs. However, the individualist doctrine needs to be argued, and I do not find serious argument for it in *Liberty and Nature*. It can be noted that one of the earliest textual sources for the metaphor of rights as “trumps” is Hobbes’s *Leviathan*, Part 1, ch. 5. There, Hobbes invokes the metaphor in order to ridicule the notion of justiciable natural rights.
8. On the late-medieval origin of *iura* (rights) as so many *dominia* (rights of sovereignty or leadership) rooted in the natural *facultas* (power) of liberty, see Richard Tuck, *Natural Rights Theories* (Cambridge: Cambridge University Press, 1979), p. 27.
9. Whether or not natural law (or reason in accord with nature) requires us to believe that there is “no higher value than the individual human being” (*ibid.*, p. 77) is disputable. An argument that aims to show the incompetence of the political state still permits the libertarian to acknowledge the fact that individuals pursue a myriad of social ends having intrinsic value. Indeed, a libertarian can argue that there are superordinate social values which are crucial to human flourishing, and still consistently argue that the political state ought to be limited in its supervision of these values. The fact that an individual, qua citizen, claims a right against the state meddling in this area does not entail, nor is it entailed by, the strong ontological premise that there is a natural-right credential for individualism. Hence, the individualist premise is not necessary to the libertarian case for limited, even drastically limited, government.
10. In the scholastic parlance, we are speaking of the *actus humanus* rather than the *actus hominis*.
11. Raz, *The Morality of Freedom*, p. 157.
12. Raz is correct, then, when he goes on to note: “Being a very abstract right, nothing very concrete about how people should be treated follows from it without additional premises.

This explains why it is invoked not as a claim for any specific benefit, but as an assertion of status. To say 'I have a right to have my interest taken into account' is like saying 'I too am a person.' This may perhaps explain its deontological flavour" (*ibid.*, p. 190).

13. *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 112 S.Ct. 2791, 2807 (1992).

14. Of course, the directives ordinarily come from the positive law. But this is not the level at which Rasmussen and Den Uyl treat the problem.

15. A point made by William A. Galston in "On the Alleged Right to Do Wrong: A Response to Waldron," *Ethics*, vol. 93 (January 1983), pp. 320-24.

16. Raz, *The Morality of Freedom*, p. 411.

RASMUSSEN AND DEN UYL ON NATURAL RIGHTS

Eric Mack
Tulane University

In this paper I want to investigate the character and force of the argument for natural rights offered in Douglas Rasmussen and Douglas Den Uyl's *Liberty and Nature: An Aristotelian Defense of Liberal Order*.¹ The argument, which is presented in chapter three of their book, is complex and complexly dependent on the individualistic eudaimonist ethics which is developed in the book's previous chapter. My interest in understanding how the argument is supposed to work encompasses an interest in understanding which elements of that eudaimonism play what role within the grounding of natural rights. I am not at all confident that my criticism of their argument is based upon a correct understanding of it. If my criticism is based upon misunderstanding, then at least it may still have the beneficial effect of eliciting clarifications about the true structure of the argument. I shall begin by recounting, as stage-setting, what I take to be the crucial elements of Rasmussen and Den Uyl's eudaimonism; then I shall turn directly to the case for natural rights.

Rasmussen and Den Uyl's grounding of their Aristotelian ethic centers on the notion of natural function. This is the notion that spans the gap which otherwise would exist between the factual and the normative realms. The natural function of an object or process of a given kind is the activity or deployment of that object or process which promotes the attainment of the end whose possible attainment explains the existence of and/or illuminates the nature of that kind of object or process. The natural end of an object or process of a given kind is the outcome whose possible attainment provides this (functional) explanation. For instance, the natural func-

tion of human hearts is their pumping oxygen-rich and nutrient-rich blood through the human body, this being the end whose possible attainment explains the existence of human hearts and/or illuminates their nature. It is by understanding the natural end and natural function of an object or process of a given type that we can evaluate specific instances of the activity or deployment of an object or process of that kind. This is because an object or process functions *well*—functions as it ought—if and only if its activity or deployment does effectively promote its natural end.²

Linking up with this claim about the nature and normative significance of natural ends and natural functions is the crucial contention that the natural function of human valuation, the process by which human beings identify, pursue, and attain ends, is the sustenance of human life. For it is the need to sustain life in the face of continuous challenges to it which explains human valuation. The end of human life as a process of identifying, pursuing, and attaining ends is the maintenance of this very process of value-attainment (45). Rasmussen and Den Uyl offer a number of further characterizations of the end of human life. The end of human life is the actualization of the distinctive human potentialities (45, 46). It is the attainment and maintenance of the “mature state” of human existence (46). It is human flourishing (36). And beyond these characterizations, there are at least four further claims within this Aristotelian ethics which seem to me to be relevant to the argument for natural rights. Quickly and/or roughly these are:

1. Value is agent-relative. For each human being, it is that person’s flourishing that is of ultimate value (56). Rationally, each must recognize the equal ultimacy of the value of each other person’s flourishing. But these other instances of flourishing are not, as such, ends to which our first agent’s pursuits ought to be directed. There is a plurality of ultimate values—one for each being capable of flourishing.

2. The primary virtue by which one lives well is rationality. Two distinct claims are offered in support of this contention. The first is that successful goal pursuit for human beings requires that we “apprehend the world in conceptual terms” and that we bring “intelligence and understanding to bear on the problems and issues . . . life presents” (33). The second is that our potential for rationality is our fundamental potentiality and, hence, that its actualization is most fundamental to *our* actualization (56).³ Through some combination of these claims⁴ we arrive at the conclusion that “the crucial element in an Aristotelian ethics is the idea that living rationally or intelligently is the natural end, function, or *ergon* of a human being” (35).⁵

3. Human flourishing consists in a certain complex of human activity rather than in certain results of human action conceived of as distinct from that activity. This distinguishes Rasmussen and Den Uyl’s Aristotelian ethics from both standard consequentialism and standard deontology. Contrary

to the former, it ascribes value directly to actions and dispositions, while, contrary to the latter, the evaluation of actions and dispositions remains directly tied to the cause of value (59-61).⁶

4. Although rationality is the primary virtue, the form of all valuable, self-perfecting action is autonomy or self-directedness. No human activity can genuinely contribute to the flourishing of an agent unless the agent is autonomous with respect to that activity:

Human flourishing does not consist in the mere possession and use of the goods required for successful human living. Rather, human flourishing or eudaimonia consists in a person taking charge of his own life so as to develop and maintain those ends. . . . (63)⁷

Great stress is placed upon this good of self-directedness. It is said to be “the very form, the only form, in which life in accordance with virtue (human flourishing) can be lived” (74).

With this stage-setting completed, let us turn to the Rasmussen/Den Uyl case for natural rights. And let me begin by revealing my key assertions about their case. I shall maintain that (i) there are in reality two quite distinct arguments—I label them the “expression in a social context” argument and the “obligation to self” argument; (ii) each of these arguments satisfies one of two theoretical conditions Rasmussen and Den Uyl place upon an acceptable doctrine of rights—I label these conditions the “priority of rights” condition and the “primacy of the self” condition; (iii) unfortunately, each of these arguments violates the condition it does not satisfy; and (iv) while Rasmussen and Den Uyl will probably insist that there is a single argument at work, and while, within their exposition, the “expression in a social context” argument does metamorphose into the “obligation to self” argument, my sense is that they retreat back to the former argument and perhaps are wise to do so.

It is instructive to begin with an argument for rights which is presented by Rasmussen and Den Uyl but on which they choose not to rely as a rationale for rights (93-96). This argument—which I will label the “natural function” argument—appeals to a norm (or perhaps one should call it a meta-norm) that is highly congenial to the Rasmussen/Den Uyl perspective and to a further claim of theirs about the natural end of human value-promoting behavior. The norm is: Conduct or respond to the occurrence of activities in accordance with their natural function. For each activity which one cannot conduct because it is the activity of another agent, this norm proscribes thwarting that other agent’s conducting the activity in accordance with its natural function. Rasmussen and Den Uyl’s further claim is that self-directedness is so fundamental to any activity’s contributing to the flourishing of the agent engaged in the activity that self-directedness is an

essential constituent of the natural function of human value-promoting behavior. Given this further claim, any action by one agent which precludes or undercuts the self-directedness of another agent thwarts that agent's conducting his activity in accordance with its natural function. Thus, any such action violates the norm which forbids thwarting that other agent's conducting his activity in accordance with its natural function. The "natural function" argument concludes that, in virtue of this norm, each agent is obligated not to so direct the behavior of others, and, therefore, each has a correlative right against all not to have his activities so directed.⁸

Rasmussen and Den Uyl's rejoinder to the "natural function" argument is striking. What they say is:

Yet this does not show that X has a right to be self-directed or autonomous. It only shows at best that Y, in virtue of his natural end as a human being, has an obligation to respect X's self-directedness or autonomy. (96)

Despite the slight suggestion that they might want to challenge the inference to Y's obligation toward X, the core of Rasmussen and Den Uyl's complaint is that a right of Y established as the conceptually posterior correlative of an obligation of X is not the sort of moral entity for which they are searching. The "natural function" argument and the sort of right it discloses seems to violate each of the two conditions they propose to impose upon a satisfactory doctrine of rights. It violates the "priority of rights" condition according to which rights are conceptually prior to their correlative obligations, and it violates the "primacy of the self" condition according to which the authors' "Aristotelian ethics gives primacy of place to the self and not to others" (62). The "natural function" argument violates the latter condition because the reason it provides to Y to constrain his actions toward X is not at all a function of that constraint's contributing to Y's well-being.

For Rasmussen and Den Uyl, what I call the "expression in a social context" (or "social expression") argument has neither of these purported defects. Let me begin by providing some of the passages which, I think, are central to this argument, and then follow with my gloss upon these passages.

(a) "[T]he individualism which holds that individuals can be a unique source of their own values gives rise to the idea of moral territorialism . . ." (105).

(b) "The moral territory we as individuals possess allows us . . . to 'clash with impartiality' " (105).

(c) "The concept of rights . . . is necessary to preserve the moral propriety of individualism . . ." (105).

(d) “[T]he rights we have are held by us because they are right within the context of a need for a compossible set of moral territories. Since we admit to a large degree of value pluralism . . . , rights define the basic ways in which that pluralism can express itself in relation to others” (106).

(e) “[D]oes human flourishing . . . require that there be a moral concept which provides for a moral territory that protects individualism and is both deontically universal and irreducible? The answer is unequivocally ‘yes’ ” (113).

As I understand this argument, rights in the form of “moral territory” represent the rational expression of individualistic eudaimonism which obtains among individuals engaging in or confronted with the opportunities and dangers of social interaction. Rights represent the rules which are appropriate to interpersonal interaction among rational beings each of whom has his own well-being as his ultimate end. Rights are the appropriate expression of individualistic eudaimonism in the “social context.” They are the appropriate projection of eudaimonism into the “social context” because they are protective of each person’s self-perfecting pursuits and, more specifically, are protective of the essential aspect of self-perfecting pursuits which is endangered by others, viz., self-directedness. And they are impartially protective of each distinct individual by protecting that aspect of flourishing which is essential to each individual, whatever the particular character of his own good. This is how rights “blend impartiality and diversity” (104). Furthermore, by representing each person’s rights as the appropriate interpersonal expression of that person’s teleological mission, Rasmussen and Den Uyl portray rights as conceptually prior to their correlative duties:

It is true that one ‘ought to respect another’s basic rights(s)’, but the reason that restraint is due is not because of what I owe you, but because of my own principled commitment to human flourishing. (106)

Within the “social expression” argument, is it theoretical or practical reason that calls on us to affirm “the objective requirements for producing a compossible set of moral territories consistent with the diversity of value flourishers” (107)? Insofar as the “social expression” argument is distinct from the soon to be described “obligation to self” argument, the answer to this question is that it is theoretical reason. For the force of the passages that I have cited is that the ascription of rights to those individuals who stand at the threshold of interpersonal engagement is a rational projection, into this social state, of the impartial recognition of each of them as moral ends-in-themselves. Since reason endorses a “principled commitment to human flourishing” (106), it must also endorse the interpersonal rules which are appropriate to individuals’ flourishing in a social context.⁹ Since

reason endorses "the moral propriety of individualism" (105), it must also endorse rights which are the moral claims that sanctify and preserve this individualism in social interaction. These rights are, so to speak, actualized by one's entrance into interaction with others who, in virtue of those rights, are obligated not to contravene one's self-directedness.

From the perspective of Rasmussen and Den Uyl, the problem with this argument is that, while it makes *A*'s right against *B* conceptually prior to *B*'s obligation to *A*, it does so by ascribing a moral status to *A*—a moral standing for *A vis-à-vis B*—which is not a function of *B*'s prospective flourishing. *B* has theoretical reason to acknowledge *A*'s status as a right-holder quite independently of the practical significance for *B* of *A*'s being accorded this status. This clashes with the "primacy of the self" condition. It constitutes a departure from an ethics that "gives primacy of place to the self and not to others" (62). This defect accounts for the metamorphosis that can be observed in *Liberty and Nature* in which the "social expression" argument is transformed into the "obligation to self" argument.

Throughout the passages which I have read as constituting the former argument, Rasmussen and Den Uyl insist that rights are not fundamentally a manifestation of "what I owe you" (106), or of "what one owes another" (106). But the import of these remarks evolves from the priority of rights over obligations to the idea that "it is not what I owe others, *but rather what I am obligated to do for myself* that grounds rights" (107; emphasis added). The "principled commitment to human flourishing" which gives rise to rights is now to be understood as a commitment to *my* flourishing—albeit a commitment which is informed by my belief that my flourishing is best promoted by my acquiring certain virtues (internalized principles) among which is adherence to a system of individual rights. Within the emerging "obligation to self" argument, the reason one has to accord others their rights—indeed, to believe that there exist rights to accord—is practical reason. The "need" for "a compossible set of moral territories" or for "moral space" for each individual (106, 114) is not now the theoretical need for a form of moral individualism appropriate to the social state, but rather the practical need for adherence to such a structure of rights if *I* am to flourish. Affirming and according these rights to all will best promote what practical reason tells me I have ultimate reason to promote, viz., my own flourishing.¹⁰

This is why Rasmussen and Den Uyl pass immediately from the claim that what grounds rights is what I am obligated to do for myself, to a consideration of Henry Veatch's view that "natural rights are derived from duties one naturally owes to oneself" (108). According to Veatch, each individual *A* has eudaimonic obligations of self-perfection to himself, and, in virtue of these obligations to self, all other persons are obligated not to prevent *A*'s self-perfecting activity. However, Rasmussen and Den Uyl reject Veatch's view. Their main criticism is that his argument cannot provide *A*

with any right protective of non-self-perfecting behavior. *A* will, at most, have rights vindicating his rightful, i.e., dutiful, actions (108-9). How, then, does Rasmussen and Den Uyl's grounding of rights on obligations to self differ from Veatch's? For these authors, what *A* owes himself for the sake of his own well-being includes his support for and adherence to a system of rights universally protective of self-directedness. Thus, on their "obligation to self" argument, *B*'s rights against *A* are grounded on *A*'s obligations to himself. Unfortunately for Rasmussen and Den Uyl, while this nicely satisfies the "primacy of the self" condition, it violates the "priority of rights" condition. For *B*'s rights now exist in virtue of *A*'s obligations—not *A*'s obligations to *B*, but (worse yet?) *A*'s obligations to himself.

At the core of the "obligation to self" argument is the striking claim that each person is most likely to flourish if he scrupulously adheres to a system of rights protective of self-directedness¹¹—at least as long as other persons similarly adhere to those rights. Can this claim be made plausible other than by stipulating that genuine flourishing requires this adherence? One would expect Rasmussen and Den Uyl to support an affirmative answer by bringing to bear their entire doctrine of the human good and the human virtues and, perhaps, by marshaling historical, sociological, and economic generalizations congenial to classical liberalism. But, instead, the discussion that concludes their case for natural rights proceeds entirely in terms of identifying a principle or concept that "protects these basic features of human flourishing" (114). The "moral propriety of individualism and pluralism" is repeatedly cited as the basis for a framework within which "individual human beings may go about determining, creating, and achieving their own values" (114). And the authors answer "unequivocally 'yes' " to the question "[D]oes human flourishing as we have described it require that there be a moral concept which provides for a moral territory that protects individualism?" (113). Unfortunately, whatever the merits of these remarks, they simply cannot lend credence to the striking claim at the core of the "obligation to self" argument. For they represent a retreat back to the "expression in a social context" argument and to the prospect that not all of ethics can be explained in terms of obligations to self.

Postscript: Rights as Meta-Normative Principles

Clearly my most basic qualms about the natural rights theory developed by Rasmussen and Den Uyl concern that doctrine's aspiration to be consistently and thoroughly teleological. More specifically, my concern is that in failing to incorporate a deontological turn within their doctrine, Rasmussen and Den Uyl fail to capture an essential feature of natural rights. What I have in mind is that these rights constitute moral side-constraints on one's

behavior rather than substantive prescriptions of particular courses of behavior. Rasmussen and Den Uyl are eager to affirm this distinctive property of rights. However, I believe that their affirmation is undercut by the "obligation to self" account of rights, according to which one's reason for acknowledging rights is entirely a matter of acknowledgment of and compliance with these moral claims being instrumental for and partially constitutive of the advancement of one's own prescribed ends. The affirmation of rights as moral side-constraints can only be grounded and preserved by an account of rights in which the existence of other agents as beings with a moral status one must recognize, plays a more fundamental role.¹²

Rasmussen and Den Uyl attempt to affirm the side-constraint character of rights without affirming that these constraints fundamentally reflect, for each constrained agent, the moral status of other rational agents. This is accomplished by an equivocation in the meaning assigned to the proposition that rights are meta-normative principles. When it is first introduced, this proposition amounts to the claim that rights function as moral side-constraints. They are not "specific prescriptive rules" which guide this or that individual's pursuit of ends; they do not specify ends. Rather, rights specify "only the conditions under which their pursuit [i.e., the pursuit of ends] is legitimate" (105). Especially given their commitment to construing the normative realm teleologically, it is not surprising for Rasmussen and Den Uyl to want to mark off the practical reasons one has in connection with others' rights from one's end-oriented reasons by labeling the former "meta-normative." But one can readily accept that rights are "meta-normative" in this specific sense and still recognize that these "meta-normative" side-constraints confront one in one's moral deliberations—confront one as the manifestation of others' moral standing. Thus, if one continues to understand the proposition that rights are meta-normative as the claim that they function as side-constraints, one will be pushed toward a deontological turn which Rasmussen and Den Uyl do not want to make. And, in some cases, standard normative (i.e., teleological) and nonstandard normative (i.e., meta-normative) considerations may even come into conflict.

To avoid both the push toward the deontological turn and the prospect of such conflict, Rasmussen and Den Uyl shift to a different understanding of "meta-normative." Given this alternative understanding, the proposition that rights are meta-normative amounts to the claim that rights are not "principles whose function is to guide personal conduct" (113). Rather, rights provide "the normative basis to law" and "guidance to the creators of a constitution" (112). Rights now are construed as heuristics for the construction of a justifiable legal order and not as constraints on behavior which confront individuals in their ordinary course of behavior. Perhaps it will be acknowledged that individuals will be confronted with and constrained by the legal rules which are erected on the basis of rights. And perhaps it will be further acknowledged that these rules will some-

times call for behavior which conflicts with that recommended by standard normative (i.e., teleological) considerations. But since it will be the institutional emanations of rights—perhaps merely accidental features of those emanations—and not rights themselves that will confront and constrain one's pursuit of ends, and may even conflict with that pursuit, Rasmussen and Den Uyl can avoid acknowledging the contra-teleological character of rights.

Unfortunately, there is no justification for the crucial transition from the first sense of "meta-normative" to the second. The argument implicitly at work seems to be: (i) Since rights do not constitute "specific prescriptive rules" (105) disclosing particular ends to be pursued, "they do not provide normative guidance to individuals in the conduct of their lives" (111-12); (ii) Hence, they must instead provide "guidance to the creators of a constitution" (112). The relevant problem is within claim (i). For, while rights as moral side-constraints do not constitute "specific prescriptive rules," they do nevertheless provide (restraining) normative guidance to individuals in the conduct of their lives. They guide individuals to constrain the means by which they pursue their various ends.

Moreover, Rasmussen and Den Uyl must acknowledge this normative guidance by rights in both state-of-nature and unjust-legal-regime cases. Surely the authors should want to say that at least part of the reason that Anna has for not killing peace-loving and nonthreatening Bella within a state of nature, or under a legal regime that has endorsed the killing of peace-loving and nonthreatening Bella, is Bella's *right* not to be killed. Surely they should want to say that what is at the core of the wrong done to Bella in either case is the violation of Bella's *rights*. I say "should want to say" because, apparently anticipating the present criticism, Rasmussen and Den Uyl seem to resolve not to use the vocabulary of rights and rights violation for describing interactions such as Anna and Bella's. They insist that the view that rights "do not provide normative guidance for individuals in the conduct of their lives" does not preclude "that in the conduct of their lives human beings have particular moral obligations to respect the self-directedness of others." But they also insist "that rights are not the concept which specifies those moral obligations" (111-12).

Presumably, in the state of nature or under an unjust regime, Anna has an obligation to respect Bella's self-directedness, and that obligation would be violated were Anna to kill Bella, but it would be erroneous to describe Bella as having a right against Anna not to be killed. Since rights, in the second sense of "meta-normative," are only rules guiding the construction of a just legal regime, all that can be said in the language of rights when Anna kills Bella in a state of nature or under an unjust regime is that Anna has acted in a way that would be prohibited in a rights-sensitive legal order. This really does move the conception of natural rights out of the core of ethics in a way that is very surprising for natural rights

theorists.

Furthermore, it leaves Rasmussen and Den Uyl with the following dilemma. Either Anna's obligation to Bella is ultimately a matter of obligations that Anna has to herself, or Anna's obligation to Bella is a side-constraint on Anna's behavior reflective of Bella's moral status. In the former case, Rasmussen and Den Uyl will not be able to account for the side-constraint character of Anna's obligation (a side-constraint character usually associated with a right correlative with that obligation). In the latter case, Rasmussen and Den Uyl will be endorsing the existence of side-constraining obligations which cannot be construed as dependent correlatives of rights. For there will be, on their view, no rights for those obligations to be dependent correlatives of.

1. Douglas B. Rasmussen and Douglas J. Den Uyl, *Liberty and Nature: An Aristotelian Defense of Liberal Order* (La Salle, IL: Open Court, 1991). Subsequent citations to this work will appear parenthetically in the text. This paper was presented at a symposium on *Liberty and Nature* organized by the American Association for the Philosophic Study of Society. Aside from stylistic changes, I have added note 10 and the postscript.

2. Here I appeal to formulations of my own which are cited by Rasmussen and Den Uyl. In particular, see Eric Mack, "How to Derive Libertarian Rights," in *Reading Nozick*, ed. Jeffrey Paul (Totowa, NJ: Rowman and Littlefield, 1981). In my formulations, natural function and natural end are distinct, whereas Rasmussen and Den Uyl seem to conflate the two. See, e.g., their statement that "there is an end or function that a living thing has in virtue of its nature, and this end or function is the source of all other ends or functions (values) the living thing might have" (46).

3. The two claims are linked by way of Rasmussen and Den Uyl's identification of (1) whatever is the distinctive potential of a thing, with (2) that feature of the thing the activity or deployment of which keeps it in existence. For they contend that "[t]he actualization of a being's potentialities is needed because a being cannot remain in existence, cannot be the sort of thing it is, if it does not actualize its potentialities, and remaining in existence as the sort of thing it is is the natural end or function of a being" (35).

4. Cf. also: "Conceptually attending to the world is the *method* of using our mind and constitutes the distinctively human way of living" (64); and: "Living rationally or intelligently is a human being's unique excellence—*arete*" (71).

5. Perhaps it is at least in part through this sort of insertion of rationality into the content of eudaimonia that Rasmussen and Den Uyl hope to support the claim that acting in accordance with the rational conclusion of (what I shall be calling) the "expression in a social context" argument must contribute to one's well-being. In the language I suggest in note 10, the insertion of this rationality into the content of eudaimonia means that one has instrumental reason to act in accordance with inferential reason.

6. See, e.g., Rasmussen and Den Uyl's claim that "[t]he morality of our actions is judged by normative principles, not consequences, and yet these principles are based on the final ends of human flourishing which, when achieved, constitute that-for-the-sake-of-which morality . . . exists" (60).

7. Part of the virtue of rationality, as it is broadly construed by Rasmussen and Den Uyl, is that it is necessary for self-directedness (65-66). Cf. also their claim that "human flourishing

does not merely require that a human being possess health, wealth, pleasure, and friendship; he must rather attain these goods through the exercise of his own *reason and intelligence*. Thus, *self-directedness* or *autonomy* remains the central or primary feature of rational or intelligent living" (72; emphasis added).

8. Cf. the argument cited by Rasmussen and Den Uyl from Mack, "How to Derive Libertarian Rights" (96).

9. In terms of the basic relationship between "the moral propriety of individualism" and rights, Rasmussen and Den Uyl entirely endorse Ayn Rand's claim that "[r]ights' are a moral concept—the concept that provides a logical transition from the principles guiding an individual's actions to the principles guiding his relationship with others—the concept that preserves and protects individual morality in a social context . . ." (111; quoted from Rand, "Man's Rights," in *The Virtue of Selfishness* [New York: Signet, 1964], p. 92).

10. The terminology of "theoretical" versus "practical" reason does not well convey the contrasting character of the "social expression" and "obligation to self" arguments. Perhaps it would have been better to speak of "inferential" reason versus "instrumental" reason. The idea is that (1) within the "social expression" argument, the conclusion that persons are rights-bearers is to be inferred from the recognition that each person's well-being is his ultimate normative purpose plus the recognition that a structure of individual rights is the interpersonal expression or manifestation of this pluralism of ends—what is crucial is the *conceptual* relationship of the conclusion and its premises; whereas (2) within the "obligation to self" argument, the recognition of this structure of rights recommends itself to each individual as a necessary instrument of his well-being—what is crucial is the *causal* relationship between affirming and complying with rights and one's well-being.

11. Or to a legal order constructed on the basis of such a system of rights.

12. The existence of others with this moral standing does play this more fundamental role within the "natural function" and "expression in a social context" arguments.

THE MODERN SCHOOLMAN

A quarterly journal of philosophy

founded 1925

William C. Charron, *Editor*

THE MODERN SCHOOLMAN promotes historical research and critical analysis of philosophy in all periods: Ancient, Medieval, Renaissance, Modern, and Contemporary.

Address submissions, subscriptions,
and other correspondence to

Editor, *The Modern Schoolman*

Department of Philosophy

Saint Louis University

221 North Grand Blvd.

Saint Louis, Missouri 63103

Subscription

\$26 a year

Single Issue

\$6.50 each

THE MONIST

AN INTERNATIONAL JOURNAL OF GENERAL PHILOSOPHICAL INQUIRY

APRIL 1993

VOL.76, NO.2

SINGLE ISSUE, US \$9

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COMMENDATIONS AND QUERIES RE *LIBERTY AND NATURE*

Henry Veatch
Georgetown University (Emeritus)

Let no one think that this admirable book is but another manifestation of the wearisome, and by now somewhat threadbare, tradition of present-day analytic moral philosophy! Far from it, for by its very title, *Liberty and Nature*,¹ Rasmussen and Den Uyl would proclaim at once their allegiance, on the one hand, to a decided libertarianism and, on the other hand, to nothing less than an updated Aristotelianism—neither one of which is to be very readily associated with ethics in the mode of so-called linguistic analysis. Thus, by the word “liberty,” Rasmussen and Den Uyl would signify their conviction that human individuals have a primary—yes, even, as they call it, a “meta-normative”—right to self-determination and self-direction in the entire range of their actions and choices. Further, by the word “nature,” they would signify that it is to no less than a *natural* right and *natural* law that individuals can appeal in justification of their right to such autonomy and self-direction.

This much said, one is then immediately inclined to go further and ask: “But how, in this day and age, can one any longer appeal to ‘nature’ in support of anything like moral and ethical claims? For ever since the rise of modern science in the seventeenth century, have we not had it drummed into us that the nature that gets investigated in modern science is a nature that is completely amoral, there being no such things as values, or natural ends, or distinctions between right and wrong, or good and bad, to be found anywhere in nature?” To which Rasmussen and Den Uyl would simply reply by noting that, just as we all recognize that there are quite objectively determinable differences between health and disease, or between being in a flourishing condition and one not so flourishing—and this, throughout the whole of animate nature—so why not likewise acknowledge

that, directly in our day-by-day experience of ourselves as human persons living in the world, we are continually being made aware of, and having brought home to us, the patent differences between two sorts of individuals: those who have so ordered their lives that they might be said to be living as truly intelligent and rational individuals ought to live, and those of whom it can only be said that they are nothing if not downright foolish and perverse in their actions and behavior—and often in their entire mode of life generally?

Let this then suffice, at least for the moment, as but a cursory explanation of what may be understood as the “nature”-pole in the title *Liberty and Nature*. What now of the other pole, the “liberty”-pole? For no less avowedly and unequivocally are Rasmussen and Den Uyl libertarians in their insistence that human individuals should enjoy an entire freedom and liberty in all of their choices and decisions in life, than they are Aristotelian in their insistence that the ground and basis of ethics is no less than nature itself, and more specifically human nature. And so, having taken a passing look at the nature-pole of their ethics, as Rasmussen and Den Uyl conceive it to be, let us now have a look at the liberty-pole.

In their championing of their libertarian ethics of liberty and of the freedom of the human individual to make his own decisions and to pursue his own ends and goals in life, Rasmussen and Den Uyl find themselves immediately up against the whole panoply of entrenched fashions in ethics—fashions that are not just prevalent, but even regnant, in present-day academic circles. It is this type of ethics that is fueled largely by arguments drawn from the so-called school of linguistic analysis in contemporary philosophy, and that, particularly in moral philosophy, traces its origins back to Kant on the one hand and to the utilitarians on the other.

More particularly, then, one might ask, “What is the particular message or instruction that these linguistic analysts would like to convey to today’s moral philosophers?” Presumably, it is a message that runs directly counter to the message that libertarian thinkers like Rasmussen and Den Uyl would like to convey in their ethics. For it insists that the human individual, considered as a moral agent, rather than devoting himself to his own concerns, and to pursuing his own ends and purposes in life, should rather discipline himself to be always and ever “other-regarding” rather than “self-regarding” in his conduct and behavior. As a result, the dominant fashions in ethics today have come to be largely those of an altruism, rather than any sort of egoism. Or, perhaps more accurately, one might say that the recommended stance for moral agents in today’s world should be a strict impartialism toward the interests and concerns of others, as compared with one’s own.

So far as Rasmussen and Den Uyl are concerned, what this all means is that in their efforts to uphold an ethics—call it a libertarian type of ethics—of liberalism and individualism, they cannot very well avoid facing

up to the challenge of the current varieties of altruism and impartialism that are still today so prevalent. Moreover, there is one key resource which the altruists and impartialists tend to rely upon in justification of their efforts to uphold their kind of "duty ethic," as it might be called, as contrasted with the sort of "desire ethic" favored by libertarians. This is none other than the resource which they think is afforded them by a so-called principle of universalizability—a principle which, incidentally, would seem to turn on no more than purely logico-linguistic considerations, as opposed to considerations that make appeal to the nature and being of reality.

In effect, what this principle states is that in all statements in which a person affirms no more than what his or her own interests, aims, ends, purposes, or objectives in life might happen to be—such statements are, as the going lingo has it, just not "universalizable." Thus, for example, the mere fact that I, let us say, happen to like this or that, or that I am concerned to try to achieve such and such ends or purposes in life, does not in any way imply that anyone and everyone else as well must therefore like or cherish the same purposes and goals as I.

But now contrast with sentences and affirmations such as the foregoing, which reflect no more than a particular individual's personal likings or desires or objectives, such other sentences as would contain what might be called properly "moral words"—words such as I "ought" to do thus and so, or it is only "right" that I do this or do that, etc. Clearly, in the case of sentences containing words implying a distinctively moral appraisal, there can be no denying that such sentences are universalizable—and this simply as a matter of linguistic fact. Thus, supposing it to be true that I ought to do thus and so, or that I have a right to do thus and so, it can surely be inferred from sentences to such effect that anyone and everyone else ought to do so as well, or that anyone and everyone else likewise would have such a right, given similar circumstances.

And now consider what the moral is, if you will, that the altruists and impartialists would draw from the applicability of the principle of universalizability in such cases. For they would say—and do say—that in any ethics which concerns itself, in libertarian fashion, simply with such things as the ends, purposes, goals, desires, and projects of human individuals, affirmations that might be made in the context of any such mere "desire ethic" are quite palpably not universalizable. And if they are not universalizable, then the statements and pronouncements made in the context of any such supposed ethics simply cannot qualify as properly moral or ethical statements at all. Nor will the key words contained in such statements—these being merely "desire words," as we are calling them—possibly qualify as "moral words," or words of moral import.

Accordingly, returning now to *Liberty and Nature*, just how do Rasmussen and Den Uyl propose to meet this kind of radical challenge to their ethics—a challenge which seems to do no more, and no less, than

apply the test of the principle of universalizability, with the result that the entire structure of libertarian ethics, as put forward by Rasmussen and Den Uyl, would appear to collapse, as if from but this single stroke! Of course, one device that Rasmussen and Den Uyl might resort to, in order to uphold their ethics of liberty, might be just to repudiate the principle of universalizability altogether. And they do indeed suggest at times that such is the course that they might be inclined to follow, supposing that course to be what it would take to salvage their ethics from the devastation that the linguistic analysts would wreak upon it. For let's face it, in the prevailing climate of present-day academic ethics, a "desire ethic," as contrasted with a "duty ethic," scarcely seems to be given even so much as the time of day!

Surely, though, a far sounder course for libertarian moralists like Rasmussen and Den Uyl to follow would be to question whether present-day moral philosophers may not have tended to confuse certain purely logico-linguistic restrictions connected with the use of particular words in the language, with various real restrictions as these might pertain to the actual facts of reality. Thus, suppose we grant that when mere "desire words" are used in sentences, the effect, linguistically, would seem to be that such sentences are not subject to what has come to be called universalizability. At the same time, the mere fact that such "desire words," turn out not to be universalizable in language surely does not necessarily imply that the objects of such desires in reality might not be the sorts of things that any and all human persons perhaps ought to desire, whether they actually do so or not.

For instance, just recall the well-known passage in Plato's *Euthyphro*,² where Socrates is represented as raising the question of whether things are said to be good because they are beloved of the gods, or whether they are beloved of the gods because they are and are seen to be truly good, or good in fact. Translating Plato's question into a language more consonant with purely secular talk in matters of ethics and morals: Is a thing to be called "good" merely on the ground that people happen to like it and desire it, or has the thing in question come to be desired because it is seen to be good, really and in fact?

Very well, suppose that in a given case we opt for the second alternative as being the relevant one. Surely, this must imply that the goodness or value or excellence of the thing in question is no less than an objective property of the thing. And once a thing's goodness or worth is thus recognized as being objective, will it not follow that the thing in question, so far from being something that just happens to be desired—say, by me—is rather something that ought to be desired? Moreover, since "oughts" are universalizable, as we have said, just like other "moral words," the conclusion follows that whatever it is that I desire on the grounds that I recognize it as being good—i.e., objectively good—must also be recognized as

being something that ought to be desired, and not just by me, but by anyone and everyone else as well, all things being equal.

Surely, though, this entire line of contention may now be seen to be nothing if not misguided, not to say even downright wrongheaded. For the error of so many of the linguistic analysts among today's moral philosophers is their assumption that, since mere "desire words" are not universalizable, any ethics oriented toward the achievement of any of the desired ends or goals that as human individuals we propose for ourselves cannot really qualify as being an ethics at all, because its propositions would not be universalizable. However, this entire line of argument on the part of present-day ethical altruists and impartialists, based as it is on mere linguistic considerations, just will not do. Instead, all one has to do is to go beyond considerations having to do only with the supposed purely linguistic behavior of both "desire words" and "moral words," and consider instead with Plato what the nature of the realities might be behind such words, that is, what such words are to be taken as pointing to or signifying. Then it will readily be seen that such "desire words" as are used to signify no less than what our ends and goals and purposes in life might be—these words can very well turn out to be universalizable after all.

Accordingly, an Aristotelian type of ethics such as Rasmussen and Den Uyl would subscribe to—i.e., an ethics which might be termed a "natural-end" ethics, and which maintains that all of our human actions and activities should be ordered to the attainment of just such a natural perfection and flourishing as befits a human person—such an ethics, for all its having the character of a "desire ethic," and not a mere "duty ethic," turns out to be, after all, an ethics whose propositions meet the test of the principle of universalizability. Nor will the strictures against such a version of a "desire ethic" put forth by present-day altruists and impartialists, with their avowed partiality for a "duty ethic," turn out to be other than baseless and without foundation.

Considerations such as those immediately foregoing have, in effect, returned us once again to that basic framework or structure which Rasmussen and Den Uyl have so brilliantly evoked, and then constructed their whole book around. For it now emerges that the Aristotelianism of the nature-pole of this ethics supposedly reinforces the liberty-pole, just as the libertarianism of their liberty-pole enables them properly to exfoliate what it is that the nature-pole, as they understand it, actually should and does involve. Indeed, separated or divorced from the context of a natural teleology of a more or less Aristotelian cast, there would be no proper basis in fact for the libertarian rights of individuals, which Rasmussen and Den Uyl are so eloquent in insisting upon. And no less so, take away the libertarian freedom of choice on the part of individuals that Rasmussen and Den Uyl are so insistent upon in connection with the liberty-pole, and the guidance and direction by nature as to the kinds of persons we human beings should

try to be and become would turn out to be a determination that is purely natural in the modern sense of "natural," and therefore not one that first needs to be understood, and then freely chosen and acted upon.

With this, though, and directly at the end of my discussion, I wonder if I might supplement my hitherto almost continuous commendation of this excellent book with at least the suggestion of a possibly disturbing question: Is there a possible ground for suspicion that Rasmussen and Den Uyl's libertarianism, which indeed would seem to fuel their entire discussion of liberty in their book, might be in conflict at times with their Aristotelianism, which presumably is the inspiration for their entire discussion of nature? Thus, prompted by their libertarianism, Rasmussen and Den Uyl do seem to suggest—even to insist—that an individual's life, morally and ethically considered, ought to be entirely self-directed and therefore a creation entirely of his own doing and making. At the same time, though, their Aristotelianism seems to lead them to suggest that nature, as it were, sets up no less than objective and seemingly external standards, which the human individual is under obligation to observe and to try to meet, whatever his personal inclinations and likings to the contrary might happen to be.

Is it not, then, at least conceivable that Rasmussen and Den Uyl are caught up in a certain inescapable tension between the notion of an individual's life as being entirely the product of his own self-direction and self-creation, and the notion of that same individual's life as being something that requires an ongoing and continuing deference to such external standards of human excellence and development as are set by nature herself?

Now this is not necessarily to say that if there is such a tension within any individual's life, in order to overcome it, an individual's supposed absolute right to an unimpeded self-direction of his own life must presumably occasionally give way to an "other-direction," such as would have to be provided by family, or friends, or the community, or whomever. Nevertheless, even if one stops short of violating libertarian principles to the extent of saying outright that sometimes and somehow an individual's right to self-direction has to give way to an actual other-direction—even if one refrains from ever going quite this far—still might not Rasmussen and Den Uyl have to admit that a libertarian absolute right of an individual to self-determination and self-direction is at best but a necessary and not a sufficient condition of that individual's leading the good life, or at least the kind of life that he, as a human being, ought to lead? And what, then, would Rasmussen and Den Uyl recommend as a possible way of converting such a mere necessary condition into a sufficient condition?

1. Douglas B. Rasmussen and Douglas J. Den Uyl, *Liberty and Nature: An Aristotelian Defense of Liberal Order* (La Salle, IL: Open Court, 1991).
2. Plato, *Euthyphro*, 10A.

NATURAL ENDS AND NATURAL RIGHTS

Jeffrey Paul
Bowling Green State University

In *Liberty and Nature*,¹ Den Uyl and Rasmussen make the following argument in defense of natural human rights:

1. Human beings, like all living entities, are teleologically organized so as to satisfy a certain natural end.

2. Nonconscious living entities are organized so as to automatically strive to advance that end. Entities which are both conscious and rational (i.e., human beings) are not so organized with respect to the part of their behavior that is under their volitional control.

3. Unlike nonconscious living entities, human beings must attempt the satisfaction of that end by choice.

4. Therefore, the natural end (i.e., human flourishing) of human beings is the final normative end toward which all human beings ought to strive.

5. A necessary condition and constituent (or, as they call it, the form) of human flourishing is self-direction or autonomy.

6. Therefore, because no human being ought to be prevented by another from flourishing, it follows that no human ought to be prevented from exercising his autonomy. To do so would be to constrain both a necessary condition and a necessary constituent (the form) of flourishing. (Presumably, what this means is that to prevent the exercise of autonomy in any case of its possible exercise, is to prevent the pursuit of human flourishing from which it is inseparable.)

In what follows I will contend, first, that the factual claim which undergirds this entire argument, that living beings are teleologically organized, is false. And second, I will maintain that even if one could demonstrate that there is, for man, a natural normative end which is human

flourishing, *it does not follow* that what Den Uyl and Rasmussen call the necessary form of flourishing—human autonomy—is a right of each which imposes a duty of forbearance upon all. That is, I will claim that the authors fail to demonstrate that Lockean or Nozickian rights are derivable from their normative point of departure.

1.

The claim that human flourishing is the normative final end toward which human activity ought to be directed rests upon the antecedent contention that human beings have natural ends. This is dependent, in turn, upon the premise that all living things, conscious and nonconscious, are teleologically organized so as to realize a certain natural end. By this, Den Uyl and Rasmussen mean that

[t]he actualization of a being's potentialities is needed because a being cannot remain in existence, cannot be the sort of thing it is, if it does not actualize its potentialities, and remaining in existence as the sort of thing it is is the natural end or function of a being. (p. 35)

Why should it follow from the fact that a thing cannot remain in existence as the sort of thing it is unless it actualizes its potentialities (i.e., as a living thing of a certain type) that being a living thing of a certain type is a natural end? Because, they claim, there are "some facts [about living things] which cannot be adequately understood without appealing to a natural end or function" (p. 43). That is,

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

Now, quite obviously, there *can* be laws of the sort that Den Uyl and Rasmussen are constrained to deny. That is, presumably we could discover, in principle, how the DNA of a particular organism leads through many chemical transformations to its maturation, just as we can employ causal laws to predict that the interaction between two chemicals will produce a third. Clearly, it would be misleading to suggest that there is some goal which causes the maturation of an organic entity, in the way that a child's goal of learning his multiplication tables motivates him and, therefore,

causes him to do so. It would be equally erroneous to portray the immune system's successful repulsion of an infection as the realization of an organism's final end of maintaining its existence. Such an explanation would not help us to diagnose the death of someone due to pneumonia. Only a causal and ultimately molecular explanation would enable us to diagnose the source of the failure in this case. The physical development or response of a living entity toward some "end" is something that we metaphorically ascribe to it, not something that has any literal analog in genuine examples of end-seeking, i.e., human intentional behavior, where an end-in-view does causally bring about the envisaged goal. There are, of course, some human artifacts and inventions which, though their movements are explained by mechanical laws, have been constructed in the first place so as to satisfy a human purpose. In this sense, then, their constituent parts and their movements may be said to have a function, i.e., to serve a human purpose, to realize and be directed by an end-in-view. They serve a human purpose only because they have been invented and are used to do so by human beings. Indeed, there are natural objects (like trees which cast shadows) which can be used by human beings to satisfy a purpose—in this case, to tell the time by using the tree as a natural sundial. But these ends are envisaged by human beings and realized through human intellectual and/or physical action. It is erroneous to ascribe to a system which maintains itself in a certain state through its causal properties, regulation by an intrinsic telos. The most we can say about it in a literal sense is that its processes are causally linked so as to maintain it in a certain state, not that this state itself has efficacy as some sort of final cause. The most we can say metaphorically is that it behaves *as if* it has an end which regulates its activity, as an agent's purpose brings about its future behavior.

If, therefore, it is a mistake to ascribe a teleological organization to living things generally, the ascription of a natural, inherent telos to human life must also be a misapplication of this principle. There is no intrinsic "end" which causally regulates the constituent parts of a human organism. It is true, however, that human beings can devise purposes to inform their voluntary actions and govern their lives. These purposes are subjectively imposed by them upon their actions. While it is true to say that if these purposes are to be effectively served, then they *ought* to be consistent with both the natural limitations and capacities of the human species—it is false to allege that these *ends* exist apart from their subjective formulation by a conscious intelligence.

2.

If Den Uyl and Rasmussen fail, as I think they do, in their neo-Aristotelian project of supplying grounds for the claim that the normative end of

human action is derivable from the prior existence of a natural human end, then we may independently consider the second half of their project. Assuming that they had succeeded, we may inquire as to the derivability of natural rights from a normative premise which asserts that each human being ought to strive toward his natural end, human flourishing. If human flourishing is the ultimate good for each person, does it follow that each person has Lockean rights to human liberty?

In constructing their demonstration, Den Uyl and Rasmussen recognize that a derivation of the following kind is fatally flawed:

1. Each individual ought to strive to flourish, as its final end.
2. Therefore, each individual *must* have sufficient freedom of action to enable it to pursue that end.

The problem with such an argument, they recognize, is that it would justify the exercise of liberty only when it is used in pursuit of that final end, whereas the Lockean right to liberty is supposed to be unconditionally exercisable. Lockean rights, then, cannot be justified merely as the necessary means to the pursuit of human flourishing, for that would not justify liberty *as such*. Only if the exercise of liberty can be justified unconditionally, can it attain the status of an indefeasible right.

Den Uyl and Rasmussen have two separate arguments that purport to show that the right to liberty may be exercised whether or not it conduces either to the pursuit of or to the fulfillment of the human end of flourishing. The first of these rests upon the claim that self-directedness or autonomy is not only a necessary means to human flourishing, but a necessary constituent of it as well. As a necessary constituent of it (indeed, as the very form of human flourishing), self-directedness is inseparable from it. In preventing, therefore, the use by any person of himself, a rights violator necessarily interferes with the human flourishing with which self-directed activity is inextricably mixed. Therefore, self-directed activity as such ought not to be obstructed by others. This, Den Uyl and Rasmussen argue, logically follows from the claim that autonomy is a necessary constituent of flourishing:

[S]ince self-directedness is both a necessary condition for self-perfection and a necessary feature of all self-perfecting acts at whatever level of achievement or development—what we have called the very form in which human flourishing exists—self-directedness just as such is always good for each and every human being. (p. 95)

The problem with this argument is that it provides no more support for its conclusion than the flawed one which described self-directedness

only as a necessary condition of human flourishing. For even *if* autonomy is the form of human flourishing, it does not follow that it could not as readily be present in examples of nonflourishing—e.g., acts of self-abnegation, acts of persecution, acts intended to humiliate an innocent party, and so on. Only if self-directedness were both necessary for human flourishing and necessarily incompatible with all other anti-flourishing activity could self-directedness, as such, be defended as a right. The latter would be the case if it could be proven that self-directedness is both a necessary and a *sufficient* condition or constituent of human flourishing, so that to inhibit self-directedness would, in each and every possible case, be to impede flourishing. Additionally, if it could be demonstrated that self-directedness is the *same* as human flourishing, so that to prevent the former is to constrain the latter, Lockean rights would be derivable from the premise that one's own flourishing is the highest good for each person.

The problem with these two strategies is that they rest on wholly implausible foundations. For self-directedness is and has been a constituent of every manner of wicked behavior. Indeed, if this were not the case, the assignment of moral blame to evil actors for their evil actions would be impossible. Would anyone wish to claim that all examples of good behavior are self-directed, while all evil activity is involuntary and coerced? I think not.

Den Uyl and Rasmussen, however, seem to be reaching for just this sort of strategy when they advance the following claim:

A world in which human beings are self-directed but fail to do the morally proper thing is better than a world in which human beings are prevented from being self-directed but whose actions conform to what would be right *if* they had chosen those actions themselves. (p. 95)

In other words, a profoundly evil act, if voluntarily undertaken, is morally superior to a coerced act of unalloyed goodness. And a world in which the rights of aspiring villains are preemptively transgressed is, on this view, morally inferior to a world in which their autonomous conspiracies are permitted to continue. And yet it seems doubtful that a world in which Lenin, Trotsky, and Stalin were assassinated before they had committed their first acts of criminality could really be said to be inferior to a world in which they were forcibly opposed only after they were in a position to effectively violate the rights of others. Can a world which protects the authorial autonomy of totalitarian conspirators be morally superior to a world in which the murder of millions of Russians, Ukrainians, and Georgians, etc., is *prevented* by the prophylactic assassination of this troika? It would seem, at best, highly controversial.

Rasmussen and Den Uyl further elaborate this putative defense of self-directedness as such in the following way: “[I]f I am not the author of the activity, that activity is not good or right for me even if it should nonetheless be true that if I were the author of that activity it would be good or right for me” (p. 95). Suppose I am compelled to physically exercise, in spite of the fact that I have concluded that it is a waste of my time to do so. As I get used to my daily routine and begin to appreciate its benefits, I conclude that my newly attained fitness in fact allows me to complete more of my highly valued projects than would have otherwise been possible and so is a savings of time. I therefore voluntarily undertake to do what I had previously been forced to do. I exercise. It is at least not obvious why one would say that this outcome is morally inferior to the one which would have emerged from my former sedentary life style. For, by hypothesis, I now acknowledge that as a result of my enforced activity I am better off than I would have been if I had been left to my own devices. Am I misinformed in this conclusion? Or have I just not been adequately schooled in the morally superior value of autonomous, self-destructive behavior when compared with coerced, constructive activity? Perhaps Den Uyl and Rasmussen are simply mistaken in their claim that “self-directedness just as such *is always* good for each and every human being” (p. 95; emphasis added). Do they really intend to claim that self-directedness is good even when it massively subverts the goal of human flourishing?

Even if this argument fails, as I think it does, Den Uyl and Rasmussen have another which they hope is logically separable from it and, therefore, does not share its vulnerabilities. According to this argument, rights do not imply the rightness of what they permit, they only define the legal framework in which moral activity can take place; rights are not normative concepts, but meta-normative ones. Therefore, to successfully demonstrate that they are universally authoritative, I need not prove that their exercise leads to or is identical with morally good behavior, nor, presumably, that their violation is evil. I merely have to show that rights are necessary for the very possibility of human flourishing, whether or not their protection leads in every case to examples of human flourishing. But how does the protection of Lenin’s rights as a young man contribute to the *possibility* of human flourishing? Perhaps by protecting the possibility of *his* flourishing. But suppose we conclude that, given his most deeply held values, it is unlikely that his autonomous behavior will lead to his flourishing, but more probable that it will culminate both in his own diminished flourishing and in that of millions of others. How can the protection of Lenin’s rights, given Rasmussen and Den Uyl’s natural-end ethics, be conducive to the likelihood of flourishing? Rasmussen and Den Uyl would presumably argue that rights should be respected not because of the *likelihood* that their protection will lead to a moral outcome, but because they guarantee its *possibility*. True enough. But they make its antithesis, evil, possible as well. If

evil is not the natural end of man, what is so great about meta-normative principles which are neutral between good and evil? Den Uyl and Rasmussen's answer is to revert to their original argument:

The natural end is an inclusive end which allows for the morality of an action to be determined by whether an action is an instance of the virtues which constitute it, and not by the calculation of the specific consequences of the action. This is especially true for being self-directed or autonomous, since this is *the* virtue which makes all other virtues possible. As said before, we know that being self-directed is good or right simply from our analysis of the nature of human flourishing. Further, we know that being self-directed or autonomous is good for each and every human being just in virtue of their being human. (p. 113)

Of course, having come full circle, what Rasmussen and Den Uyl still must show (but haven't) is that self-directed activity for *every human being in every case* is good, just in virtue of its being self-directed—that self-directed activity is good as such. To do this they must demonstrate how their own natural-end ethics, which advances the claim that action is to be morally evaluated by its contribution to that end, can rank self-directed anti-flourishing activity as axiologically superior to nonautonomous flourishing activity. Trying to identify autonomy with flourishing is not an option for them as they confront the general opinion of mankind that most evil is voluntarily undertaken.

1. Douglas B. Rasmussen and Douglas J. Den Uyl, *Liberty and Nature: An Aristotelian Defense of Liberal Order* (La Salle: Open Court, 1991). All parenthetical references to page numbers in this essay are to *Liberty and Nature*.

REPLY TO CRITICS

Douglas B. Rasmussen
St. John's University

and

Douglas J. Den Uyl
Bellarmino College

We would like to thank Fred Miller for organizing the session on our book for the American Association for the Philosophic Study of Society (AAPSS) in conjunction with the Eastern Division meeting of the American Philosophical Association (December 1992). Special thanks are due the three commentators—Martin Golding, Russell Hittinger, and Eric Mack—who read their criticisms at the session and who have been gracious in allowing their remarks to be included here; two other individuals—Henry Veatch and Jeffrey Paul—were kind enough to offer criticisms which have been added to this volume but which were not part of the original AAPSS session. We hope that our responses to their insightful comments will do them some measure of justice.

Martin Golding notes in his comments that he will focus on what is at the heart of our book, namely our derivation of natural rights. While this is certainly what Professor Golding does in his comments, it seems to us that he really offers *two* main topics of criticism. Although the two topics are not unconnected, the one that occupies roughly the first half of the commentary deals mostly with ethics, while the second half of the commentary is more directly on rights.

The first issue centers around the distinction between desire and right desire, which is itself introduced by Gewirth's worry that an Aristotelian ethics cannot provide sufficient guidance in determining what is or is not

consistent with "human nature." But Golding seems to be making a point that is the opposite of Gewirth's. For Golding, Aristotle *can* distinguish between desire and right desire because he has a substantive theory of human nature. We, on the other hand, given our commitment to pluralism and individualism, end up with a "minimalist Aristotle" that is in danger of being unable to distinguish desire from right desire. In this connection it is not always clear to us whether Golding fully appreciates the inclusive-versus dominant-end controversy over these questions. He seems to take the contemplative life as the standard by which all lives should be measured in Aristotle. But this dominant-end interpretation runs counter to the inclusive-end treatment we give Aristotle in the book. But of course, in saying that Aristotle has an inclusive-end theory, we might be doing no more, from Golding's perspective, than simply pushing Gewirth's problem back onto Aristotle instead of ourselves; so let us deal with the matter as it applies to our work.

The first thing to be aware of is that the distinction between desire and right desire is not directly relevant to the question of rights. As we conceive of rights, they are not designed either to discriminate between desire and right desire or to promote the latter over the former. Instead, rights outline for us the social conditions which are necessary to protect such conduct *when and if* any given individual chooses to act on right desire or chooses to be "autonomous" in some fuller and more self-actualizing sense of the term. There is then no *direct* connection between actions based on right desire and actions to which one has a right.

Golding wants to treat autonomy or self-directedness as one good among a possible set of goods, which one might want more or less of depending on one's life plans and circumstances. One might, for example, trade a little autonomy for more health by letting the AMA determine the extent to which one is allowed to smoke. While there are undoubtedly ways of understanding self-directedness or autonomy in this one-good-among-many fashion, this does not represent our own conception. When we say that autonomy is a necessary condition for flourishing, we do not mean that it is the first good one must acquire before one can acquire other goods; rather, for any good to become a constituent part of our eudaimonia it must be chosen by us. In this sense, "autonomy" or self-directed action is the condition through which any good becomes a *good for me* and thus a constituent part of *my* eudaimonia. It is not something that can be traded off for other goods, because for me to see those goods *as* goods I must incorporate them into my nexus of goods by some act of choice. This is what it means for value to be agent-relative. Yet, almost paradoxically, this setting for the agent relativity of value means we do not have to "know how autonomy stacks up . . . in a variety of possible concrete pictures of eudaimonia." In the concrete, self-directedness would transform an "abstract" good to a good *for some concrete person*. "Autonomy" under-

stood in this way can be identified independently of anyone's particular form of eudaimonia, because it is through self-directedness that particularization itself occurs.

At this juncture it might be tempting to point to lives where "autonomy" has been restricted and yet eudaimonia apparently achieved. It could be argued that some people may need more "paternalism" in their lives than others to achieve their well-being. There are a number of points to be made about this sort of concern. The first, and one Golding himself makes, is that noticing this about people does not go very far in determining what rights people might have. Secondly, from our perspective ethical theory is not in a good position to predict a priori which acts of paternalism will lead to the desired end (and to what extent). Not only does our commitment to individualism and pluralism tell against such predictions, but so does the central role prudential judgment must play in ethical conduct. It is not that paternalistic generalizations have no utility, but rather that they should be treated as just that—generalizations about a possible means to an end and not a constituent part of an individual's flourishing. Finally, paternalism is a factor in an individual's flourishing only if that individual incorporates its effects, methods, or object into his or her nexus of values by some self-directed act. We reject what might be called "church ethics" whereby if one just does the right things bliss will come whether one wants it to or not.

Golding is quite right to recognize that for us the transition to rights is integrally bound up with self-directedness. He is also correct to notice that some of his own work on rights appears in a pivotal place in our discussion of this issue and has greatly helped us clarify our own conception of rights. This may have led him, and perhaps other readers as well, into thinking that our approach is fundamentally like his own. There are, however, important differences. In the first place, the problem of rights for us would not be framed in terms of whether one person should concede to another a rights claim. Such an approach is fundamentally contractarian and therefore not particularly suited to an Aristotelian orientation. We are bound to conceive of rights not within a system of competing claims, but with respect to the obligation of self-perfection. The contractarian approach seems to push one either in the direction of expressing rights in terms of universal agreement or in the direction of seeing rights as a function of some objective or genuine good. The former makes no direct appeal to self-perfection and can therefore be rejected. The latter, however, appears compatible with an Aristotelian approach.

While appeals to genuine or objective goods may be quite consistent with some versions of Aristotelianism, it does not exactly represent our own way of dealing with the issue of rights. The point is not to find a genuine good which both (all) claimants would have some reason to recognize as a right, but rather to ask what the purpose of rights might be in

the first place. Since the Aristotelian framework already presupposes a commitment to and recognition of the social character of individuals, it is not the purpose of rights to create sociality by arbitrating potential disputes among claimants. That is, again, the contractarian way. Instead, one must discern the role rights should play in conditions of social life where flourishing is understood to be individualized and pluralistic. What one is looking for then is not one possible genuine good among others upon which to hang a theory of rights, but rather a good or principle that both looks to the obligation of self-perfection and meets certain other conditions, such as having some real theoretical work to do and being of a form that respects the pluralistic and individualized nature of self-perfection. The central problem here, and thus the central condition to be met, is to find a principle that not only looks to self-perfection but also can be characterized as truly universal—universal not just with respect to persons in general but with respect to *each and every act* that may become a part of their flourishing. And to assure that some modes of flourishing are not given antecedent preference over others, the principle chosen must also not give an institutional bias to certain forms of flourishing. It is our contention that only self-directedness or autonomy as described earlier meets these stringent conditions.

If the problem were really as Golding suggests—namely, one of choosing one or more appropriate genuine goods from among a possible list of such goods—then he would be correct in claiming that whatever one chooses is just as likely to support positive rights as negative ones. In other words, if, in Rawlsian fashion, we had to select from among a list of primary goods which ones would ground basic rights, then some of those goods are as likely to call for positive action as they are forbearance. Hence, autonomy, respect, food, and wealth might all be among the candidates for our allegiance in living the good life and in providing standards for proper moral conduct. But what if, as we are arguing, rights function instead to provide the necessary constraints upon social interaction that create the conditions so that the pursuit of these primary goods might be undertaken? Viewed in this way, it is irrelevant to note that primary good X is needed for P's (or anyone else's) flourishing, because rights are not norms which help define the terms of appropriate conduct, but rather *meta-norms* which define the conditions under which pursuit of any of those goods will take place. Again, it is not *any* "genuine good" that will keep this distinction sharp, but rather one whose own content is supplied in the concrete by the pursuit of particular ends while being in the abstract neutral with respect to various forms of flourishing. Such is the nature of self-directedness.

Russell Hittinger sees *Liberty and Nature (LN)* as an attempt to articulate a perfectionistic liberalism. He is sympathetic toward such an

attempt but dubious of whether a natural right to liberty can indeed be of any ethical use to political theory. Before responding to Professor Hittinger's doubts, however, it should be made clear just what we take the function of the natural right to liberty to be. This right is not primarily of use in directly adjudicating a particular legal case, which must indeed involve considerations of culture and circumstance; rather, its purpose is the establishment of a certain political context in a society. As we say throughout *LN* (85, 112-13, 205-6), rights provide guidance in the creation, interpretation, and justification of a polity's constitution. This is part of what we mean by calling rights meta-normative principles.

For brevity's sake, we will confine our reply to what seem to be Hittinger's three main reasons for doubting the usefulness of the natural right to liberty:

1. Hittinger is worried that our argument for the natural right to liberty is nothing other than a faculty argument decorated in Aristotelian clothing, meaning, we take it, an argument based on a natural power of human beings but not on what is naturally appropriate, good, or right for human beings. And if this is so, our argument cannot establish the natural right to liberty as a "claim-right"—a right which provides the normative basis for a legally imposed obligation not to use persons for purposes they have not chosen. The natural right to liberty would instead be essentially amoral, and, as Hittinger notes, "from the fact that a person has the capacity for agency, nothing can be drawn for showing the moral ground of an individual's duty." Such an amoral right (that is, mere power) would provide no normative basis for differentiating between legitimate and illegitimate governmental power.

We can only say here that we agree with Hittinger. Such an argument would indeed be inadequate, but this is not our argument. We specifically state that our argument for the natural right to liberty is based on an understanding of the human telos and not merely the natural powers possessed by human beings in some state of nature (*LN*, 80). We thus do not wish to deny a connection between politics and ethics, but we do not wish to identify the two either.

2. It is our understanding of the human telos that is also a basis for Hittinger's doubts about the usefulness of the natural right to liberty. Regarding our conception of the telos, there seem to be two questions raised by Hittinger: (a) What is it that makes autonomy or self-directedness valuable? and (b) Is the self-perfection of the individual human being truly the ultimate moral purpose according to a natural-end ethics?

Regarding (a), Hittinger seems to hold that autonomy or self-directedness is valuable only if it is directed at the human good—that is, Hittinger conceptualizes self-direction as an instrumental value external to the nature of human flourishing. In our theory, however, the moral value of self-direction itself is not based on its being a mere means to the human

good, but is due to the very character of the human good or telos. The value of self-direction results from the fact that self-direction as such pertains to the very essence of human flourishing.

According to our theory, human flourishing is the ultimate end and is not sought for the sake of anything else, because it is an end constituted by activities which are themselves final ends. Human flourishing is an inclusive end. Thus, it is possible for some activity (e.g., maintaining one's integrity or pursuing a friendship) to be done for its own sake and still be expressive of the overall end (human flourishing) of which it is a constituent. The central activity which unites and integrates the activities of human flourishing into a coherent whole for each individual is rationality. There is no activity, among those activities that constitute human flourishing, that does not involve the exercise of reason or intelligence. Rationality is not a single activity but is expressed in the use of the virtues which constitute and make possible the achievement, enjoyment, and coherent integration of the goods that an individual human life requires. Thus, rational or intelligent living is the unique excellence or *arete* for an individual. However, since human reason or intelligence is not something which functions automatically, but requires effort on the individual's part (to both initiate and maintain), self-direction is not merely an external means to human flourishing. Rather, it is the central, necessary feature of the telos which must be present in any activity that is a constituent of the telos.

Hearing this reply, Hittinger might respond that this still does not make a difference to his objection; because, when we get down to fundamentals, "morality does not require us to justify the fact that human beings act freely, but rather whether such and such an act has moral rectitude." Such a response would, however, miss its mark. First, self-directedness (or autonomy) and human reason (or intelligence) are not in our theory two separate faculties, but distinct aspects of the same conscious act. The act of exercising reason, of using one's intellectual capacity, is not for us something automatic.¹ It is something that the individual human being needs to initiate and maintain and is of fundamental moral importance. If a person does not exercise his reason, there will be nothing for which he is responsible. Nothing will be right or wrong for him, and he will live as an amoral being. Because of this failure, he will remain unfulfilled; his life will not be a good one. In a profound way, his life will not really be his. This is why we say that "[b]efore ever addressing questions of what someone should think, how someone should act, or what they should do, we know that human beings ought to use their minds, act on their own judgments" (*LN*, 94). Of course, we readily acknowledge that even the admission of the ultimate importance of self-directedness to the very nature of human flourishing is not sufficient for morally judging the rectitude of a person's act. In fact, we explicitly note that the fundamental value of thinking and living for yourself can only be seen in abstraction from its object or any consider-

ation of circumstance. The issue of exercising one's reason is always embedded in some issue or object and is seldom faced abstractly, but the abstract point about the fundamental value of self-direction is crucial. It shows the importance of individual effort to what some assume "naturally" takes place, and brings us to the second reason why this possible response by Hittinger misses its mark. The value of self-directedness is for us not primarily of use when dealing with issues of normative ethics—that is, in answering such questions as "What is my ultimate good?" and "What ought I to do?" Rather, the value of self-directedness is primarily of use when it comes to dealing with issues that concern the ethical character of the basic political context in which individuals try to fashion morally worthwhile lives for themselves. The role of the value of self-directedness in our argument for the natural right to liberty will be noted shortly.

Regarding question (b), Hittinger remains to be convinced that the ultimate moral purpose of a natural-end ethics is the self-perfection of the individual human being. He mentions our individualistic premise in his oral comments and remarks in a note that this emphasis on the individual is disputable and that it should be acknowledged that individuals pursue social ends that are of intrinsic value. By way of response, we can only say that *LN* is from beginning to end an argument for the political implications of a natural-end ethics in which the human telos is not a Platonic *eidōs*. There is no flourishing of "human being," but only of individual human beings. However, since the telos of an individual human being is on our account an inclusive end, and thus can be constituted by ends that are valuable in their own right, our view does not reduce to an egoism in which everything else is valuable only as a means to individual well-being. Our discussion in *LN* of the intrinsic value of character-friendships and the virtues—not to mention the many values that exist because of the social and political character of human beings—makes it clear that it is possible for many things to be valued for their own sake and still claim that the ultimate moral purpose of a natural-end ethics is the self-perfection of an individual human being.

3. The political importance of these issues can, perhaps, be more clearly seen if we consider Hittinger's third reason for being dubious about the political usefulness of the natural right to liberty. In response to our claim that there is a difference between normative and meta-normative principles, Hittinger asks, "How can anyone be obligated to respect the choices of persons if one does not know whether these choices are worthy of respect?" He notes that morality is after all a matter of discovering what the good is and choosing to do it, and this cannot be determined without greater ontological and moral specificity. So rights are necessarily too clumsy to handle questions about what determines the moral authority of a polity's constitution.

Hittinger's dismissal of the importance of the normative/meta-norma-

tive distinction actually begs the question. Must all ethical principles of a natural-end ethics function only as guides to individuals in their pursuit of self-perfection in some concrete situation where knowledge of the specifics is crucial? Could it not be that the nature of human flourishing is such that there might need to be principles which are concerned with protecting the condition for the possibility of achieving self-perfection interpersonally? And could the nature of human flourishing tell us something about what such a condition is and give us guidance regarding the essential character of its protection? Each of these questions is addressed in *LN*, but we can only provide summary answers here:

a. Human flourishing is individualized not only in the sense that it is not some Platonic form but also in the sense that it only becomes real, achieves determinacy, when an individual's unique talents, potentialities, and circumstances are considered. In other words, there are individuating features to human flourishing that are neither included in nor implied by an abstract consideration of human flourishing, and these are crucial in determining what an individual ought to do. Yet this implies that the virtues and goods that constitute human flourishing are not concretely the same for all human beings, that their determinate form varies, and indeed that it must vary to the extent that human beings are individuals. Thus, ethical principles whose function is to provide guidance to the individual on how to achieve fulfillment can only be useful if an individual employs (not in a recipe-like manner) practical reason to determine just what the appropriate course of action in the concrete case is. Thus, we agree with Hittinger that rights are not very useful ethical principles in providing an individual guidance in how to conduct his or her life—be it alone or in the company of others.

b. However, the individualized character of human flourishing creates a need for another type of ethical principle once we realize that human flourishing is only achieved with and among others. We are social beings, not in the Hobbesian sense of merely needing others to get where we want to go because we are powerless on our own, but in the sense that our very maturation as human beings requires others. Indeed, a significant part of our potentialities is other-oriented. If this is true, however, there is a difficulty. If one person's particular form of flourishing is different from another's and may even conflict, and if persons can prevent others from being self-directed, then certain interpersonal standards need to be adopted if individuals are to flourish in their diverse ways among others. There needs to be an ethical principle whose function is not primarily that of guiding a person to self-perfection, but that of providing a standard for interpersonal conduct which favors no particular form of self-perfection while at the same time providing a context for diverse forms of self-perfection to be achieved. Such a principle provides a context by protecting that which is necessary to the possibility of each and every person flourishing,

regardless of what determinate form the virtues and human goods of flourishing take in their lives. Thus, it is very important that there be such a thing as a meta-normative principle.

c. Given what we have already said about our conception of human flourishing and the central, necessary role that self-directedness plays in this conception, self-directedness is that feature of human flourishing that everyone must first have protected in the concrete case if they are to flourish, and it is the only such feature. A principle that provides for the protection of the self-directedness of persons will not favor any particular form of flourishing, but will still allow the possibility that everyone can flourish.

d. The condition that must be present in society if people are to have any possibility of being self-directed is that they not be used for purposes they have not chosen. The meta-normative principle that protects this condition is the natural right to liberty. A polity whose constitution is based on such a principle will provide the legal context that protects the possibility of self-direction; and while this does not guarantee that people will be self-directed, much less conduct their lives in self-perfecting ways, it does provide a connection between—though not an identification of—the ethical and the political that is both necessary and sufficient to keep our argument from falling outside the pale of ethics.

In his opening remarks, Eric Mack worries about whether he has a correct understanding of our argument. It shall not be our contention that Professor Mack has exactly misunderstood our position so much as that he has filtered it through his own conceptions of ethics and political theory. In doing this, Mack ends up with the sort of dilemma that applies more to his own approach than to ours.

Mack seems committed to what Den Uyl in *The Virtue of Prudence* labels “moral dualism.” The hint of this comes in the last line of his initial comments, where we are told that not all of ethics can be explained in terms of obligations to self. This suggests that ethics has two distinct and separable theoretical modes: (1) a theoretical foundation that looks to the activities, development, projects, or flourishing of the individual, and (2) obligations directed toward interpersonal relations. While there might be norms implied by the first category which say something about our conduct toward others, not all interpersonal norms can be reduced to that first category. Some must have strictly interpersonal roots. The most important of such interpersonal principles are rights.

It was probably Henry Sidgwick at the end of the *Methods of Ethics* who first identified the dichotomous character of modern practical reason. He was nevertheless reluctant to accept it. Mack, in contrast, embraces it. There is no reason, so the story goes, that the moral landscape cannot have two quite independent, but equally necessary, sources of moral obligation. All efforts to reduce one to the other have and will fail, so the best option

is to give up moral unitarianism altogether. Yet moral dualism seems to us to have problems quite analogous to dualism in mind/body relations. Do the two sources of obligation interact or affect each other, and if so how? Is one superior to the other, and can one make such an evaluation without begging all sorts of basic questions? How do we determine which obligations are covered by which source? Are there areas of overlap? These questions, and the problems they raise, suggest to us that moral dualism is inherently unstable. We have sought, therefore, to avoid it.

It would be a mistake, however, to suppose that some of the reasons Mack may have for adopting moral dualism are not also reasons we have for offering the kind of theory we do. In both cases, for example, there is a desire to develop a theory of rights which does not commit the theorist to agent neutralism or impersonalism, at least in all areas of ethics. In addition, our politics are quite similar. We both seek to find some way in which Lockean rights can be given some support by our respective approaches to ethics. Yet for Mack, rights have a central—if not *the* central—role to play in ethics. For us, in contrast, rights are not central to ethics at all. Indeed, their relationship to normative ethics is quite derivative. As we have repeatedly said: to make a rights claim is *not* to make an ethical judgment in any ordinary sense of “ethical judgment.” Rather, what one is doing is making a “meta-normative” judgment—a judgment which, although ethical, is not descriptive of anyone’s particular good or any obligations one may directly have toward oneself or others as a function of the requirements of flourishing. The intuitive idea here, and perhaps the very one that leads Mack to moral dualism, is that rights-respecting conduct does little to further one’s self-perfection. But now the distinction between “normative and meta-normative” may make it look like we share Mack’s moral dualism and thus that we too will have as much trouble explaining the relationship between norms and meta-norms as Mack does with respect to his two sources of obligation. Unlike moral dualism, however, we believe that there *is* a linking principle shared by rights theory and ethics both. That principle is, of course, self-directedness.

Having made our point in the abstract, let us further elaborate by looking at some of the specifics of Mack’s criticism. The essence of that criticism is to suggest that our theory of rights is two-pronged, but the success of each prong comes at the expense of the other. One obvious way out would be to adopt moral dualism, which would give each prong its own inner logic, and thus neither would succeed at the expense of the other. Another possibility is to make the two prongs one. Mack asserts that this is the strategy we will try to take. We will, in other words, try to reduce the “social expression” argument to the “obligation to self” argument. This attempt, Mack claims, will fail. Indeed it will, for that would be Henry Veatch’s argument—one that Mack notices we reject but somehow misses the point of that rejection. We cannot, however, adopt the “social expres-

sion" argument (as Mack seems to want us to) because that would make the Aristotelian ethic irrelevant with respect to the establishment of rights.

To solve the problem, we must recognize that although moral dualism may provide distinct sources of obligation, it does nothing to counteract the notion that all ethical principles are of the same type, with variations coming only through degrees of obligatoriness. With the understanding that ethical principles are not all of a piece, the "social expression" argument does not have to succeed at the expense of the "obligation to self" argument, because the norms in question are of different logical types. In other words, we will not have to end up trying to reduce the "social expression" argument to the "obligation to self" argument, because the principles that specify a person's rights are not directly aimed at specifying a person's flourishing.

Although there is a *single* source of obligation for both rights (meta-normative principles) and normative ethics—namely, the obligation of self-perfection—it does not follow that all ethical principles need to relate to that source in univocal fashion.² It is not a requirement of saying that principle X is grounded in the obligation of self-perfection, that therefore X must make some direct contribution to promoting self-perfection. It may just be, as we claim is the case with rights, that the obligation associated with X is a function of self-perfection seen in a particular context—a context which in some way helps define the sort of norms appropriate to it and which varies the character of those norms vis-à-vis other sorts of norms.

Consider, in this connection, Mack's claim that on the one hand we want to make rights "prior to their correlative duties," while on the other hand we want all duties to be a function of their contribution to an individual's flourishing. This won't square, we are told, because it is contradictory to claim that some duties are prior to all duties while being themselves dependent on prior duties. But of course the point is that rights are "prior to their correlative duties" as political principles, not absolutely. And the obligation to self-perfection which is absolutely prior to rights is not by itself sufficient to determine the nature of those rights. Because the two sorts of principles do different kinds of work, they are not comparable at the same level and thus not in conflict.

Part of the confusion here may come from the unusual and non-Aristotelian use of theoretical and practical reason toward the end of Mack's comments.³ This part is unusual because Mack wants to claim that the "social expression" argument is a function of theoretical reason. In Aristotelian terms, theoretical reason refers to the eternal and unchanging and thus to that which is not a factor in one's motivation except insofar as truth itself is. We, consequently, would see our argument as more of a product of practical reason. If practical reason in ethics is understood as the application of principles to contexts requiring action, then our approach

is closer to saying that rights are the product of practical reason. We are not, for example, Hobbesian atomists dealing with individuals “who stand at the threshold of interpersonal engagement.” For one thing, the sociality of persons is presupposed when we consider rights. For another, we are not transcendental contractarians who believe that, instead of interests defining the rules of engagement, we get our rules (rights) by recognizing the inherent worth of the other and then translating that joint recognition into an impartial rule. Rights are not, either directly or transcendently, generative of the social or social/moral order itself and thus are not generative of a motivation for social life. The issue then is not what gives A or B reason to recognize the rights of the other. They already have that reason given their natural sociality. Instead, the issue is what principles, given a social commitment, they should adopt in light of certain other commitments and realities they have or face.

In short, all of ethics *can* be understood in terms of obligations to self, if by “ethics” we mean those rules of conduct with direct applications to self-perfection. Rights, however, do not do this kind of work. The two sorts of normative perspectives nevertheless work in tandem, not at cross purposes. And they work in tandem because they share some central elements of the eudaimonistic context that encompasses them both. We do not need two sources of obligation. We would, however, need two sources if all ethical principles served the same function or if the judgments of practical reason were all of the same type, which they are not.

In the postscript to his original comments, Mack further clarifies his claim that the “two sides” of our argument come at the expense of one another. The basic idea here is that the “moral status” of agents plays a “fundamental role” in generating the deontological character needed by any rights theory. Failure to recognize the foundational role of the moral status of others instrumentalizes that status, in our case by reducing the justification for rights-respecting conduct to “obligations to self.” Mack does, however, allow us the “moral status” notion within the “natural function” and “social expression” arguments, or so he claims in note 12. Yet by allowing it within the “natural function” argument, we believe the force of Mack’s argument is considerably diminished.

We can come at the issue in one of two ways, either by recognizing that for us the moral status of others is not primitive, or by recognizing that the “problem” with the “obligation to self” concept is Mack’s truncated conception of the self. Although it is not exactly clear what Mack understands by the “natural function” argument, if we take it to mean simply what must be considered when discussing the grounds of our obligations and what is thereby needed to fulfill our function, then by conceding that the moral status of others is contained within the “natural function” argument, Mack concedes that the conflict between the “social expression” argument and the “obligation to self” argument is only apparent.

A deep dichotomy between obligations to self and recognizing the moral status of others is most characteristic of theories that see the self as a bundle of passions and self-realization as the continual satisfaction of those desires. This truncated conception of self is prone to instrumentalize others by being unable to accord them any status other than what is in some way conducive to one's interest. Two solutions to this problem seem to predominate historically: (1) build into human nature some kind of concern for others (e.g., Smithian sympathy), or (2) make the moral status of others primitive with respect to practical reason (e.g., Kant). Another possibility (the one we adopt) is to reject the preceding framework altogether, substituting instead a conception of self that is teleological in character. If the "functions" of this self could not be realized without others—and not just others as separate beings, but as separate *moral* beings—then saying that the moral status of others is a feature of the "natural function" argument is equivalent to saying that there cannot be moral dualism at the deepest levels of the theory. This is so because a recognition of the moral status of others is constitutive of self-perfection.

In saying this, however, we are also implying that the moral status of others is not primitive—i.e., a given from which moral reasoning takes place. We can, indeed must, ask what it means to accord others "moral status" and the role that plays in the theory. If we do not ask this sort of question and simply take the moral status of others as a primitive given, we fail to realize the derivative nature of rights. For Mack, rights are not derivative but serve as a foundational sort of moral reasoning. For us, in contrast, rights appear on a second tier of moral theorizing. Due to space limitations, it is impossible for us fully to defend the superiority of our position, although *LN* ch. 2 was supposed to do this in part. What can be said is that Mack's foundational dualism is consistent with his conception that others and self represent radically divergent moral strategies; yet this may prevent him from appreciating our theory, which rejects this approach in favor of a more classical conception of self and ethics.

The failure just mentioned leads Mack to assume that if rights do not function in our theory the way they do in his (i.e., as a first-level form of moral reasoning), then our conception of rights must lack the deontological punch of his theory. But this is a non sequitur. If the moral status of others is embedded deep within our theory (as he grants us by allowing it as part of the "natural function" argument), and if rights cannot be sacrificed for the sake of anyone's self-perfection (which is the character of "meta-normative" principles), then our rights would seem to function with the same "deontic" punch as his own. Mack fails to see this because he believes that rights have the same moral ontology as ordinary duties. Hence, he gets off on the wrong track when he describes the meta-normative principles that characterize rights as "side constraints." But a side constraint is technically a principle one follows while in pursuit of one's inter-

ests (or perfection), whereas a meta-normative principle marks off the conditions for protecting the possibility of the pursuit of one's "interests." It is quite possible that there may be something like side constraints that must be considered in addition to the meta-norms that one must follow in the pursuit of one's interests (e.g., certain rules of justice). Meta-norms, then, can carry normative weight without being norms tied to the pursuit of our self-perfection (we could easily follow them and move toward self-degradation). Because of the weight they carry, these norms are not just suited to guiding the *formation* of a legal order but also to *giving* us some guidance when such orders have gone bad, for they provide us with a standard for evaluating whether any situation where persons interact meets certain minimal legitimating conditions. Instead of the equivocation we are accused of in our use of "meta-normative," it is rather the case that the sort of work done by meta-norms is applicable to any situation where social interaction is possible. Anna can therefore violate Bella's rights in unjust regimes and certain descriptions of the "state of nature,"⁴ because the relevant meta-norms are applicable. What cannot be done, on our theory, is to claim that the mere recognition that another has moral status is sufficient to generate rights or rights-respecting conduct. We do not believe Mack can generate rights on such a basis either.

Toward the end of his comments, Henry Veatch raises a very important question: Is there an inescapable tension between the nature-pole and the liberty-pole of our argument? That is, can we really use a natural-end ethics to justify a natural right to liberty that provides the basis for a constitution or legal system that requires people not to use others for purposes they have not chosen, but nonetheless allows, and even protects, their liberty to do many things that are not self-perfecting? If an activity is contrary to a human being's nature, how can the liberty to engage in that activity be a natural right?

As is usual, Professor Veatch puts his finger on the central issue. But what he and others have failed to note about our argument in *LN* is our claim that the human telos has a dual moral function. By this we mean that it provides us with both normative principles (virtues) by which we can lead our lives in pursuit of self-perfection, and meta-normative principles by which to establish a political context in which everyone can have the chance to be self-directed. Though the telos, human flourishing, is the source of both types of principles, they do not have the same function.⁵

The purpose of virtues is to enable each person to achieve his unique form of flourishing—both alone and with others—but the purpose of meta-normative principles (such as the natural right to liberty) is to protect that in which every person in the concrete situation—despite the diversity in their circumstances and forms of flourishing—has a necessary stake—that is, self-directedness. So the aim of meta-normative principles and thus of poli-

tics is the protection of the condition for the possibility of flourishing that every and any person in society needs, but not the achievement of flourishing itself.

In *LN* we argue at length for the importance of distinguishing between normative and meta-normative principles, and our summary of this argument in our reply to Hittinger, as well as our replies to Golding and Mack, should suffice to show that human flourishing demands both normative and meta-normative principles. So we will confine the rest of our response to noting something Veatch did not quite get right regarding our view of the principle of universalizability. This will also provide a transition to our reply to Jeffrey Paul.

We did not at times suggest rejecting the principle of universalizability. Rather, we endeavored to show that such a principle did not necessarily carry with it a commitment to an "impersonalist" or agent-neutral conception of the human good. In other words, acceptance of this principle did not preclude the human good from being something which is both individualized and agent-relative. The importance of this interpretation of the principle of universalizability for our argument for natural rights was primarily negative. That is, we did not attempt to argue that since achieving my human good requires that my self-direction be protected, "therefore" that should give you a reason to act in ways that respect my self-direction, or that I somehow have a right that you respect my self-direction.

Professor Paul seems to think our argument for rights depends on such a claim—see premise 6 of his reconstruction of our argument. It does not, and we explicitly reject such a claim (*LN*, 88, 109-10). Paul's comments are divided into two parts: part (1) rejects our claim that human beings have a telos, and part (2) rejects our argument for rights. We will reply to part (2) first. However, since much of what needs to be said in reply to Paul's objections has already been said in reply to others, and since Paul has so thoroughly misconstrued the nature of our argument for rights, our comments will be confined to showing that we do not in fact hold the positions that he attributes to us.

1. Even though we argue that self-directedness or autonomy is the very form of human flourishing, we do not contend that being self-directed is both a necessary and sufficient condition for self-perfection. We explicitly deny this contention. (See *LN*, 73-74, 245n. 56.) Nor is it necessary to our argument.

2. When we claim that self-direction as such is always good for each and every human being, we are talking of self-perfection abstractly considered, that is, "described without specific virtues or concrete goods a particular human being's reason or intelligence determines as needed for the specific circumstances in which he finds himself" (*LN*, 94). We are not claiming that self-direction invariably produces good results or that it can-

not result in evil (*ibid.*). Nor are we claiming that it is impossible for someone who has suffered coercion to nonetheless turn the situation into an opportunity for moral growth by using whatever occasions for self-direction remain. (See our example of Solzhenitsyn in *LN*, 112.) Rather, we are describing the central intrinsic feature of human flourishing and arguing that human flourishing cannot be what it is if it is not a self-directed activity. We are making a claim about the *nature* of human flourishing but not a claim about what may or may not be causal factors in its existence.⁶ Nor are we primarily offering normative guidance to an individual in pursuit of his self-perfection.

3. Our claim, then, that a world where people freely choose to do the morally wrong thing is better than a world in which people are coerced to do the right thing is made when we are speaking about the nature of flourishing. That is to say, the point of this claim is simply that while a world in which there is self-directed activity is only a world in which human flourishing may be present, a world in which there is no self-directed activity is a world in which flourishing must be absent. Hence, the former world is better when one considers the nature of human flourishing, and this is important to know when looking for a basis for meta-normative principles. The counterexamples that Paul offers suppose that there is some possibility of self-direction, so they are beside the point. Also, they suppose that self-direction is being offered as a normative principle.

4. Our analysis of human flourishing reveals that for every and any person it is always good and right that what they do is the result of their own judgments, but this is not to say (nor does our analysis of human flourishing show) that what they do as a result of their own judgments is always good and right. So to say that self-directedness ought to be protected is not to say that whatever one decides to do ought to be protected. All that is politically required to protect self-directedness is that people be prohibited from using other people (that is, their time, life, and resources) for purposes to which they have not consented. This is what the negative right to liberty requires. So, contrary to Paul's implications, we are in no way committed to protecting autonomous acts which use people for purposes they have not chosen.

5. Finally, there is one more correction. Our claim is not that the right to liberty guarantees the possibility of human flourishing. Rather, our claim is that the right to liberty guarantees politically the possibility of self-direction and this in turn guarantees the possibility of human flourishing. We note this in many places in *LN*—for example: "The goal is to protect the condition under which self-perfection can exist—to protect the possibility of self-directedness" (*LN*, 95).

In part (1), Paul claims that it is a mistake to ascribe teleological organization to living things generally and thus also a mistake to apply such organization to human beings particularly. He argues that there is

nothing in principle that prevents the reduction of the laws in terms of which living things are explained to laws which make no mention of the mature state of living things, but only to how their material constituents interact. Further, he argues that the most we can say about living things is that they behave *as if* they have an inherent end.

But, first, we are not arguing that there could not be a reduction or even that such reductions have not been attempted. Regarding the "reducibility thesis," we say that this cannot be settled a priori. We cannot legislate from our philosophical armchair the particular form a successful account of the natures and potentials of living things must take. There is, however, neither any ontological nor epistemological necessity that such reductions or eliminations be made. In other words, we see nothing intellectually objectionable if it should turn out to be that such reductions or eliminations cannot be made.

Second, we do note that in contemporary biology there are developments which, despite rejecting Aristotle's account of the physical mechanisms involved, support the claim that an adequate account of what living things are and how they operate must make reference to what we call a "potential that is irreducibly for development to maturity." Though we do cite some of the important literature, we do not discuss the various arguments for this claim or what differences there are, if any, between "reduction without remainder," or "eliminative reductionism," or what "vitalism" entails, or what it means to speak of "supervenience," or "emergent properties," or even the proper account of the relation between final, formal, material, and efficient causation. All these important metaphysical issues are well beyond the scope of a book in political philosophy.⁷ Our aim is minimal. We want to show that a commitment to teleology is not necessarily opposed to scientific developments and that there is no need to think of teleology as requiring a commitment to either theism or the claim that the "universe as a whole has a purpose."

Third, Paul argues that "it would be misleading to suggest that there is some goal which causes the maturation of an organic entity, in the way that a child's goal of learning his multiplication tables motivates him and, therefore, causes him to do so." We agree, but Paul assumes that there is no middle ground for a defender of teleology to occupy between "reductionism" and ascribing purposes to things that lack consciousness. This is the point at issue. We hold to the possibility of a middle ground that is afforded both by a refusal to accept an a priori commitment to "reductionism" and by a consideration of the developments in contemporary biology. Paul has only reasserted that there is no middle ground. He has not presented any reason to suppose that this is not a real possibility.

1. Even if there is some elementary or basic level of conceptual awareness that is automatic or, at least, nearly so, what we have in *LN* called “conceptually attending to the world”—the uniquely human *method* of cognition and action—is not. As Tibor R. Machan has noted: “Concepts (ideas, theories, plans, reflections) do not exist independent of a mind that thinks. Ideas are produced by people; they are not *found* ‘out there.’ While sensory and perceptual awareness may be produced in animals by those features of the world that possess sensible qualities, there is nothing in nature that forces generalizations, classification, theories upon us. (This is a plain fact. One can detect it simply enough by considering how many people in identical situations do not have the ideas on certain issues that others have thought through thoroughly.)” See Machan, *Human Rights and Human Liberties* (Chicago: Nelson-Hall, 1975), p. 74. These considerations are, however, true not only for speculative reason but for practical reason as well. Further, the effort that is necessary to conceptually attend to the world is not only exercised at the time of action but *in* action. Thus, we are not speaking of the actions of some “homunculus,” but of actions of flesh and blood human beings that occupy space and time. See Douglas J. Den Uyl, *The Virtue of Prudence* (New York: Peter Lang, 1991), pp. 181-86.
2. On this very point, we note (*LN*, 111) a lack of clarity in Rand’s account of rights. Strangely, Mack says (note 9) that we “entirely endorse” her view. We do not.
3. Mack adds a new note (10) to help clarify the distinction he is making between theoretical and practical reason. The distinction rests essentially on a dichotomous account of reasons on the one hand and motivation on the other. There are large issues here, but in general the Aristotelian tradition rejects this sort of distinction. In non-teleological frameworks in which persons are not moved by reasons (such as that depicted by Hobbes and Hume), the distinction is vital. For us, in contrast, the distinction does not carry much weight. Our comments on Mack’s postscript should help to further clarify our stand.
4. It should be noted that “state of nature” language is troublesome to an Aristotelian and would be rejected in its Enlightenment usages except as a heuristic tool in the way we use it in ch. 5 of *LN*. We recognize, however, that there may be “practical” uses (Beirut, Bosnia, etc.) where “state of nature” is a perfectly adequate description.
5. It should be clear by now both the *similarity* and *difference* that exists between our theory and Mack’s, viz., that while there is some “duality” present, there is a fundamental unity and hence not a true moral dualism.
6. Our comments on paternalism in our reply to Golding are particularly relevant here.
7. This point is not realized by Irfan Khawaja in his review of *LN*, “Natural Right and Liberalism,” *Reason Papers*, no. 17 (Fall 1992), pp. 135-51. Also, much of what we have said in reply to our critics here can be applied to Khawaja’s concerns.

ARISTOTLE AND ANARCHISM

David Keyt

University of Washington

1. Anarchism, Ancient and Modern

Aristotle's infamous defense of slavery in the first book of the *Politics* is intended as an answer to a sweeping challenge of the institution. "Some maintain," Aristotle reports, "that it is contrary to nature (*para phusin*) to be a master [over slaves]. For [they argue] it is [only] by law (*nomoi*) that one man is a slave and another free; by nature (*physei*) there is no difference. Hence it is not just; for it rests on force [*biaion*]" (I.3.1253b20-23).¹ Aristotle does not identify the exponents of this impressive argument. The only writer of the classical period to whom its leading idea can be attributed with certainty is the sophist Alcidamas, a follower of Gorgias. In his Messenian Oration, a speech that Aristotle studied (*Rhetorica*, hereafter *Rhet.*, I.13.1373b18, II.23.1397a11), Alcidamas is reported to have said that "God left all men free; nature has made no one a slave" (Scholiast on *Rhet.* I.13.1373b18).²

The argument challenging slavery that Aristotle preserves has a ramification that its exponents, whoever they were, may not have noticed. It contains the seeds of philosophical anarchism. The conclusion of the argument is inferred from two assertions about slavery: that there is no difference by nature between a master and a slave, and that the rule of a master over a slave rests on force. Now, the very same things can be plausibly maintained about rulers and subjects in a political community: there is no difference by nature between a ruler and a subject, and political rule rests on force. Thus, by parity of reasoning political rule is unjust. A wholesale challenge of political authority is but a short step from the

wholesale challenge of slavery.

Philosophical anarchism is simply a generalization of the antislavery argument. Its central idea is that coercion is unjust. The classical statement of the theory is in William Godwin's *Enquiry Concerning Political Justice*,³ though the use of the word 'anarchism' in an ameliorative sense to describe the theory is a later idea. Thus, Godwin claims "that coercion, absolutely considered, is injustice."⁴ The phrase 'absolutely considered' implies that Godwin might sanction coercion in some circumstances, which in fact he does. He says, for example:

Now it is the first principle of morality and justice, that directs us, where one of two evils is inevitable, to choose the least. Of consequence, the wise and just man, being unable, as yet, to introduce the form of society which his understanding approves, will contribute to the support of so much coercion, as is necessary to exclude what is worse, anarchy.⁵

As this quotation makes plain, Godwin is a foe of anarchy in the pejorative sense, the false anarchy of disorder and violence. Being opposed to the use of force, Godwin is also a foe of revolution: "Revolutions are a struggle between two parties, each persuaded of the justice of its cause, a struggle not decided by compromise or patient expostulation, but by force only."⁶ "Revolution," he remarks, "is engendered by an indignation against tyranny, yet is itself ever more pregnant with tyranny."⁷

The rejection of political authority, which gives anarchism its name,⁸ is not a first principle of the theory, but a corollary of its view about coercion and force. Thus, Emma Goldman, a twentieth-century anarchist, defines anarchism as "the theory that all forms of government rest on violence, and are *therefore* wrong and harmful, as well as unnecessary"⁹ (my emphasis). This is a succinct rendering of a more elaborate argument of Godwin's. The major premise of Godwin's argument is that "[g]overnment is nothing but regulated force; force is its appropriate claim upon your attention."¹⁰ But force, or the threat of force, destroys understanding and usurps private judgment and individual conscience: "Coercion first annihilates the understanding of the subject upon whom it is exercised, and then of him who employs it."¹¹ Godwin concludes "that government is, abstractedly taken, an evil, an usurpation upon the private judgement and individual conscience of mankind; and that, however we may be obliged to admit it as a necessary evil for the present, it behooves us, as the friends of reason and the human species, to admit as little of it as possible, and carefully to observe, whether, in consequence of the gradual illumination of the human mind, that little may not hereafter be diminished."¹²

The easy transfer of the antislavery argument to the political realm raises the question of whether in the classical period there were any representatives of philosophical anarchism. The answer is that Greek democracy,

at least as interpreted by Plato and Aristotle, contains a trace of anarchism, that several of Socrates' ideas are in an anarchistic vein, and that a full-fledged anarchism is implied by some of the sayings attributed to that "Socrates gone mad" (*Diogenes Laertius*, hereafter *D.L.*, VI.54) Diogenes of Sinope.

Although both Plato and Aristotle find a trace of anarchism in Greek democracy, they find it in different places. Plato finds Greek democracy anarchic in practice. He claims in the *Republic* that in a democracy there is no coercion either to rule or to be ruled (VIII.557E2-4); thus democracy is *anarchos*, without a ruler (VIII.558C4). By Aristotle's lights, on the other hand, the champions of democracy are anarchists in theory only. As Aristotle interprets their idea of freedom, they recognize the practical necessity of government—democracy is after all one form of government—but would prefer not to be ruled at all (VI.2.1317b14-15).

At least two of Socrates' ideas are in an anarchistic vein. In Plato's *Apology* (25C-26A), Socrates argues that if he corrupts the young, he does so unintentionally. For no one, he reasons, wishes to be harmed; and if a man corrupts those around him, their corruption will lead them to harm him. But if a person corrupts the young unintentionally, he is in need, not of punishment, but of instruction. This is an argument that philosophical anarchists would applaud. Godwin remarks, for example, that "[if] he who employs coercion against me could mould me to his purposes by argument, no doubt he would. He pretends to punish me, because his argument is strong; but he really punishes me, because his argument is weak."¹³

Also in an anarchistic vein is the Socratic idea that the first of the three cities described in Books II and III of the *Republic* is "the true city" and not, as Glaucon characterizes it, "a city of pigs" (372D-E). This first city, an idyllic agrarian community without warriors or rulers, whose farmers, craftsmen, traders, seamen, and wage-earners supply the necessities of life but no luxuries, resembles Godwin's anarchist utopia.¹⁴ Even though Socrates is Plato's spokesman throughout most of the *Republic*, this particular idea may reflect a genuine Socratic sentiment. It is of a piece with the argument in the *Apology* opposing punishment and is inconsistent with the Platonic idea expressed later in the *Republic* that the true city is an aristocracy in which the farmers, craftsmen, traders, and other workers of Socrates' first city are ruled by a group of philosopher-kings backed by a military force (*Republic* IV.445D-V.449A, together with *Statesman* 300D11-301A2).

The seeds of philosophical anarchism are more easily found in Diogenes the Cynic than in Socrates.¹⁵ Diogenes said that "the only correct constitution is that in the cosmos" (*D.L.* VI.72) and declared himself to be a citizen of the cosmos (*kosmopolitês*) (*D.L.* VI.63). The first of these sayings entails that no constitution in a polis is correct (and hence just) whereas the second may be taken, consonant with this, as a disavowal of citizenship

in any polis. Diogenes had similar anarchistic ideas about slavery and marriage. "To those who advised him to pursue his runaway slave, he said, 'It would be absurd if Manes can live without Diogenes, but Diogenes cannot without Manes' " (*D.L.* VI.55). Diogenes implies in this saying that slavery should be a voluntary relation resting on the need of the slave for a master. "He also said that wives should be held in common, recognizing no marriage except the joining together of him who persuades with her who is persuaded" (*D.L.* VI.72). In this saying, Diogenes advocates free cohabitation and disavows marriage based on coercion.

Aristotle refers to Diogenes only once in his extant works (*Rhet.* III.10.1411a24-25); but since Diogenes was such a prominent spectacle in Athens, it is safe to assume that Aristotle was familiar both with his outlandish behavior and with his ideas.¹⁶

That Aristotle is addressing the proto-anarchism of Diogenes in the introductory chapters of the *Politics* (I.1-2) has been realized for a long time.¹⁷ The general consensus is that Aristotle is an uncompromising opponent of anarchism. Whereas Diogenes brags about being *apolis*, without a polis (*D.L.* VI.38), Aristotle claims that "man is by nature a political animal" (I.2.1253a2-3) and that "he who is unable to share in a community or has no need . . . is either a beast or a god" (I.2.1253a27-29). And what could be further removed from anarchism than the total subordination of individual to state that Aristotle seems to envisage (I.2.1253a18-29; see also VIII.1.1337a26-30)?¹⁸

Aristotle defends the polis against Diogenes' assault. So much is clear. But, it will be recalled, the anarchist's rejection of the state is not a first principle of his philosophy but a consequence of his idea that coercion and compulsion are unjust. So there is a deeper question to consider. Where does Aristotle stand on this matter of the injustice of coercion and compulsion? As a defender of the political community, he must reject the central idea of philosophical anarchism, must he not? The answer is surprisingly unclear. As I shall show immediately, that coercion is unjust is a theorem of Aristotelian philosophy: it follows syllogistically from three basic ideas of Aristotle's ethical and natural philosophy. But whether Aristotle realized this, whether he consciously embraced the central idea of philosophical anarchism, is a further question.

2. Derivation of the Anticoercion Principle

The chief philosophical idea of the *Politics* is that of a link between justice and nature. When Aristotle wishes to justify a certain practice, institution, or form of government, his ultimate appeal is always to nature. He subscribes to two principles relating justice and nature: a positive principle linking the just and the natural (I.5.1255a1-3, III.17.1287b37-39,

VII.9.1329a13-17) and a negative principle linking the unjust and the unnatural (I.10.1258a40-b2, VII.3.1325b7-10; and see I.3.1253b20-23). (For both principles together, see I.5.1254a17-20 and III.16.1287a8-18.)

These principles are obviously of restricted generality, since the sphere of justice is much narrower than the realm of nature. The realm of nature includes all objects that have an internal source of motion—the simple bodies, plants, animals, and the heavens (*Physica*, hereafter *Phys.*, II.1.192b8-32, *Metaphysica*, hereafter *Met.*, XII.1.1069a30-b2)—whereas the sphere of justice is restricted to human beings. (The gods are beyond both nature [*Met.* VI.1.1026a13-22] and justice [*Ethica Nicomachea*, hereafter *EN*, X.8.1178b8-12].) Furthermore, many of the movements of human beings such as growth and respiration are natural but outside the field of ethics (*EN*, I.13.1102a32-b12). Only voluntary (*hekousia*) actions are praised or blamed (*EN* III.1.1109b30-31). And, finally, among voluntary actions only those that affect others are just or unjust (*EN* V.1.1129b25-27, 1130a10-13, and 11.1138a19-20). The sphere of justice is restricted, in sum, to human conduct that affects others, or, in short, to social conduct.

By Aristotle's theory, the negative principle is not equivalent to the converse of the positive. For although Aristotle holds that everything (within the sphere of social conduct) that is unnatural is unjust, he denies that everything that is just is natural. The people of Amphipolis, for example, passed a law honoring the Spartan general Brasidas, who was killed defending their city (*Thucydides* V.11). It is just, in Aristotle's view, to obey such a law, once enacted, even though the justice of doing so is legal or conventional only (*nomikon*), not natural (*phusikon*) (*EN* V.7.1134b18-24).

The two principles relating justice and nature are not first principles of Aristotle's philosophy but corollaries of his natural teleology. Consider the positive principle first. According to Aristotelian teleology, "nature makes everything for the sake of something" (I.2.1252b32; *De Partibus Animalium* I.1.641b12, 5.645a23-26; *Phys.* II.8), where this something, the end, or *telos*, of the making, is something good (I.1.1252b34-1253a1; *Phys.* II.2.194a32-33, 3.195a23-25; *Met.* I.3.983a31-32).¹⁹ This view of nature yields the first (or minor) premise in the following quasi²⁰ syllogism:

- 1.1 Everything natural is good.
- 1.2 Everything (within the sphere of social conduct) that is good is just.
- 1.3 Therefore, everything (within the sphere of social conduct) that is natural is just. (The justice of nature principle.)

That Aristotle subscribes to its major premise, which connects the justice of nature principle with his natural teleology, is clear from his assertion that "justice (*dikaiousunēn*), which all the other virtues necessarily

accompany, is social virtue (*koinôniken aretên*)” (III.13.1283a38-40). The justice that all the other virtues accompany is universal rather than particular justice. It is the justice that is the same as complete virtue and whose opposite is lawlessness (*EN* V.1). Since the justice of nature principle applies to every sort of social conduct, this must be the sort of justice referred to in it as well. Furthermore, *dikaios* (‘just’) is the adjective of the noun *dikaiosunê* (‘justice’), and *agathos* (‘good’) is the adjective of the noun *aretê* (‘virtue’). So the relation Aristotle asserts between *dikaiosunê* (justice) and *aretê* (virtue) also holds between that which is *dikaios* (just) and that which is *agathos* (good). Consequently, to say that justice and social virtue are the same is equivalent to saying that in the sphere of social conduct what is just and what is good are the same.²¹ Aristotle’s statement is thus a bit stronger than the premise he needs, for it entails both the premise and its converse.

The negative principle relating the unjust and the unnatural is derived similarly. If within the sphere of social conduct what is good and what is just are the same, then within the same sphere what is bad and what is unjust are the same. This yields the major premise of a second quasi syllogism. As for the minor premise, Aristotle never, to my knowledge at least, asserts straight out that what is unnatural is bad; but his statement that “nothing contrary to nature is beautiful (*kalon*)” (VII.3.1325b9-10) comes close. For the adjective *kalos* applies, not only to physical beauty, but also to moral beauty—the beauty of good character and right conduct. So it seems reasonable to attribute this second argument to him:

2.1 Everything contrary to nature is bad.

2.2 Everything (within the sphere of social conduct) that is bad is unjust.

2.3 Therefore, everything (within the sphere of social conduct) that is contrary to nature is unjust.

It is worth recalling at this point that in Aristotle’s philosophy of nature what is forced and what is contrary to nature are identified. Thus, Aristotle says that “what is by force (*biai*) and what is contrary to nature are the same” (*De Caelo* I.2.300a23; see also *Phys.* IV.8.215a1-3, V.6.230a29-30; *De Generatione Animalium*, hereafter *GA*, V.8.788b27). In Aristotelian physics, for example, fire moves upward toward its natural place by nature but downward only by force and contrary to nature (*De Generatione et Corruptione* II.6.333b26-30 and elsewhere). This identification of the forced and the unnatural is a feature, not only of inanimate nature, but of the entire natural world (*GA* II.4.739a4, III.8.777a18-19, V.8.788b27; *Ethica Eudemia*, hereafter *EE*, II.8.1224a15-30; *Rhet.* I.11.1370a9). Thus, Aristotle accepts:

2.4 Whatever is forced is contrary to nature.

When this idea is combined with 2.3, we have an Aristotelian derivation of the first principle of philosophical anarchism:

2.5 Everything (within the sphere of social conduct) that is forced is unjust. (The anticoercion principle.)

That Aristotle was aware of the anticoercion principle there can be no doubt. He chronicles it as a premise of the antislavery argument (I.3.1253b22-23); in an aporetic passage he suggests that certain claims to political power are suspect because they imply its opposite, that rule based on force is *just* (III.10.1281a21-24); and he attempts to mediate a dispute between those who champion the principle and those who champion its opposite (I.6.1255a5-21). Moreover, the fact that it follows from three of his basic ideas—2.1, 2.2, and 2.4—means that he cannot deny it without inconsistency. Since a charitable interpretation strives to preserve consistency, the possibility that Aristotle accepts the first principle of anarchism is worth exploring. I try to show in the remainder of this paper that it is indeed a fundamental principle of his political philosophy.

3. Whose Advantage Is the Common Advantage?

In searching for evidence that Aristotle accepts the anticoercion principle, a good place to begin is with his distinction between constitutions that are correct (*orthoi*) and hence just, and those that are deviations (*parekbaseis*) and hence unjust (III.6.1279a17-20, 11.1282b8-13). The question we need to consider is his basis for inferring that a constitution is unjust because it is deviant. Does the inference rest on the anticoercion principle? But before addressing this question we need to understand the distinction itself. In marking it, Aristotle uses an expression that requires elucidation.

The difference between the correct constitutions (kingship, aristocracy, and polity) and the deviations (tyranny, oligarchy, and democracy) is that the correct constitutions look to the common advantage (*to koinêi sumpheron*), whereas the deviant constitutions look only to the rulers' own advantage (III.6.1279a17-21). Thus, tyranny aims at the advantage of the tyrant; oligarchy at the advantage of the rich; and democracy at the advantage of the poor (III.7.1279b6-9).

Whose advantage do kingship, aristocracy, and polity aim at? Whose advantage is the common advantage? Aristotle does not give a straightforward answer. The common advantage is not the advantage of every inhabitant of a given polis. The common advantage does not include the advantage of slaves (III.6.1278b32-37). Nor apparently does it include the advantage of resident aliens (*metoikoi*) or foreign visitors (*xenoi*).²² Aristotle

seems to equate the advantage of the whole polis with the common advantage of its citizens (III.13.1283b40-42).²³ As W. L. Newman remarks, “[t]he common advantage . . . which a State should study is the common advantage of the citizens . . . , and that of other classes, only so far as their advantage is bound up with that of the citizens. . . .”²⁴

In this explanation of the common advantage, who counts as a citizen? The answer is surprisingly complex. By Aristotle’s official taxonomy there are four types of citizen. The basic concept is that of a *full citizen* (*poliûês haplôs*) (III.1.1275a19-23, 5.1278a4-5). Aristotle defines a full citizen as a man²⁵ who “is entitled to share in deliberative or²⁶ judicial office” (III.1.1275b17-19). The group of full citizens is thus the supreme political authority in a polis (III.1.1275a26-29; see also 6.1278b10-14, 11.1282a25-39). The other concepts of a citizen are derivative from that of a full citizen. Thus, a boy or a youth who will in the future be entitled to be enrolled as a full citizen is an *immature citizen* (*poliûês atelês*), and an old man who was a full citizen but is now exempt from political duties is a *superannuated citizen* (*poliûês parêkmaqôs*) (III.1.1275a14-19, 5.1278a4-6). Aristotle also mentions *female citizens* (III.2.1275b33, 5.1278a28) but does not give an account of the concept. A female citizen (*politîs*) is presumably a woman or a girl who has the legal capacity to transmit citizenship to her (properly sired) offspring and, in particular, to her sons. The concept of a female citizen is important under any constitution that requires that a full citizen have a citizen mother (I.2.1275b22-24).²⁷ By this taxonomy, the citizens of a polis will normally be the full citizens and the members of their families: their wives, children, and elderly parents.

We are now in a position to notice a problem about Aristotle’s explanation of the common advantage that has generally gone unnoticed.²⁸ On the assumption that a man’s advantage is closely tied to that of the household he heads, the advantage of the full citizens of a polis will be the same as the advantage of the totality of its citizens. But, on Aristotle’s functional definition of a full citizen, the full citizens of a polis are its rulers. Hence, if the common advantage of a polis is the advantage of the totality of its citizens, a constitution that looks to the rulers’ advantage looks to the common advantage, and the distinction between correct and deviant constitutions collapses.

The solution to this problem is to be found in Aristotle’s tacit recognition of second-class citizenship. There are several reasons for attributing such a concept to Aristotle. First of all, by Aristotle’s definition of a full citizen there is only one full citizen in a kingship—the king himself.²⁹ Thus, the only citizens in a kingship are the members of the royal family. But in two passages in the *Politics* Aristotle, following the normal Greek practice, refers to other men besides the king himself as citizens (III.14.1285a25-27, V.10.1311a7-8). (In both passages a citizen, a *politês*, is contrasted with an alien, a *xenos*.) Since these men do not share in deliberative or judicial

office, the citizenship they enjoy must be second-class. Secondly, in discussing revolution Aristotle twice contrasts a group of men who are "outside the constitution" with the group of rulers (V.4.1304a16-17, 8.1308a3-11). Since these men appear to be neither metics, foreigners, nor slaves, they too must be second-class citizens (compare III.5.1277b33-39). Thirdly and finally, in his essay on the best polis, in a context where only adult males are under discussion, Aristotle uses the expression "citizens who share in the constitution" (VII.13.1332a32-34), which would be pleonastic unless one could envisage (second-class) citizens who do *not* share in the constitution.³⁰

Who would these second-class citizens be? Presumably, they are individuals who have a moral, though not a legal, claim, based on their free status and place of birth, to be first-class citizens. In short, they are free natives. A second-class citizen, like an immature citizen, is a citizen "under an assumption" (*ex hupotheseôs*) (III.5.1278a5). The assumption in the case of an immature citizen is that he will one day become a full citizen. The assumption in the case of a second-class citizen is that he or she would become a first-class citizen should such citizenship be maximally extended, as in a democracy.

On this interpretation of the *Politics*, Aristotle divides the population of a typical Greek polis into five groups as follows:

1. First-class citizens:
 - a. Full citizens
 - b. Immature citizens
 - c. Superannuated citizens
 - d. Female citizens
2. Second-class citizens
3. Metics (resident aliens)
4. Foreign visitors
5. Slaves

The solution to the puzzle, then, about the collapsing distinction between correct and deviant constitutions is to take the common advantage to be the advantage of both first- and second-class citizens. The difference between a correct and a deviant constitution is that a correct constitution looks to the advantage of both classes of citizen, whereas a deviant constitution looks to the advantage of first-class citizens only.

But a question remains. By this explanation of the common advantage, shouldn't a democracy, contrary to Aristotle's classification, be a correct, rather than a deviant, constitution? For in a democracy first-class citizenship is maximally extended, and thus in aiming at their own advantage its full citizens aim at the common advantage. The answer is that the definition of democracy that leads to its being classified as a deviant consti-

tion is in terms of social classes rather than free status. By this definition, democracy is essentially rule by the poor and only incidentally rule by the many (that is, by the free) (III.8.1279b34-1280a6). Under such a constitution the poor constitute a majority, vote their own interests in the assembly and in the law courts, and reduce the rich to virtual second-class citizenship. Such a proletarian democracy is as much a deviant constitution as an oligarchy (III.7.1279b8-10).³¹

4. Deviant Constitutions

Aristotle defines a deviant constitution as one under which the rulers rule for their own advantage (III.6.1279a19-20). He goes on to claim that deviant constitutions are characterized by their use of force (III.10.1281a23-24; see also III.3.1276a12-13), that they are contrary to nature (*para phusin*) (III.17.1287b37-41), and that they are unjust (III.1.1282b8-13). Aristotle does not explicitly connect these three claims with each other or with his definition. But the derivation of the anticoercion principle shows how they can be linked together.

That the rulers in a polis with a deviant constitution must use force to maintain themselves in power is a consequence of the nature of their rule. For deviant constitutions are all despotic (III.6.1279a19-21, IV.3.1290a25-29, VII.14.1333a3-6). Under such a constitution the rulers, looking only to their own advantage, treat those outside the constitution, the second-class citizens, as slaves (see III.6.1278b32-37 and IV.11.1295b19-23). Since these outsiders are free men (III.6.1279a21; see also IV.6.1292b38-41), there can be no question of their enduring such treatment willingly (see IV.10.1295a17-23). Thus, under a deviant constitution there is always a group of subjects who obey their rulers only because they are forced to. In a democracy it is the rich; in an oligarchy, the poor; in a tyranny, the free (for tyranny, see III.14.1285a25-29, V.11.1314a10-12).

Given the Aristotelian equation of the forced and the unnatural, it follows at once that deviant constitutions are contrary to nature. From this one can infer, by an appeal to nature, that such constitutions are unjust. Thus, we can construct an argument that moves within the same circuit of ideas as the derivation of the anticoercion principle:

3.1 Every deviant constitution rests on force.

3.2 [Whatever is forced is contrary to nature.]

3.3 Therefore, every deviant constitution is contrary to nature.

3.4 Everything (within the sphere of social conduct) that is contrary to nature is unjust.

3.5 Therefore, every deviant constitution is unjust.

Although this argument does not occur explicitly in the *Politics*, it does introduce coherence into the various things that Aristotle says about deviant constitutions. The only premise that Aristotle does not endorse explicitly in the *Politics* is 3.2. But, given its appearance in other treatises, it seems a reasonable one to supply. If this interpretation is on the right track, we have additional evidence for thinking that the anticoercion principle is an operative, though tacit, principle in the *Politics*; for the principle simply telescopes argument 3.

The vast majority of fourth-century Greek cities, it should be noted, had deviant constitutions. Most were democracies or oligarchies (IV.11.1296a22-23, V.1.1301b39-40). Aristotle is hard pressed for contemporary examples of correct constitutions. "Kingships," he remarks, "do not come into existence any longer now, or if they do, they are rather monarchies or tyrannies" (V.10.1313a3-5). Aristocracies are of two main types: true and so-called (IV.7). His favorite examples of so-called aristocracies are Sparta and Carthage (II.9, 11; IV.7.1293b14-18), though he mentions that Thurii and the Epizephyrian Locri were (so-called) aristocracies at one time (V.7.1307a23-29, 34-40).³² He gives no example of a true aristocracy. The third and last type of correct constitution, polity, seems to have existed for a period at least at Mali (IV.13.1297b12-16), Tarentum (V.3.1303a3-6), Syracuse (V.4.1304a27-29), and Oreus (V.3.1303a18-20);³³ but, like kingship and aristocracy, it "did not occur often" (IV.7.1293a39-b1).

Aristotle's view, then, was that virtually every fourth-century Greek polis was ruled unjustly by a group of men using force to advance their own interests at the expense of a body of second-class citizens. His evaluation of the actual constitutions that people lived under in fourth-century Greece is as unfavorable as that of the proto-anarchist Diogenes.

5. Legitimate Force

The anticoercion principle, which links the forced with the unjust, entails that nothing just is forced. Thus, in searching for evidence that Aristotle accepts and tacitly uses the anticoercion principle in the *Politics*, one needs to examine the role, if any, that coercion plays under the constitutions that he regards as correct and hence as just (III.11.1282b8-13). It will suffice to consider only the best constitution, which is a generic constitution with two species: kingship and true aristocracy (III.18; IV.2.1289a30-33, 7.1293b18-19). By the stricter analysis of Book IV, the other correct constitutions, so-called aristocracy and polity, are regarded as deviations from "the most correct constitution," and the three original deviations as deviations from the less correct (IV.8.1293b22-27). The most correct constitution is thus the

only one that is absolutely just.

In discussing kingship Aristotle explicitly raises the question to which we want to know his answer. He asks "whether the man who is to rule as king should have some force about him by which he will be able to compel those who do not want to obey" (III.15.1286b28-30). His answer is that the king should have a force stronger than a single individual or small band of individuals but weaker than the many (III.15.1286b34-37). The many referred to here are "the whole body of [second-class] citizens" in the kingdom.³⁴ If the king had a force stronger than the whole body, he could, if he wished, turn his kingship into a tyranny. This seems to be the rationale for Aristotle's answer. If so, Aristotle is tacitly assuming that coercion of second-class citizens is unjust. The rationale of Aristotle's answer is of a piece with that which lies behind his negative evaluation of deviant constitutions. The passage indicates, however, that Aristotle does not accept the anticoercion principle in an undiluted or unrestricted form. But, then, as we have seen, neither does Godwin.³⁵

The true aristocracy sketched in Books VII and VIII of the *Politics*³⁶ has an army, and in two passages Aristotle discusses its proper employment. In the first Aristotle says that "the members of a community must have arms in their own hands also³⁷ both for purposes of government, on account of those who are disobedient, and with a view to those who try to wrong them from without" (VII.8.1328b7-10). Later in Book VII Aristotle gives a second list of the legitimate purposes of armed force. The armed forces in his best polis, he says, have three purposes: first, self-defense; second, hegemony, or leadership, in foreign affairs exercised, not despotically, but "for the benefit of those who are ruled"; and, finally, "to be master of those who are worthy to be slaves" (VII.14.1333b38-1334a2).

The mention of hegemony (see also VII.6.1327a40-b6) suggests that Aristotle's best polis will adopt an aggressive foreign policy; and, indeed, the great nineteenth-century commentators on the *Politics* believe that this is exactly what Aristotle is advocating, or at least condoning, in the passage just quoted. Franz Susemihl and R. D. Hicks regard Aristotle as a precursor of Bismarck. They remark that "like Athens, Sparta, and Thebes, [Aristotle's ideal state is] to exercise an hegemony; that is, to stand at the head of a more or less dependent confederation, in which union has been achieved, if necessary, with the edge of the sword."³⁸ Newman, in a similar vein, construes Aristotle's idea broadly enough to accommodate any British imperialist. Aristotle's enumeration of the aims of war, according to Newman, "is wide enough to be accepted by any conqueror, however ambitious, who might be willing to adjust his methods of rule to the claims of the States subjugated by him."³⁹

Both comments are misrepresentations. Susemihl and Hicks are demonstrably mistaken in thinking that Aristotle wishes his best polis to emulate the sort of hegemony, or leadership, displayed by Athens or Sparta

in the fifth and fourth centuries. Aristotle had no illusions about the Athenian and Spartan empires. He says that, when Athens and Sparta were in positions of leadership, the one set up democracies, and the other, oligarchies, in the cities under their sway, "looking not to the advantage of the cities [they led] but to their own" (IV.11.1296a32-36; see also V.7.1307b22-24). The leadership of Aristotle's best polis is to be the very opposite of this: not despotic, but for the benefit of those who are ruled. In response to Newman's idea that Aristotle's remark about hegemony is wide enough to be accepted by any ambitious but forbearing conqueror, it must be said that one would be hard pressed to cite many historical examples of the sort of hegemony Aristotle envisages. For, as Aristotle points out, cities in a position of leadership, including those that do not tolerate despotism at home, have a propensity for acting despotically toward the cities under their sway (VII.2.1324b22-41, especially b32-36). A city in a position of leadership that looks to the advantage of the cities under its sway would seem to be even rarer than a city with a correct constitution.

The main point for our purposes is that Aristotle evaluates leadership among cities by the same principles he uses in evaluating constitutions. The anticoercion principle, to whatever extent he accepts it, is not abrogated when he turns to a discussion of foreign affairs.

A further question about Aristotle's two lists of the legitimate purposes of armed force is whether the second adds one item or two to the first. In addition to defense against external aggressors, the first list mentions "purposes of government, on account of those who are disobedient." The second list, on the other hand, mentions defense, hegemony, and mastership over natural slaves. Are the disobedient of the first list the natural slaves of the second?⁴⁰ If so, Aristotle does not envisage the use of force or the threat of force *within* his best polis.

6. The Best Polis Proper

The polis described in Books VII and VIII has a two-tiered social structure. One tier consists of the proper parts (*oikeia moria*) (III.4.1326a21) of the polis; the other, of the mere accessories required for its existence. The proper parts, who together hold all the landed wealth in the polis, are hoplites, officeholders, and priests; the accessories, who provide for its material needs, are farmers, traders, artisans, seamen (VII.6.1327b4-9), and day-laborers (VII.8-9). Traders (*agoraioi*) are either merchants (*emporoi*) or shopkeepers (*kapêloi*) (IV.4.1291a4-6).⁴¹

The proper parts of Aristotle's best polis are citizens; the accessories are not (VII.9.1328b33-1329a2, 17-19). Furthermore, there are no second-class citizens in Aristotle's polis. "A polis is good," Aristotle says, "because the citizens who share in the constitution are good; and for us all the citi-

zens share in the constitution" (VII.13.1332a32-35). To say that all the citizens share in the constitution is to say that all the citizens are first-class citizens.

If farmers, craftsmen, and traders are not citizens, what is their legal status in Aristotle's best polis? Farmers are to be slaves or barbarian serfs (VII.9.1329a25-26, 10.1330a25-31). The status of craftsmen and traders is not indicated, but it can be inferred. They cannot be slaves; for art and trade require a mental capacity denied to natural slaves,⁴² the only sort of slaves allowed in a polis that is absolutely just (see VII.2.1324b36-41). Since the population of a polis consists of citizens, metics, foreign visitors, and slaves, craftsmen and traders must be metics or foreign visitors. Foreign trade, the province of the merchant, could all be in the hands of foreign visitors; but craftsmen and shopkeepers would have to be metics.⁴³ This is their status in the Cretan city of Plato's *Laws* (VII.846D1-847B6, 850A6-D2; XI.920A3-4). Aristotle seems to be silently following in Plato's track.

The regulation and control of foreign visitors and metics is never discussed by Aristotle. This is surprising since he was himself a metic during his long sojourn in Athens (367-357 and 335-323 B.C.)⁴⁴ and remarks on the inferior position of a metic (III.5.1278a37-38, *EE* III.5.1233a28-30). Perhaps he thought that rule over metics, from the standpoint either of a ruler or of a metic, did not raise any philosophical problems. From the standpoint of the ruler, the relation of a metic to the polis would be purely economic and contractual. From the standpoint of the metic, the relation would be wholly voluntary, since (except for a few involuntary exiles) a metic would have a native polis where he enjoyed the privileges of citizenship and to which he could return whenever the life of a metic became a burden.⁴⁵

Most of the noncitizens in Aristotle's best polis will be natural slaves. A natural slave, in Aristotle's view, is a mental defective who lacks forethought and the ability to deliberate, "shares in reason to the extent of apprehending it but without possessing it," and is capable as a consequence of nothing higher than physical labor (I.2.1252a31-34, 5.1254b16-26, 13.1260a12). Such a person lacks the forethought to provide for tomorrow or next winter and would perish without someone to look after him. If he were not so dimwitted, he would recognize his need for a master and join in a friendly relation with him (I.6.1255b12-15; see also *EN* VIII.11.1161b5-8). But natural slaves do not ordinarily recognize this need and are not willingly enslaved. Consequently, one role of the army in Aristotle's polis is "to be master of those who are worthy to be slaves" (VII.14.1334a2). Aristotle envisages using the army to capture natural slaves (see I.7.1255b37-39, 8.1256b23-26) and to insure that, once captured, they do not revolt. For Aristotle, it seems, what is forced is not always unjust. The anticoercion principle apparently does not apply to natural slaves.

But the matter is not quite as clear and straightforward as this. For

Aristotle cannot forget, even while justifying natural slavery, that within his philosophy the forced and the just are polar opposites. The anticoercion principle exerts pressure even on his discussion of slavery. Thus, Aristotle says that “there is an element of advantage and friendship for slave and master in their relation to each other when they merit these things [i.e., mastership and slavery] by nature; but when [those who are enslaved are] not [slaves] in this manner, but *through law and by being forced*, the opposite is the case” (I.6.1255b12-15). Given Aristotle’s identification of the common advantage and the just (III.12.1282b16-18), this passage opposes force not only to advantage and friendship but to justice as well.

If, setting the accessories aside, one focuses on Aristotle’s best polis proper and the relation of its citizens to one another, what comes into view is a community that approaches the anarchist ideal and where the anticoercion principle is alive and active. The end of Aristotle’s best polis is true happiness, a life of virtuous activity, for its citizens (VII.13). And its adult male citizens possess all the cardinal virtues—wisdom, bravery, temperance, and justice (VII.1.1323a27-34, b21-23; 15.1334a11-40). Indeed, Aristotle describes them as “great-souled men” (*megalopsuchoi*) (VII.7.1328a9-10, VIII.3.1338b2-4). Greatness of soul, or *megalopsuchia*, is a magnification and “a sort of adornment (*kosmos*) of the virtues; it makes them greater, and does not come to be without them” (*EN* IV.3.1124a1-3). Aristotle’s best polis is thus a virtue state or a moral community.⁴⁶ It is no accident, then, that its rulers, being just men (VII.9.1328b37-39), seek the common advantage, the advantage of all the citizens, and not the advantage of some segment of the citizen body only. Furthermore, in such a virtue state, coercion and compulsion will be virtually unknown. For coercion is neither appropriate nor necessary among men of full virtue (see *Rhet.* I.14.1375a16).

This interpretation is borne out by Aristotle’s views on corporal punishment. Aristotle does not have much to say about punishment in the *Politics*, but a few ideas emerge. Punishment in Aristotle’s eyes, though sometimes just and hence good, is good only conditionally and not absolutely: “just retributions and punishments spring from virtue, but are necessary, and possess nobility [only] in a necessary way (for it would be preferable if neither man nor polis had any need of such things)” (VII.13.1332a12-15). Aristotle would punish those citizens who disobey a law against obscenity in different ways depending upon the age of the offender—a youth with blows and dishonors, an adult with slavish dishonors, but not with blows (VII.17.1336b3-12). He is reluctant, in other words, to inflict corporal punishment on an adult, but is prepared to use it on a minor.

Aristotle certainly believes that coercion has a role to play in the moral education of the many as distinct from the well-bred (see *EN* X.9.1179b4-13). In discussing the moral education of the many, he remarks

that “generally passion [which the many live by] seems to yield not to argument but to force” (*EN* X.9.1179b28-29) and that “the many obey coercion more than argument and penalties more than the noble” (*EN* X.9.1180a4-5). But it is noteworthy that coercion plays no role in the education, including the moral education, envisaged in *Politics* VIII, perhaps because all the young men in his best polis will be well-bred (VII.7, especially 1327b36-38). The passions of the young men of Aristotle’s best polis yield not to argument but to music (VIII.5-7).

What Aristotle attempts to describe in *Politics* VII and VIII, if the foregoing interpretation is correct, is a political community (= a moral community) held together by the justice of its citizens rather than by the sword, and sustained by a system of moral education that relies on methods subtler than force.

7. Noncoercive Rule

It should be clear by now how Aristotle can embrace both the polis and the anticoercion principle. Coercion is not, in Aristotle’s eyes, an essential feature of political rule. It is no more the function of a ruler to coerce his subjects than it is for a physician to coerce his patients or a helmsman his crew: “Nor do we see this [the use of coercion] in the other sciences [any more than in political science]; for it is the function neither of the physician nor of the helmsman to persuade or to compel his patients or his crew” (VII.2.1324b29-31). For someone brought up on Thomas Hobbes⁴⁷ this idea can be difficult to grasp.

Just as the anticoercion principle is derivable from first principles of Aristotle’s ethical and natural philosophy, the idea that correct political rule is noncoercive is derivable from first principles of Aristotle’s metaphysics together with a basic theorem of his political philosophy.

In every unitary entity, Aristotle argues, there is one component that rules and another that is ruled: “For whatever is composed of several parts, whether continuous or discrete, and becomes one common thing, in every case rule and subordination (*to archon kai to archomenon*) may be discerned, and this [rule and subordination] is present in living things from the whole of nature; for even in things that do not share in life there is a ruling principle, for example, of a musical scale” (I.5.1254a28-33). The idea here, an idea firmly rooted in Aristotle’s metaphysics, is that what distinguishes a whole (*holon*) from a heap (*sôros*) is the presence of form (or soul)⁴⁸ and that the natural relation of form to matter (or soul to body) is that of ruler to subject (I.5.1254a34-36). Not all wholes, in Aristotle’s view, have the same degree of unity. Nature is a stronger unifying agent than force: “That which is whole and has a certain shape and form is one [i.e., unitary] even more [than that which is one by continuity], especially if it is

one by nature and not by force (like a thing made one by glue or a nail or a cord) and has within itself the cause of its being continuous" (*Met.* X.1.1052a22-25).

Aristotle systematically applies these metaphysical ideas to political communities. First of all, since a polis is an organized community and not simply a mass of human beings, it must, like other wholes, have a principle of organization, a form. This form is its constitution (III.3.1276b1-13). Secondly, being a whole, a polis must have a component that rules and another that is ruled. A polis without rulers, Aristotle says, would be an impossibility (IV.4.1291a35-36). Finally, according to a basic theorem of the *Politics*, a polis is a natural rather than an artificial whole (I.2.1252b30, 1253a2, 25; VII.8.1328a21-22) and, consequently, is *not* held together by force when in a natural condition. Thus, coercion is not an intrinsic feature of political rule.

Hobbes and Aristotle differ on the role of force in the life of a political community because they differ about the sort of whole a political community is. For Hobbes a state must be held together by force because it is a product of art rather than of nature: "For by Art is created that great LEVIATHAN called a COMMON-WEALTH, or STATE . . . which is but an Artificiall Man."⁴⁹

As part of his naturalism, Aristotle compares a polis to an animal and identifies its ruling element, which corresponds to the soul of an animal, with those functional groups that preserve it by governing and bearing arms (IV.4.1291a24-28). He never envisages a polis without arms. But for the warriors of a polis to use them against the body politic is as contrary to nature, in Aristotle's eyes, as it is for an animal to use its teeth or its claws against its own body. Aristotle recognizes that even a state that cultivates justice at home is prone to forget about justice when dealing with other states. In their relations with each other, states too often resemble lower animals. But he does not condone such conduct and thinks that a political community, no less than a human being, should strive for a life higher than that of a beast.⁵⁰

1. Unless otherwise indicated, all references are to Aristotle's *Politics*.

2. On the early critics of slavery, see W. K. C. Guthrie, *A History of Greek Philosophy*, vol. 3, *The Fifth-Century Enlightenment* (Cambridge: Cambridge University Press, 1969), pp.

155-60.

3. William Godwin, *Enquiry Concerning Political Justice*, 3d ed., 2 vols. (London: G. G. and J. Robinson, 1798). Reprint (2 vols. in 1) ed. Isaac Kramnick (Harmondsworth: Penguin Books, 1976). Pages cited within square brackets are those of the 1976 edition.
4. *Ibid.*, vol. 2, p. 342 [p. 645]; see also vol. 2, pp. 333-37 [pp. 639-42].
5. *Ibid.*, vol. 2, p. 372 [p. 667].
6. *Ibid.*, vol. 1, p. 271 [p. 272].
7. *Ibid.*, vol. 1, p. 267 [p. 269].
8. One meaning of the Greek adjective *anarchos* is "without a ruler." Thus, Aristotle distinguishes political animals that are under a ruler, such as the crane and the bee, from others, such as the ant, that are *anarcha* (*Historia Animalium* I.1.488a10-13).
9. Emma Goldman, *Anarchism and Other Essays*, 3d revised ed. (New York: Mother Earth Publishing Association, 1917 [repr. 1969]), p. 56 [repr., p. 50].
10. Godwin, *Enquiry*, vol. 1, p. 230 [p. 242].
11. *Ibid.*, vol. 2, p. 334 [p. 639].
12. *Ibid.*, vol. 2, pp. 2-3 [p. 408].
13. *Ibid.*, vol. 2, p. 337 [pp. 641-42].
14. *Ibid.*, vol. 2, pp. 479-84 [pp. 743-47].
15. For Diogenes' relation to the modern movement, see Donald R. Dudley, *A History of Cynicism* (London: Methuen, 1937 [repr. 1974]), pp. 211-12.
16. But perhaps not with all his ideas, for Aristotle remarks that "no one else [besides Plato] has proposed such an innovation as community of children and women" (II.7.1266a34-35). See W. L. Newman, *The Politics of Aristotle*, 4 vols. (Oxford: Clarendon Press, 1887-1902 [repr. 1973]), *ad loc.*
17. See Newman, *Politics*, vol. 1, pp. 24-25, and Ernest Barker, *The Political Thought of Plato and Aristotle* (London: Methuen, 1906 [repr. 1959]), pp. 59, 271-72.
18. On Aristotle's "totalitarianism," see Jonathan Barnes, "Aristotle and Political Liberty," and Richard Sorabji, "State Power: Aristotle and Fourth Century Philosophy," in *Aristoteles' "Politik,"* Akten des XI. Symposium Aristotelicum, ed. Gunther Patzig (Göttingen: Vandenhoeck and Ruprecht, 1990).
19. In one passage, both points are combined: "We say that nature makes for the sake of something, and that this is some good" (*De Somno et Vigilia* 2.455b17-18).
20. It is not a syllogism strictly speaking since the parenthetical expression counts as a fourth term. The argument is of course valid.
21. Aristotle also says that "the political good is the just" (III.12.1282b16-17). Since he goes on in this passage to discuss distributive justice, it is plain that the justice in question here is particular rather than universal justice. This is the reason that the good that is equated with it is the political rather than the social good.
22. For the four juristic categories in a typical Greek polis—citizens, metics, foreign visitors, and slaves—see III.1.1275a7-8, 5.1277b38-39; VII.4.1326a18-20, b20-21.
23. The *kai* in this passage is epexegetical.
24. Newman, *Politics*, vol. 1, p. 119n.
25. That a full citizen will be an adult male is taken for granted.
26. Retaining (contrary to Ross) the *e* of all manuscripts.
27. It was illegal in Athens after the middle of the fifth century for a citizen to marry an alien. See Douglas M. MacDowell, *The Law of Classical Athens* (Ithaca, NY: Cornell University Press, 1978), p. 87.
28. For one exception, see John M. Cooper, "Political Animals and Civic Friendship," in Patzig, ed., *Aristoteles' "Politik,"* pp. 228-29.
29. Newman, *Politics*, vol. 1, p. 230.
30. See *ibid.*, *ad loc.* and vol. 1, p. 229.
31. Aristotle sometimes defines democracy juristically in terms of free status (see IV.4.1290b1, 1291b30-39, 8.1294a11, 15.1299b20-27; V.1.1301a28-31, 8.1309a2; VI.2.1317a40-

41, 1318a3-10). In so doing, he reverses the essential and incidental (the defining and nondefining) properties of proletarian democracy and defines what might be called "egalitarian" democracy. This kind of democracy is essentially rule by the free and only incidentally rule by the poor (since the poor are normally a majority of the free). Contrary to his official definition of democracy, Aristotle remarks in one passage that "in democracies it just happens (*sunbainei*) that the poor are more powerful than the rich" (VI.2.1317b8-9). What "just happens" in such a democracy need not always happen. When it does not—when, for example, property is fairly evenly distributed—the free will not split into rich and poor, and will be able, in theory at least, to rule with an eye to the advantage of all the citizens. If they do, the constitution will be correct rather than deviant. In fact, the best polis described in Books VII and VIII seems to be just such an egalitarian democracy. See the note to 1275b5 in Franz Susemihl and R. D. Hicks, *The Politics of Aristotle*—Books I-V [I-III, VII-VIII] (London: Macmillan, 1894 [repr. 1976]). It should be noted that since egalitarian democracy is defined purely juristically, nothing prevents an egalitarian democracy from also being an aristocracy.

32. See Newman, *Politics*, *ad loc.*

33. See Newman's note to 1293a39.

34. Newman, *Politics*, *ad loc.*

35. See the text flagged by note marker 5 above.

36. The polis of Books VII and VIII is never called an aristocracy. The noun *aristokratia* does not, in fact, occur in Books VII and VIII; and the adjective *aristokratikos* occurs only once (VII.11.1330b20). This has led some scholars to question whether it is really supposed to be an aristocracy. For a recent discussion of this matter, see Charles H. Kahn, "The Normative Structure of Aristotle's 'Politics,'" in Patzig, ed., *Aristoteles' "Politik,"* pp. 375-81.

37. Newman adds: ". . . as well as in the hands of any mercenaries they may employ or any allies they may possess" (*Politics*, *ad loc.*).

38. Susemihl and Hicks, *Politics*, p. 55.

39. Newman, *Politics*, vol. 1, p. 328.

40. As Susemihl and Hicks imply in their *Politics*, (note to 1328b8).

41. For the distinction between *emporoi* and *kapeloi*, see Plato, *Republic* II.371D5-7 and *Sophist* 223D5-10.

42. The ability to deliberate is an essential property of a craftsman or artisan (see *Met.* VII.7.1032a25-b21; *EN* III.3, VI.4), whereas a natural slave "wholly lacks the deliberative faculty" (I.13.1260a12). Aristotle distinguishes two types of *hired* labor: "that of the vulgar (banausic) arts [retaining *technon*]" and "that of the unskilled who are useful for their body only" (I.11.1258b25-27). Since the latter phrase describes the highest work of which a natural slave is capable (I.5.1254b25-26), even the lowest artisan is not a natural slave. For the definition of banausic art, see VIII.2.1337b8-15.

43. This is the standard interpretation. Thus, Susemihl and Hicks write in their *Politics* that "[o]nly foreigners and resident aliens are allowed to engage in trade, industry, or manual labour [in Aristotle's best State]" (p. 54).

44. See David Whitehead, "Aristotle the Metic," *Proceedings of the Cambridge Philological Society*, n.s. 21 (1975), pp. 94-99.

45. David Whitehead, *The Ideology of the Athenian Metic* (Cambridge: Cambridge Philological Society, 1977), pp. 71-72; G. E. M. de Ste. Croix, *The Class Struggle in the Ancient Greek World* (London: Duckworth, 1981), pp. 95, 289.

46. This is true, to some extent at least, of every polis that has a correct constitution (III.7.1279a39-b4, 17.1288a6-15).

47. Thus, Hobbes writes:

For the Lawes of Nature (as Justice, Equity, Modesty, Mercy, and (in summe) doing to others, as wee would be done to,) of themselves, without the terrour of some Power, to cause them to be observed, are contrary to our naturall Passions that carry us to Partiality, Pride, Revenge, and the like. And Covenants, without the sword, are

- but Words, and of no strength to secure a man at all. (*Leviathan* [London: Andrew Crooke, 1651], ch. 17, p. 85)
48. *Met.* V.6.1016b11-16; VII.16.1040b8-10, 17.1041b11-33; VIII.6.1045a8-10 together with *De Anima* II.1.412a19-21, *Met.* VII.10.1035b14-16.
49. Hobbes, introduction to *Leviathan*.
50. The research on this paper has been aided at critical junctures by that wonderful contribution of modern technology to ancient scholarship, the *Thesaurus Linguae Graecae*.

JUSTICE AND RIGHTS TO HEALTH CARE

Kenneth F. T. Cust
University of British Columbia

We are facing a health-care crisis; in 1988, U.S. health-care expenditures amounted to \$496.6 billion, or 11.2% of GNP. Further studies suggest that, if current trends continue unabated, U.S. health-care expenditures will consume an even larger percentage of GNP by the year 2000, \$1.6 trillion or 16.4%.¹ Another figure mentioned is that health-care costs will “consume 17% of GNP by the year 2000—more than the current shares of education, defense, and recreation combined.”²

In the face of this crisis, the debate over entitlements to health care continues. In this paper I want to consider one contribution to the debate, Norman Daniels’s fair equality of opportunity argument for justice in health care. Daniels has argued that people have “rights and entitlements [to health care that are] defined within a set of basic institutions governed by the fair equality of opportunity principle.”³ I shall briefly explicate and criticize Daniels’s argument, identifying where it fails. In addition, I shall advance an argument for a right to a just minimum of health care; this right, I will argue, can be derived from David Gauthier’s theory of justice as articulated in his *Morals by Agreement*.

Norman Daniels attempts to argue for the aforementioned rights and entitlements by extending the Rawlsian principle of fair equality of opportunity so that health-care institutions would be included among the basic institutions falling under the principle. He argues, first, that health care is a “special social good” (Daniels, 56) because of its limited role in maintaining species-typical normal functioning. He then argues that impairment of such functioning has an adverse impact on one’s normal opportunity range,

where a normal opportunity range is defined as “the array of life plans reasonable persons in [a society] are likely to construct for themselves” (Daniels, 33). Because disease and illness are like lack of talent and/or skill, in that they adversely affect the range of opportunities one may have in a modern liberal-democratic society, one should not be denied access to the full scope of one’s normal opportunity range simply on the basis of the “natural disadvantages induced by disease” (Daniels, 46). Finally, assuming that justice requires guaranteeing fair equality of opportunity, Daniels concludes that health-care institutions should be among those basic institutions which are governed by a principle that will guarantee fair equality of opportunity. He says:

I urge the fair equality of opportunity principle as an appropriate principle to govern macro decisions about the design of our health-care system. Such a principle defines, from the perspective of justice, what the moral *function* of the health-care system must be—to help guarantee fair equality of opportunity. This is the fundamental insight underlying the approach developed here. (Daniels, 41)

Daniels buttresses this part of his argument with the argument that, in order to generate the conclusion that health care is a special social good, we need a theory of health-care needs. Health-care needs, he tells us, are “those things we need in order to maintain, restore, or provide functional equivalents (where possible) to normal species functioning” (Daniels, 32). The theory of health-care needs on which Daniels relies is Christopher Boorse’s biomedical model.⁴

Daniels-cum-Boorse’s account of the biomedical model is that “health is the absence of disease, and diseases (I include deformities and disabilities that result from trauma) are *deviations from the natural functional organization of a typical member of a species*” (Daniels, 28; italics in original). The list of needs Daniels includes under health-care needs is substantial: (1) adequate nutrition, shelter; (2) sanitary, safe, unpolluted living and working conditions; (3) exercise, rest, and some other features of life style; (4) preventive, curative, and rehabilitative personal medical services; (5) nonmedical personal and social support services (Daniels, 32). These needs can be met, Daniels argues, by a four-tier system of health-care delivery which he goes on to describe.

While Daniels’s argument does not guarantee a universal individual right to health care, it does guarantee that we would have those “rights and entitlements [to health care that are] defined within a set of basic institutions governed by the fair equality of opportunity principle” (Daniels, 54). These basic institutions—essentially Daniels’s four-tier system—are, on his account, necessary to provide what a theory of justice in health care

requires if our general theory of distributive justice guarantees that we are to have fair equality of opportunity.

While Daniels's argument may be related to that of Rawls, there are important differences, especially concerning the fair equality of opportunity principle. Rawls argues extensively for his fair equality of opportunity principle: it is a principle of distributive justice that would be chosen by free, rational, equal, and mutually disinterested agents behind a veil of ignorance. On Daniels's account, the fair equality of opportunity principle is assumed at the outset. Thus, it is worth noting that Daniels's argument is a conditional argument. This is important for at least two reasons. First, alternative theories of justice—for example, those advanced by Nozick and Gauthier—may not include fair equality of opportunity as a principle of justice. And second, Daniels's reliance on the principle of fair equality of opportunity is deeply problematic, for, as I shall argue shortly, health care does not necessarily lead to an increase in one's normal opportunity range.

Another difference between Rawls's and Daniels's accounts of fair equality of opportunity is that the scope of opportunity Rawls had in mind is much narrower than the scope Daniels has in mind. Rawls's conception of fair equality of opportunity relates to the likelihood one has in a just society of securing one of the better positions that society has to offer. Daniels's conception is much broader in the sense that it relates to the likelihood one has in a just society of actualizing any one of the "array of life plans reasonable persons are likely to construct for themselves" (Daniels, 33). Given that Daniels's conception is much broader than Rawls's, then, as Lawrence Stern notes and Allen Buchanan reiterates,⁵ "Daniels' FEO [fair equality of opportunity] requires promoting equality in more areas of life than Rawlsian FEO."⁶ The promotion of equality in more areas of life is problematic, for, if it cannot be constrained, society may find itself attempting to meet all health-care needs in the name of fair equality of opportunity. Any such attempt would place us on the edge of a "bottomless pit" that has the potential to consume not only our health-care budget but all of society's resources.

There are, however, more substantial objections that can be raised against Daniels's argument. The most compelling objection is that, *pace* Daniels, his argument results in a narrowing of the range of opportunity that people would otherwise have. Presumably, on his account, the money for funding health care would be raised through taxation. Either the money raised through taxation would be sufficient to meet annual health-care expenditures or it would not. If it was sufficient, then people would have less money to spend on their other non-health-care preferences. This assumes, of course, that people have limited resources such that they cannot satisfy all their preferences. If people have less money to spend on their other non-health-care preferences, then they will be unable to satisfy those preferences. And if one's opportunity range is related to these non-

health-care preferences, then, to the extent that one cannot satisfy one's preferences, one's opportunity range has been restricted.

If the money raised through taxation was insufficient to meet the annual health-care budget, then, presumably, the remaining funds would be raised through deficit financing, or raising the national debt. If this were the case, then, while the opportunity range of the present generation might not be narrowed, the opportunity range of some future generation or generations would be narrowed (on the assumption that deficit financing cannot be continued indefinitely). Thus, on either account, we would end up with a narrowing of opportunity ranges, either the ranges of the present generation or the ranges of some future generation or generations.

Daniels defines the concept of a normal opportunity range as "the array of life plans reasonable persons in [a society] are likely to construct for themselves" (Daniels, 33). My preceding argument rests on this same definition. The life plans reasonable persons in a society are likely to construct for themselves are just those plans that people make with respect to educating themselves, choosing a career, having a family, providing for their children's education, and providing for their retirement. If the amount that people are taxed to fund health care is greater than the amount that they would have voluntarily spent on health care (e.g., by purchasing insurance), then they will have less money to spend on these other areas, and hence will have a narrower range of opportunities.

The next objection to Daniels's argument is that his reason for tying health care to the principle of fair equality of opportunity is arbitrary and unsubstantiated. Daniels first argues that health-care needs reflect dissimilarities in natural differences, not social differences. He then argues that the notion of species-typical normal functioning, in conjunction with access to health care, can be used to solve the problem of these natural differences and thus leave everyone equal with respect to their normal opportunity range. But the different exceptional talents that people are born with are also the result of natural differences and not social differences; that is, they are deviations from the norm of species-typical normal functioning. If deviations from this norm are the baseline for determining if positive measures ought to be taken with respect to guaranteeing access to one's normal opportunity range, then the same should apply to differences in natural talents. But Daniels does not attempt to rectify the inequality that exists between people with different exceptional talents. He says, on the one hand: "But if it is important to use resources to counter the advantages in opportunity some get in the natural lottery, it is equally important to use resources to counter the natural disadvantages induced by disease"; and, on the other hand, that "this does not mean that we are committed to the futile goal of eliminating or 'levelling' all natural differences between persons" (Daniels, 46). Since he offers no reason to explain why the disadvantages one has from disease are more important than the disadvantages one

has from not having been born with exceptional talents, his reason for tying health care to the principle of fair equality of opportunity is purely arbitrary and therefore unsubstantiated.

The third objection to Daniels's argument is also related to the notion of deviations from species-typical normal functioning. While it is true that some of the differences between people with respect to their health-care needs are natural differences, not all of them are. For some differences in health-care needs are self-inflicted. Thus, Daniels must either exclude those health-care needs which are self-inflicted from being covered under his fair equality of opportunity argument, or allow some people to free-ride on their more health-conscious neighbors. Daniels notes that there is "nothing in [his] view [that] makes health protection *so* overriding a concern that we may deny individuals the autonomy to take risks that endanger life, liver, and lungs" (Daniels, 153). Therefore, while he may not endorse high-risk activity, he permits it, as he should; but the people who engage in such activities are not made to pay the costs that result. The problem is not simply that people engage in high-risk activities, thereby increasing the costs all must pay, although this is important. Rather, the problem is that there is no means available to Daniels's theory that could limit the number of people engaging in such high-risk activities.

I now want to consider an alternative approach to guaranteeing a universal right to a just minimum of health care. This approach will rest on certain key concepts of David Gauthier's theory of justice: the notion that society is a cooperative venture for mutual advantage; Gauthier's interpretation of Locke's proviso; the right to compensation if one's rights have been unjustifiably violated and/or if one's liberties have been unjustifiably restricted; and Gauthier's principle of distributive justice, minimax relative concession. I will begin by briefly explicating each of these concepts and then show how they can be used to derive a universal right to a just minimum of health care.

As a contractarian, Gauthier, like Rawls, endorses the idea that society is a "cooperative venture for mutual advantage among persons conceived as not taking an interest in one another's interests."⁷ The rationale for agreeing to enter such a society is straightforward; a society, "analyzed as a set of institutions, practices, and relationships" (Gauthier, 11), that can guarantee that each of its members will benefit from entering it, as compared to what each could expect from remaining in a Hobbesian state of nature, is one that is sure to have the voluntary support of its members. If such a society is possible, then there must be a set of conditions under which each person would voluntarily agree to enter into it.

In Gauthier's case, the agreement to enter such a society is a hypothetical agreement, not an actual agreement. Furthermore, the set of individuals who are parties to this hypothetical agreement does not include everyone. Gauthier explicitly excludes animals and those who cannot

contribute to the cooperative enterprise (Gauthier, 268). The people who are parties to the hypothetical agreement are highly idealized agents; that is, they are conceived to be rational in the sense that they are concerned to maximize their expected utility, and they are fully informed with respect to each other's utility function. In addition, Gauthier assumes that bargaining is cost free.

Once armed with these assumptions, Gauthier's task is fivefold. (1) He must tell us what it is that people would agree to. (2) He must demonstrate why these highly idealized agents would agree as he says they would. (3) He must demonstrate why it would be rational for people so conceived to keep their agreement. For while it may be rational to make an agreement, it may not be rational to comply with it once the conditions under which the original agreement was made change. A simple example will illustrate the nature of this problem—typically referred to as the compliance problem. Suppose we each find it rational to help each other harvest our crops at the end of the season and agree to do so. However, while it may be rational to agree to help you harvest your crop after we have harvested mine, once my crop is harvested my expected utility will be maximized if I now defect rather than keep the agreement. (4) Gauthier must supply a principle for governing the distribution of the cooperative surplus, or the benefits of cooperation. If people cannot reach agreement on such a principle, then they will not cooperate. However, prior to reaching agreement concerning a principle of distribution, Gauthier must first specify the initial bargaining position; he must specify what assets the bargainers are allowed to bring to the bargaining table. Unless people reach agreement on this issue, either there will be no other agreement or any agreement reached will be unstable.

With respect to (1), Gauthier argues that these highly idealized agents would agree to impartial constraints on the pursuit of individual utility-maximizing behavior. With respect to (2) and (3), he argues that they would agree to such self-imposed constraints and keep their agreements because doing so would maximize each person's expected utility. With respect to (4), he argues that rational agents would agree to the principle of minimax relative concession to govern the distribution of the cooperative surplus; that is, when bargaining over distribution, each agent would agree to make a concession no larger than the concession any other agent would make. In other words, rational agents would agree to minimize their maximum relative concession. Finally, Gauthier's solution to the problem of defining the initial bargaining position is the noncooperative outcome constrained by Gauthier's interpretation of Locke's proviso; that is, each agent brings to the table those assets he would have in the absence of the others.

Locke originally conceived of the proviso as one of the conditions that must be satisfied in the state of nature if one is to acquire a claim right to private property. He argued that one could acquire such a right

provided, among other things, that there was “enough, and as good left” in common for others.⁸ Robert Nozick, like Locke, was concerned to provide an argument for the original acquisition of property and thus substantiate his entitlement theory of justice. He interpreted Locke’s proviso to mean that “the situation of others is not worsened.”⁹

Given that Gauthier is concerned to provide an argument not merely for a claim right to property but also for the claim right to one’s original factor endowments—that is, the natural assets one is born with—he finds Nozick’s interpretation of Locke’s proviso to be too demanding. He argues that Nozick’s interpretation may require one to worsen one’s own situation so as to avoid worsening the situation of others. Locke held, and Gauthier agrees, that preserving one’s own life is more important than preserving the life of another. Hence, Gauthier modifies Nozick’s interpretation to allow one to preserve one’s own life. Gauthier interprets Locke’s proviso so that it “prohibits bettering one’s situation through interaction that worsens the situation of another” (Gauthier, 205).

An example will help illustrate this. Imagine that someone is drowning in a lake. Suppose further that his being in the lake came about in one of two ways: I could have pushed him in, or he could have accidentally fallen in. If I pushed him in and then fail to rescue him, I have worsened his situation, for he would have been better off had I been absent. If he accidentally fell in and if I should happen to pass by and ignore his cries for assistance, then, while I may have failed to better his situation, I have not worsened it. For the outcome he could expect, by my passing by and not saving him, is the same outcome he could expect if I had not come along. Thus, on Gauthier’s account, the base point for determining whether one is made better or worse off is determined by the outcome one could expect in the absence of another.

Rational agents, Gauthier argues, would only consider approaching the bargaining table if they knew that what each initially brought to the table had been acquired fairly—that is, if they knew that neither of the players would have been placed at a strategic disadvantage by the coercive efforts of the other. If an initial acquisition were unfair, then the bargaining situation itself would be contaminated such that any outcome would be unfair. This would lead to problems with compliance and hence to social instability. But if the prebargaining baseline is the noncooperative outcome constrained by Gauthier’s proviso, then, since no one would have bettered his situation through interaction that worsened the situation of the other, each party could bring to the bargaining table what he could make use of “in the absence of his fellows” (Gauthier, 209). In the absence of his fellows, each person could only make use of his natural factor endowments, his physical and mental capacities. In the drowning example, where the person accidentally fell into the water, in the absence of all others, he could expect to drown. Thus, the first step in Gauthier’s derivation of claim rights

to one's own person is that the noncooperative outcome, constrained by his proviso, "gives each person [an] exclusive [claim] right to the use of his body and its powers, his physical and mental capacities" (Gauthier, 210).

There are three other steps in Gauthier's derivation of rights and liberties, but for my purposes I need not explicate them here. What is important for my purposes is that people have rights and liberties and that there are certain consequences which follow if these are unjustifiably violated or restricted. If a person's liberties are restricted and if the justification for restricting them fails to satisfy Gauthier's proviso, then the liberty-restriction is unjustified. If the liberty-restriction does not violate Gauthier's proviso, then it is justified. Under Gauthier's theory of justice, people who have their liberty unjustifiably restricted are owed compensation (Gauthier, 212-16).

While several justifications have been advanced to justify the restriction of people's liberty—the offense principle, the principles of weak and strong paternalism, the principle of legal moralism, and the social-welfare principle¹⁰—Mill's harm principle is the only one that does not violate Gauthier's proviso. Mill argued that we may justifiably allow the restriction of a person's liberties in order to prevent him from harming another.¹¹ Harming someone is worsening his situation and therefore is in direct violation of Gauthier's proviso. Since restricting someone's liberty in order to prevent him from harming another is not in violation of Gauthier's proviso, no compensation need be paid to the person whose liberty is thus restricted.

However, suppose we restrict someone's liberty, not to prevent him from harming someone, but rather so that some other person will benefit. Would such a restriction violate Gauthier's proviso? If so, then compensation must be paid to the person whose liberty is restricted. If not, then compensation is unnecessary. For example, consider the social-welfare principle, which says that we are justified in restricting someone's liberty in order to benefit others. If my liberty is restricted so that others may benefit, then I am worse off than I would be in the absence of these others; therefore, Gauthier's proviso is violated, and, in order to rectify the injustice, I deserve to be compensated.

Under Gauthier's theory, unjustifiable rights-violations or liberty-restrictions call for market compensation, rather than full compensation, since full compensation may be less than what one could have obtained through voluntary exchange. If a rights-violator paid only full compensation, when full compensation was less than market compensation, then Gauthier's proviso would be violated; that is, the rights-violator would have benefited himself by worsening the situation of the person whose rights were violated. However, if full compensation is greater than market compensation, as it sometimes is, then full compensation must be paid, for otherwise, again, the malefactor would be benefiting himself by worsening the other's situa-

tion.

For example, suppose you restrict my liberty to engage in voluntary cooperation with another and, further, that you do so with the intention of compensating me for my loss. If you gave me only full compensation for my loss, and this was less than what I could have received by engaging in voluntary cooperation with someone else, then I have been made worse off than I would have been in the absence of your restricting my liberty. You would have violated Gauthier's proviso. However, if you paid me market compensation—that is, what I would have received had I cooperated with the other person—then I would be as well off as I could have been had my liberty not been restricted. In other words, if you do not pay me market compensation, then I am precluded from receiving any part of the benefits you obtained from restricting my liberty.

That people have rights and liberties, and that unjustifiable violation/restriction of these requires market compensation, is important in determining what constitutes justice in health care. But justice in health care need not, at least according to Gauthier's theory, guarantee a right to health care—though it may in fact do so. Prior to determining how such a right might be guaranteed, we must first consider what Gauthier's conception of essential justice demands with respect to people having the liberty to engage in fully voluntary cooperation.

A society operating within the conceptual and normative framework of Gauthier's theory is, to use his term, an "essentially just society." Such a society, Gauthier argues,

affords its members the opportunity to enjoy the intrinsic value of participation. But it does this, not by imposing any participatory structures, but by freeing persons from the barriers to fully voluntary cooperative interaction. We have indeed claimed that rational persons would accept the perfectly competitive market where conditions make perfect competition, or a near approximation thereto, feasible. But an essentially just society does not impose the market on its members; it does, however, remove what might be barriers to it, both in enforcing the proviso and punishing force and fraud, and in rejecting compulsory social practices and institutions that embody any substantive goal. An essentially just society can neither ban nor require capitalist acts among consenting adults. (Gauthier, 341)

Under Gauthier's theory, people have a claim right to their person and property; that is, they are morally entitled to their initial factor endowments and whatever property they obtain without violating his proviso. Moreover, people are entitled to the full exercise of their liberty insofar as they are not under a duty to refrain from performing some particular

action; that is, they are entitled to engage in any action not prohibited by his proviso. If people are entitled to exercise their liberty, then they are entitled to care for their own health to the best of their knowledge and ability, so long as they do not violate the proviso. They are also entitled—again, short of violating the proviso—to seek out others to assist them in caring for their own health.

As things now stand in both Canada and the United States, people's liberty to meet their own health-care needs is restricted, for the medical professions of both countries have a monopoly on the practice of medicine. This monopoly, since it deviates from what would take place in a free market, is either justified or unjustified.

Kenneth Arrow has argued that the medical profession's monopoly is justified owing to the uncertainty associated with the incidence of disease and the efficacy of treatment.¹² I will not concern myself here with whether Arrow's argument is successful.¹³ For, as I shall argue, people will be entitled to a just minimum of health care whether the medical profession's monopoly is justified or not.

Let us assume, for the sake of argument, that the medical profession's monopoly on the delivery of medical care is indeed justified. If it is, then that is to say that this nonmarket system is Pareto-superior to a free market system—there are benefits obtained from the medical profession having a monopoly that are not obtainable from a free market system. If there are such benefits to be obtained, then—since each person's liberty to care for her own medical needs has been justifiably restricted—each is entitled to her fair share of the benefits that arise from the monopoly. Under Gauthier's theory of justice, each person's fair share of these benefits is determined by the principle of minimax relative concession. Since each person's liberty has been equally restricted, each is entitled to an equal share of the benefits. The share that each person is entitled to is a just minimum of health care.

Let us now assume that the medical profession's monopoly is not justified. If it is not, then people's liberty to provide for their own health-care needs has been unjustifiably restricted. Under Gauthier's theory, if people's liberties have been unjustifiably restricted, in violation of his proviso, then they are owed market compensation. The compensation that people are owed as a result of this unjustified restriction of their liberty is also a just minimum of health care.

The argument for compensation is not an argument for being compensated for past unjustified restrictions of one's liberty, but rather an argument for the present injustice of unjustifiably having one's liberty restricted. This assumes, of course, that the medical profession's monopoly is indeed an unjustified restriction of liberty. Be that as it may, this will not detract from the overall conclusion which I am arguing for. That is, the medical profession's monopoly is either justified or not. If it is, then people

are entitled to their fair share of the benefits that result from it. If it is not, then people are entitled to market compensation for the unjustified restriction of their liberty. In either case, people are entitled to some medical care, and whatever it amounts to, it is a just minimum to which everyone is entitled.

I now want to explore a third alternative which would also guarantee a just minimum of health care. Let us imagine that the medical profession did not have a monopoly on the practice of medicine. If this were the case, then people would have three options available to them: they could attempt to meet their own health-care needs to the best of their ability and knowledge; they could seek out other nonphysician practitioners to assist them in meeting their health-care needs; or they could seek out physicians to assist them in meeting their health-care needs. Since their liberty has not been restricted, they would be entitled to that amount of health care they could obtain by exercising any one of these three options. The amount of health care they did obtain from exercising any of these options would also be a just minimum of health care to which all would be entitled.

The importance of having the liberty to meet one's health-care needs by using one's own knowledge and abilities and/or seeking out other non-physician practitioners of medical care should not be underestimated. Not only would such an exercise of liberty not be in violation of Gauthier's proviso, but also, as some have argued, "90% of patient contacts with the health care system are for the management of chronic conditions."¹⁴ Since the treatment of chronic conditions requires less physician contact than the treatment of acute ones, this suggests that physicians are not nearly as necessary for the delivery of health care as we once might have thought.

Moreover, several recent studies in the United States have demonstrated that some nonphysician health professionals, specifically nurse practitioners and physician assistants, can make significant contributions to providing care. In analyzing seventeen studies conducted in the United States from the mid-1960s to 1980, Jane Cassel Record et al. found that 80% of office visits for adult care and 90% of office visits for pediatric care could safely be delegated to nurse practitioners and/or physician assistants.¹⁵ The quality of care actually provided by these nonphysician health professionals was found to be "at least as high as the care rendered by physicians," and patients were just as satisfied with the care received from nurse practitioners and physician assistants as they were with physicians' care.¹⁶

In addition, as noted in a recent *JAMA* editorial, "there seems to be little relationship between the percentage of gross national product spent on medical and health care and the extent of improvements in expected life span."¹⁷ In graphs comparing life expectancy with the percentage of GNP spent on health care in the United States, George D. Lundberg observes that the major gains in life expectancy occurred when health-care expenditures were at their lowest. According to Lundberg's graphs, average life

expectancy in the U.S. has risen from 49 in 1900 to 77 in 1990. But the major part of that increase (from 49 to 72) occurred before 1960, during a period when the portion of GNP spent on health care was between 3% and 5.5%. That is to say, the major part of the increase in life expectancy came *before* the sharp increases in health-care expenditures that began in the 1960s. Between 1960 and 1990, as the portion of GNP spent on health care rose from 5.5% to 12.5%, life expectancy rose only from 72 to 77.¹⁸

In a study that sought to determine the impact of medical services on health status, using data for 1963 and 1970, Benham and Benham concluded that "positive increments in nonobstetric medical services for adult population groups from 1963 to 1970 did not lead to improvements of health."¹⁹ This study is important not only for the conclusion drawn, but also because part of the data comes from the mid-sixties, a period after Medicaid and Medicare (a kind of decent-minimum project) were implemented in the United States.

There is further evidence that current and past expenditures on health care in this country, and in others, has had little impact on mortality. In making this claim, one must, of course, draw a clear distinction between "clinical practice on the one hand and the larger responsibilities of medicine as an institution on the other."²⁰ Thomas McKeown, after studying the decline in mortality rates in several countries since the end of the seventeenth century, concluded that the decline was "due predominantly to a reduction of deaths from infectious diseases" (McKeown, 45).

With respect to noninfectious diseases as a cause of death in the eighteenth, nineteenth, and twentieth centuries, McKeown concluded that "the contribution of clinical medicine to the prevention of death and increase in expectation of life in the past three centuries was smaller than that of the other influences" (McKeown, 91). He judges improvements in nutrition as being the most important, and also states that improvements in public hygiene accounted for at least one-fifth of the reduction of the death rate between the mid-nineteenth and mid-twentieth centuries. Vaccinations—with the exception of the smallpox vaccine, "whose contribution was small" (McKeown, 78)—and medicines made little contribution until sulfonamides were introduced in the mid-1930s. Changes in reproductive practices were also very significant, McKeown argues, for they "ensured that the improvement in health brought about by other means was not reversed by rising numbers" (McKeown, 78). In a later study, McKeown reached basically the same conclusion: "[I]t is most unlikely that personal medical care had a significant effect on the trend of mortality in the eighteenth and nineteenth centuries."²¹

In another recent study of the decline in mortality in the United States since 1900, it was found that the vast majority of the decline occurred before the mid-sixties explosion of health-care expenditures, or in the words of the authors of the study: "*It is evident that the beginning of*

the precipitate and still unrestrained rise in medical care expenditures began when nearly all (92 percent) of the modern decline in mortality this century had already occurred" (see Figure 1).²² Markowitz et al. argue that the general decline in mortality in the late nineteenth century, which was due to "various sanitary reforms, antitoxins, protective sera and increased education," was responsible in part for the medical reform movement of the era, for physicians were worried that "the actual need for the physician would decline."²³

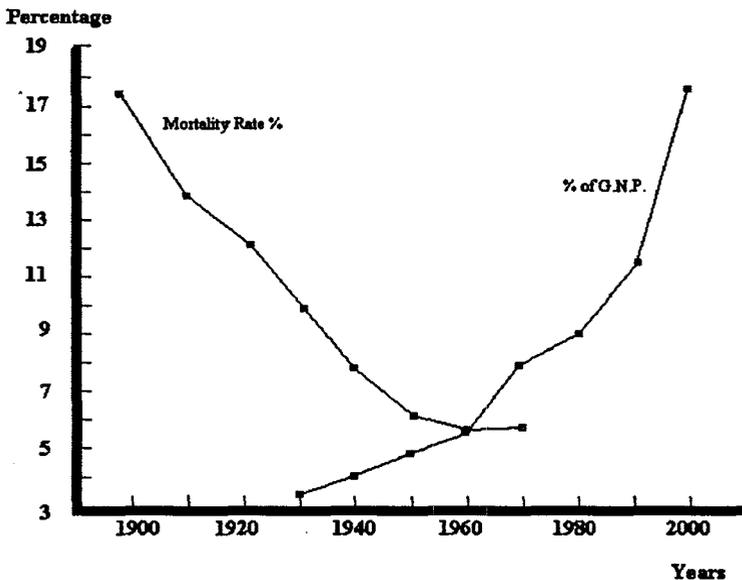


Figure 1: *Percentage Decline in Age & Sex Adjusted Mortality Rates Compared with Percentage of U.S. GNP Spent on Health Care*

Three additional studies concluded basically the same thing: "For most of history, medical care has been irrelevant in the determination of aggregate social indices whatever comfort it may have brought to particular individuals";²⁴ and "indeed, from a historical standpoint, nutritional improvement, establishment of sanitary control and the spread of educational achievement in industrialized nations have been clearly more significant for improving the health of nations (particularly in the reduction or postponement of mortality) than medical delivery has been";²⁵ and "the marginal contribution of medical care to life expectancy, holding the state of the art constant, is also very small. Improvements in medical science (primarily new drugs), however, have had significant effects during the period 1930-

60.”²⁶ In addition to these general observations, the leading causes of death in the United States and Canada are causes for which the physician can offer only palliative care. In both the U.S. and Canada, the four leading causes of death, in order, are heart disease, cancer, cerebrovascular diseases (principally strokes), and accidents.

A recent study on the impact of medical care on mortality in Canada, despite almost all of the provinces having had some degree of national health insurance throughout the course of the study, from 1958 to 1988, and despite “spectacular gains in utilization”²⁷ during the years studied, could only conclude that “medical care *probably* had an important impact on changes in mortality rates from amenable diseases.”²⁸

The evidence presented, while perhaps not conclusive, certainly does give one cause to be skeptical about the overall contribution of the institution of medicine to life expectancy and the decline in mortality rates, especially given the physicians’ monopoly on the practice of medicine. Furthermore, if the aforementioned studies withstand critical scrutiny and if, as I have argued, people are indeed entitled to a just minimum of health care, then the minimum they are entitled to should be sufficient to meet most of their health-care needs. On the other hand, even if further investigations did reveal that medicine’s overall contribution to increases in life expectancy and decreases in mortality were more than the aforementioned studies suggest, the burden of proof for demonstrating that people have a right to more than a just minimum now lies on the shoulders of others.

1. Sally T. Sonnefeld et al., “Projections of National Health Expenditures through the Year 2000,” *Health Care Financing Review*, vol. 13, no. 1 (Fall 1991), p. 1.
2. Lee Smith, “A Cure for What Ails Medical Care,” *Fortune*, July 1, 1991, pp. 44-49.
3. Norman Daniels, *Just Health Care* (Cambridge: Cambridge University Press, 1985), p. 54; subsequent page references will be given parenthetically in the text.
4. Cf. Christopher Boorse, “On the Distinction Between Disease and Illness,” in *Medicine and Moral Philosophy: A Philosophy & Public Affairs Reader*, ed. M. Cohen, T. Nagel, and T. Scanlon (Princeton: Princeton University Press, 1981), pp. 3-22.
5. Allen E. Buchanan, “The Right to a Decent Minimum of Health Care,” *Philosophy & Public Affairs*, vol. 13, no. 1 (Winter 1984), pp. 63-64.
6. Lawrence Stern, “Opportunity and Health Care: Criticisms and Suggestions,” *Journal of Medicine and Philosophy*, vol. 8, no. 4 (Nov. 1983), p. 340. For Daniels’s response to Stern, see Daniels, “A Reply to Some Stern Criticisms and a Remark on Health Care Rights,” *Journal of Medicine and Philosophy*, vol. 8, no. 4 (Nov. 1983), pp. 363-71.
7. Cf. David Gauthier, *Morals by Agreement* (Oxford: Clarendon Press, 1986), p. 10; see also John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971), pp. 4, 13; subsequent references to these books will be given parenthetically in the text.
8. John Locke, *Two Treatises of Government*, ed. P. Laslett (Cambridge: Cambridge University Press, 1965), ch. 5, par. 33.

9. Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), p. 175.
10. Cf. Joel Feinberg, *Harm to Self* (Oxford: Oxford University Press, 1986), ch. 19.
11. John Stuart Mill, *On Liberty and Other Essays*, ed. J. Gray (Oxford: Oxford University Press, 1992), p. 14.
12. Kenneth Arrow, "Uncertainty and the Welfare Economics of Medical Care," *American Economic Review*, vol. 53, no. 5 (Dec. 1963), pp. 941-73. For a response to Arrow, see Dennis S. Lees and Robert G. Rice, "Uncertainty and the Welfare Economics of Medical Care: A Comment," *American Economic Review*, vol. 55, no. 1 (March 1965), pp. 140-54. See also Arrow's response to Lees and Rice: Arrow, "Uncertainty and the Welfare Economics of Medical Care: Reply (The Implications of Transaction Cost and Adjustment Lags)," *American Economic Review*, vol. 55, no. 1 (March 1965), pp. 154-58.
13. See my "A Just Minimum of Health Care," Ph.D. Dissertation, Bowling Green State University, 1993, ch. 6.
14. William Barnhill, "Canadian Health Care: Would It Work Here?" *Arthritis Today*, November/December, 1992, p. 43. In addition, one should note that this 90% figure is in accord with other sets of figures: for example, only 11.5% of the population is hospitalized each year, and 15% of those hospitalized consume some 55% of hospital expenditures. (Natalie Gagner, "Where Does the Medical Dollar Go?" *American Medical News*, July 20, 1992, p. 26. This observation is seconded by Uwe Reinhardt when he notes that "in any given year, some 70 to 80% of health care expenditures tend to be caused by only about 10% of the population. Cf. Uwe E. Reinhardt, "Resource Allocation in Health Care: The Allocation of Lifestyles to Providers," *Milbank Quarterly*, vol. 65, no. 2 [1987], p. 169.) And, as Canadian and American demographers inform us, the population will age as the baby-boom generation begins to retire in the next fifteen to twenty years. An aging population will only reinforce these figures, for the elderly consume a disproportionate share of health-care expenditures. (Daniel Callahan, *Setting Limits: Medical Goals in an Aging Society* [New York: Simon & Schuster, Inc., 1987], pp. 225-28.)
15. Jane Cassel Record et al., "New Health Professionals after a Decade and a Half: Delegation, Productivity, and Costs in Primary Care," *Journal of Health Politics, Policy, and Law*, vol. 5, no. 3 (Fall 1980), p. 478.
16. Dorothy Robyn and Jack Hadley, "National Health Insurance and the New Health Occupations: Nurse Practitioners and Physicians' Assistants," *Journal of Health Politics, Policy, and Law*, vol. 5, no. 3 (Fall 1980), p. 450.
17. George D. Lundberg, "National Health Care Reform: The Aura of Inevitability Intensifies," *Journal of the American Medical Association*, vol. 267, no. 18 (May 13, 1992), p. 2522.
18. *Ibid.*, pp. 2521-22.
19. Lee Benham and Alexandra Benham, "The Impact of Incremental Medical Services on Health Status, 1963-1970," in *Equity in Health Services: Empirical Analyses in Social Policy*, ed. R. Anderson, J. Kravitz, and O. Anderson (Cambridge, MA: Ballinger Publishing Company, 1975), p. 227.
20. Thomas McKeown, *The Role of Medicine: Dream, Mirage, or Nemesis?* (Princeton: Princeton University Press, 1979), p. 191; subsequent references to this book will be given parenthetically in the text.
21. Thomas McKeown, *The Origins of Human Disease* (Oxford: Blackwell, 1988), p. 81.
22. John B. McKinlay and Sonja M. McKinlay, "The Questionable Contribution of Medical Measures to the Decline of Mortality in the United States in the Twentieth Century," *Milbank Memorial Fund Quarterly*, vol. 55, no. 3 (Summer 1977), p. 414; emphasis in original. The graph in Figure 1 extends the McKinlays' graph (p. 415) by including the most recent figures for American health-care expenditures.
23. Gerald E. Markowitz and David Kari Rosner, "Doctors in Crisis: A Study of the Use of Medical Education Reform to Establish Modern Professional Elitism in Medicine," *American Quarterly*, vol. 25, no. 1 (March 1973), p. 88.

24. R. M. Hartwell, "The Economic History of Medical Care," in *The Economics of Health and Medical Care*, ed. M. Perlman (New York: John Wiley & Sons, 1974), p. 3.
25. Mark Perlman, "Economic History and Health Care in Industrialized Nations," in *The Economics of Health and Medical Care*, p. 21.
26. Victor R. Fuchs, "Some Economic Aspects of Mortality in Developed Countries," in *The Economics of Health and Medical Care*, p. 174.
27. Morris L. Barer and Robert G. Evans, "Riding North on a South-Bound Horse? Expenditures, Prices, Utilization, and Incomes in the Canadian Health Care System," *Medicare at Maturity: Achievements, Lessons, and Challenges*, ed. R. G. Evans and G. L. Stoddart (Calgary: University of Calgary Press, 1986), p. 83.
28. Maria Desmeulles and Robert Semenciw, "The Impact of Medical Care on Mortality in Canada, 1958-1988," *Canadian Journal of Public Health*, vol. 82, no. 3 (May/June 1991), p. 211; emphasis added.

LIBERAL EGALITARIANISM, BASIC RIGHTS, AND FREE MARKET CAPITALISM

Daniel Shapiro
West Virginia University

A key difference between contemporary liberalism¹ and the liberalism that flowered in the eighteenth and nineteenth centuries—often called classical liberalism—concerns the issue of protection for private property rights or rights in the commercial realm. Both contemporary and classical liberalism support basic² rights in the noncommercial realm—e.g., rights to free speech, freedom of religion, privacy.³ But contemporary liberalism denies that any private property rights, other than the right to have exclusive use of personal property, are basic rights; or to put it a slightly different way, contemporary liberalism denies that there are any basic rights in the commercial realm, or the realm of (widespread) exchange.⁴ This difference between contemporary and classical liberalism leads to or is part of another difference, namely the different types of capitalism that they believe are required by justice. In a sense, contemporary liberalism supports capitalism. Like virtually any reasonable person or position these days, liberalism rejects comprehensive and central planning, and once that is rejected the market must be a central (if not the central) economic institution; furthermore, most contemporary liberals reject the claim that justice requires that most capitalist firms be banned. However, though contemporary liberalism views the widespread use of markets and capitalist firms, and the private property rights that define and constitute such markets and firms, as *permissible*, it does not think that *justice* requires that there be significant limits on the power of democratic majorities to interfere with free markets or the private property rights that define or constitute those markets in capitalism,⁵ which I shall call rights to free exchange or robust private

property rights. I shall call a system of this type, where there are no basic rights to free exchange or significant limits imposed by justice on the power of democratic majorities to interfere with those rights, welfare state capitalism. Classical liberalism rejects welfare state capitalism, and supports what I shall call free market capitalism, a system which includes at least some basic rights to free exchange or basic rights in the commercial realm, and where justice requires that there be significant limits on the power of democratic majorities to interfere with these rights.⁶

Two types of considerations would justify contemporary liberalism's different views about basic rights in the noncommercial and commercial realms. First, contemporary liberalism favors an egalitarian theory of distributive justice, and this might rule out the possibility that any robust private property right is a basic right or that there is a basic right to free exchange. Second, even if liberal egalitarianism is compatible with some basic rights in the commercial realm, if the kinds of values or considerations which justify basic rights in the noncommercial realm do not apply, or do not apply in the same way, in the commercial realm, then arguments for basic rights in the former realm cannot transfer over to the latter realm. I believe that neither possibility holds. A plausible liberal egalitarian theory of distributive justice *is* compatible with at least some basic rights to free exchange, and liberal arguments for basic rights in the noncommercial realm *do* apply and transfer to the commercial realm so as to provide grounds for basic rights to free exchange or robust private property rights. In Sections 1 and 2, I defend the former point, and in Section 3, I provide some considerations that make the latter point plausible. If both points are sound, then the kind of premises and arguments that contemporary liberalism employs compels it to recognize basic rights in the commercial realm and, like its classical liberal progenitors, endorse free market capitalism as a matter of justice.⁷

1. The Apparent Conflict between Liberal Egalitarianism and the Basic Right to Free Exchange

In order to show why liberal egalitarianism does not in fact conflict with basic rights to free exchange, one must first see why it appears that this conflict exists. That is the aim of this section.

The apparent conflict between basic rights in the commercial realm and an egalitarian distributive justice can plausibly be understood in one of two ways. First, since basic rights and egalitarian principles are part of the same *subject matter*, namely a theory of justice, there is no reason why information obtained from one part of a theory of justice cannot affect conclusions about the other part. Accordingly, egalitarian principles of distributive justice should be derived in conjunction with basic rights, and if

we are convinced that something like Rawls's difference principle is correct (requiring that social and economic inequalities be to the greatest advantage to the worst off), then we would hesitate to endorse such rights. Second, it is unclear that principles of basic rights have greater *weight* than egalitarian principles. Egalitarian principles of distributive justice might themselves be formulated in terms of rights (e.g., welfare rights) which could take priority over rights to free exchange. Even if egalitarian principles are not formulated in terms of rights, it is unclear that they are outweighed by basic rights in the commercial realm. While rights are often defined so that they typically trump nonrights considerations, it is less clear that they trump nonrights considerations that *are part of a theory of justice*. Thus, basic rights in the commercial realm may have to be restricted and perhaps even rejected when they conflict with egalitarian requirements. While neither the fact that a theory of basic rights is part of a theory of justice nor the fact that it can be outweighed by egalitarian principles *guarantees* a conflict between basic rights in the commercial realm and liberal egalitarianism, it makes this conflict a genuine possibility, and so the former may have to be sacrificed for the latter.

What is the correct formulation of a liberal egalitarian theory of distributive justice? While principles like the difference principle which focus their attention on benefiting the worst off may seem to give a roughly adequate characterization of liberal egalitarianism, in fact these *cannot* be liberal principles. To see why, consider the following example from Will Kymlicka, who asks us to imagine

two people of equal natural talent who share the same social background. One wants to play tennis all day, and so only works long enough at a nearby farm to earn enough money to buy land for a tennis-court, and to sustain his desired lifestyle (i.e. food, clothing, equipment.) The other person wants a similar amount of land to plant a garden, in order to produce and sell vegetables for herself and others. Furthermore, let us imagine ... that we have started with an equal distribution of resources, which is enough for each person to get their desired land, and start their tennis and gardening. The gardener will quickly come to have more resources than the tennis-player, if we allow the market to work freely. While they began with equal shares of resources, he will rapidly use up his initial share, and his occasional farm work only brings in enough to sustain his tennis-playing. The gardener, however, uses her initial share in such a way as to generate a steadier and larger stream of income through larger amounts of work.⁸

The tennis-player has less income than the gardener, but this is

clearly a chosen inequality; he has different preferences for the tradeoff between increased income and leisure than the gardener, and as a result he chooses leisure where she chooses income, though given the example, he could have chosen just the way she did (and vice versa).⁹ A liberal cannot object to this inequality of income. As I shall indicate in Section 3, a key component of liberalism is that there is a right to act in accordance with one's choices, and accordingly liberals must also believe that one is responsible for those choices and the costs of those choices. Freedom implies responsibility, in this context, because it would be unfair or unreasonable for the rightholder to ask those who are under obligations to respect his rights not to interfere with the rightholder's choices *and* then to also ask these others to bear the costs of those choices. The unfairness or unreasonableness of requiring someone to subsidize the cost of someone else's choices is heightened when such subsidization means the subsidizer loses some or all of the benefits obtained from her free choices. In Kymlicka's tennis-gardening example, if the tennis-player is considered not to be responsible for the cost of trading off income for leisure, and if we, say, tax the gardener to raise the tennis-player's income, then what occurs is that the gardener loses some or all of the benefits of increased income which arise from her free choices, while the tennis-player retains the benefits of his increased leisure without paying the costs of lost income. Since there is no reason why liberals should favor tennis-playing over gardening, and since both persons' situations could have been reversed had they wished, there are no liberal grounds for "correcting" the inequality of income between the gardener and the tennis-player.¹⁰

In one sense, what I am saying is uncontroversial. That you are responsible for the costs of your own choices, and that consequently it is unjust that others should subsidize those costs, is a central element of Ronald Dworkin's conception of liberal egalitarianism.¹¹ Rawls recognizes it as well in the context of discussing an objection to his view that primary goods are the appropriate metric for determining in what it is that people should be equal. (Primary goods are basic rights, freedom of movement and free choice of occupation against a background of diverse opportunities, powers and prerogatives and offices of responsibility, income and wealth, and the social bases of self-respect.) The objection is that primary goods are an inappropriate egalitarian metric because two people could have equal income and wealth but have unequal satisfaction, if one person has expensive tastes (e.g., exotic foods and fine wine) while the other has cheaper tastes (e.g., is satisfied with a diet of beans, bread, and milk):

The reply is that as moral persons citizens have some part in forming and cultivating their final ends and preferences. It is not in itself an objection to the use of primary goods that it does not accommodate those with expensive tastes. One must

argue that it is unreasonable, if not unjust, to hold such persons responsible for their preferences and to require them to make them out as best as they can. But to argue this seems to presuppose that citizens' preferences are beyond their control as propensities or cravings which simply happen. Citizens seem to be regarded as passive carriers of desires. The use of primary goods, however, relies on a capacity to assume responsibility for our ends. . . . [P]rinciples of justice view citizens as responsible for their ends. In any particular situation, then, those with less expensive tastes have presumably adjusted their likes and dislikes over the course of their lives to the income and wealth they could reasonably expect; *and it is regarded as unfair that they should have less in order to spare others from the consequences of their lack of foresight or self-discipline*.¹²

Once this principle of responsibility for one's own choices is accepted by Rawls and other liberals, it follows that it is unjust to subsidize people's choices; and so the difference principle and relevantly similar principles which place significant priority on helping the worst off must be rejected, or their characterization of the "worst off" must be revised. To focus on helping the worst off per se does not distinguish between those who are worst off through no fault of their own, and those whose choices made them worst off. Without such a distinction, egalitarian principles could easily justify subsidizing people's choices, and this is clearly unjust on liberal grounds.¹³

A plausible version of liberal egalitarianism, then, will distinguish between chosen and unchosen inequalities or disadvantages. Rather than inequalities or disadvantages per se calling for redress or correction of some kind, the liberal egalitarian view is, roughly, that unchosen disadvantages or inequalities call for redress or correction.¹⁴

To apply a principle of this type, we need to have some idea of what sorts of things are chosen and unchosen. This issue has been the focus of some very interesting work in philosophical liberalism in the last fifteen years.¹⁵ Not surprisingly, there is disagreement among liberals here, but there are paradigm cases. Choice enters very little, if at all, into one's sex, race, family and social background, genetic make-up, physical and mental handicaps that one was born with or received in an accident, and natural talents—though with regard to the last item mentioned, one could have chosen to develop or not develop one's talents and accordingly be held responsible for success or failure in that regard.¹⁶ Paradigm cases of things which are or at least could be chosen are voluntarily acquired tastes, ambitions, preferences, plans, and the development of one's talents—though these will not be listed on the choice side of the spectrum to the extent that they are regarded as obsessions, cravings, and the like, or to the extent

that one had deficient opportunity to acquire alternative tastes, ambitions, etc. We also should distinguish between disadvantages which one did not choose, but which one could now overcome, and those which one did not choose and cannot now overcome. The case for redress or correction is stronger in the second case than in the first.

An example of a liberal egalitarian principle of distributive justice, which I shall henceforth use as my paradigm case, is G. A. Cohen's principle of *equal access to advantage*, where "advantage" is understood very roughly as valuable things, i.e., those things which *ceteris paribus* help one's life go well or help one to achieve one's goals and projects (and thus need not connote having an advantage *over* someone else).¹⁷ Notice that the principle is not that people should have equal advantages, since that would neglect the crucial point that these may be unequal because of choices one is making or has made. Equal *access* to advantage connotes the idea that if one is disadvantaged in some way, justice requires that it be a disadvantage which is a product of one's choices.¹⁸ *Equal access* connotes the idea that if those disadvantages are not a product of one's choices, then justice requires that the gap between the advantaged and the disadvantaged's access to valuable resources, opportunities, etc., be eliminated (to the extent that this is possible). It is the latter point that makes the principle egalitarian.¹⁹

Cohen's principle of equal access to advantage, or any relevantly similar liberal egalitarian principle, appears to conflict with basic rights in the commercial realm, because real free market exchanges, unlike Kymlicka's tennis-gardening example, are influenced and constituted by mixtures of unchosen disadvantages and genuine choices. (Recall that in Kymlicka's example the resulting inequality of income was due solely to different preferences for the income-leisure tradeoff.) Those suffering from unchosen disadvantages in the commercial realm might have their situation improved if rights to free exchange or robust private property rights could be significantly regulated or restricted, and liberal egalitarianism appears to make it at least *permissible* to restrict such exchanges in service of the egalitarian requirement. Thus, the arguments for basic rights in the commercial realm would at the very least have to be weighed against the need to meet the egalitarian requirement, and since it is not obvious that the former necessarily defeats the latter, we could no longer be confident that significant restrictions on private property rights or rights to free exchange would have to be rejected as injustices. Liberals could still reject such policies as unwise, inefficient, and the like, but there would no longer be in-principle objections to such policies.

Notice also that the conflict described here could occur even if one weakened the egalitarian bite of liberal principles of distributive justice. Rather than *equal access* to advantage, liberals might rest content with minimizing or reducing the gap between the involuntarily disadvantaged and the advantaged vis-à-vis access to valuable resources, opportunities, etc., in

the commercial realm. This still apparently causes a conflict, since it would still be permissible to minimize or reduce that gap by restricting the right to free exchange. One could deny that there is a conflict here by claiming that principles of distributive justice can have no effect on or are always trumped by basic rights, but as I have already argued, such claims are quite problematic, if not clearly false.

To summarize, then: Once we realize that liberal egalitarian principles and principles of basic rights are part of the same subject matter (a theory of justice), and that it is not obvious that the former are always outweighed by the latter, then the content of liberal egalitarian principles—to at least minimize the gap between the advantaged and the involuntarily disadvantaged—implies that limiting or eliminating rights to free exchange is permissible.

2. The Compatibility of Liberal Egalitarianism and the Basic Right to Free Exchange

The conflict between liberal egalitarianism and basic rights in the commercial realm comes with a heavy price. The problem is that it is not just market exchanges that are affected and constituted by both choices and unchosen disadvantages. The same is true for interactions in the noncommercial realm—indeed, life itself is a mixture of choices and unchosen disadvantages. Thus, if the permissibility of narrowing the gap between the involuntarily disadvantaged and the advantaged undermines the case for a basic right to free exchange, *it also undermines the case for any of the basic rights that liberalism defends*. Consider, for example, the basic right to free speech and its relationship to articulateness. Clearly, being inarticulate is a disadvantage. First, the exercise of the right to free speech by those who are articulate will, all other things being equal, be more likely to help them achieve their goals as compared with the ways in which the exercise of this right by the less articulate will help *them* to achieve *their* goals. Second, in a competitive interaction between the articulate and the inarticulate for the same goal, the latter's chances of achieving that goal are low because of the presence of the former (and in some cases the inarticulate's overall position is worsened because of the presence of the articulate). It is also clear that while being articulate may depend in part on one's choices (e.g., whether to develop one's capacity to communicate or to pursue a career where articulateness is called for), it frequently depends upon unchosen circumstances—e.g., whether one was born into a family or social background that valued and stressed articulateness, the type of teachers one had, whether one stuttered as a child, etc. Now if the permissibility of correcting for significant unchosen disadvantages means that one does not have a basic right in a realm where such disadvantages exist, then

there is no basic right to free speech—or at least no basic right to free speech as liberals understand it. For if it is permissible for the state to correct for the unchosen disadvantages that the inarticulate face in the realm of communication, then (assuming for the moment that we had accurate information concerning which disadvantages are genuinely unchosen) the state could in principle (a) intervene in or oversee communications to make sure that the inarticulate's situation was not being worsened because they were inarticulate, and/or (b) prevent the articulate from acting in accordance with their choices where this might competitively disadvantage the inarticulate. Option (a) is incompatible with the notion of a *basic* right, since it allows ubiquitous intervention in the realm of speech, and option (b) is incompatible with the notion of a *basic right*, since a group of people (the articulate) no longer have the right to act on their choices in a way that advances their conception of the good.

A liberal might reply that the egalitarian principle calling for correcting unchosen disadvantages is limited in *scope*: it applies only in the commercial realm, or can be used only to restrict or void robust private property rights. The reason for the scope limitation is twofold: (1) the aim of rectifying unchosen disadvantages in the noncommercial realm is more likely to succeed if one does *not* eliminate or restrict basic rights in that realm, while (2) the aim of rectifying unchosen disadvantages is more likely to succeed in the commercial realm if one *does* limit or void robust private property rights. Proposition (1) is true because some of the disadvantages in the noncommercial realm are simply not rectifiable, while others are most easily rectifiable by economic means. For example, some of the disadvantages of the inarticulate may be due to genetic factors or personality traits that may be too deeply ingrained to correct, while others can be rectified without violating rights to free speech, by giving the inarticulate greater economic resources which they can use to purchase goods and services which can make them more articulate (better education, speech lessons, etc.). Proposition (2) is true because the inequalities or disadvantages in question are economic inequalities or disadvantages, and thus it makes sense to address them by limiting or changing the structure of private property rights. Both (1) and (2) presuppose that any liberal principle of justice endorses a course of action only if it has a reasonable chance of succeeding, and this is a requirement of any sensible principle of justice.

I have two objections to this liberal reply. First, while (1) sounds plausible, and I will not challenge it, (2) is problematic. It is not obvious that unchosen disadvantages in the commercial realm can be most successfully rectified by limiting or eliminating basic rights in that realm, for the disadvantages in that realm may be caused by disadvantages elsewhere, and thus it could turn out that limiting basic rights in the commercial realm may be ineffective or counterproductive. If A has less income or wealth than B due to A's involuntary circumstances, this could be because A had

deficient opportunities to acquire such wealth or income, but it could also be because A has a sour disposition which makes him unable to take risks, or because A lacks self-discipline due to his family background, etc. If we, say, limit B's private property rights so that he will generate less income or wealth, or redistribute some of B's property to A, this may not rectify A's unchosen disadvantages, for if the cause of those disadvantages was still operative, it would likely cause a big gap between A's and B's income and wealth in the future. Indeed, the redistribution of B's property could worsen A's situation if, for example, it weakens his self-discipline, etc. This is an abstract example, but the debate about whether the growth of the urban underclass in this country is due to inadequate redistribution of income or an overly generous welfare policy shows that it is not an unrealistic one. The existence of that debate, and the example just given, show why (2) is quite contentious, contrary to first appearances.

Second, and of far greater importance, this liberal reply fails even if one accepts (1) and (2), for their acceptance would not justify violating or restricting basic rights in the commercial realm. Rather, what they justify is the refusal to violate basic rights in the noncommercial realm to satisfy the egalitarian requirement and the permissibility of restricting or eliminating *some* rights in the commercial realm to satisfy that requirement. In order for the liberal egalitarian requirement to conflict with any basic right to free exchange or robust private property right, we would need not (2) but (2'): The aim of rectifying unchosen disadvantages is more likely to succeed in the commercial realm if one *does* limit or eliminate *any* (or *all*) robust private property rights. Proposition (2'), however, must be rejected. For one thing, it is hard to see what the argument for (2') could be. The argument for (2) does *not* transfer to (2'): that a certain *type* of inequality or disadvantage—economic—will most successfully be rectified by restricting or voiding a certain *type* of right—robust private property rights—hardly shows that economic disadvantages are rectified by restricting any or all robust private property rights. In addition, it is not that difficult to show that (2') is false. Recall that I have defined rights to free exchange or robust private property rights as those rights which define and constitute *free markets* in a capitalist society. Since a market is a network of exchanges, one of the most important of these rights is the right to exchange, transfer, or alienate. Now there are a *variety* of ways that this right can be restricted or forbidden. Two principal ways are to restrict or forbid market participants from engaging in certain market exchanges with their property, or to prevent people from entering into a market in the first place. Merely restricting certain exchanges or forbidding people from entering a certain market does not help the involuntarily disadvantaged, since closing off some person's options does not by itself give them new or alternative options, and may in fact harm them if no new options are made available or if the closed off options were an important means by which

they could improve their situation. So (2') is clearly false.

Thus, the claim that liberal egalitarianism rules out any basic rights in the commercial realm or any robust private property rights has run into serious obstacles. If the claim is that basic rights must be restricted or eliminated in order that the gap between the advantaged and involuntarily disadvantaged be lessened (or eliminated, in Cohen's more stringent version), or so that the former can be prevented from exacerbating the gap, then liberal egalitarianism does not just conflict with basic rights in the commercial realm—it conflicts with basic rights, period. If, on the other hand, the claim is that liberal egalitarianism has a limited scope, so that it calls for simply limiting or eliminating rights in the commercial realm, then the best rationale for this scope limitation is compatible with at least some basic rights in the commercial realm.

Perhaps a way out of this problem is for the liberal to reject any basic right to free exchange on the grounds that these rights unduly limit experimentation with different kinds of redistributive policies. The argument contains three parts. The first is the claim that liberalism requires some kind of redistributive policies. Liberal egalitarianism requires that (at least) serious and genuine steps be taken to reduce the gap between the involuntarily disadvantaged and the advantaged. Now it is generally quite difficult to determine, in the real world, on an *individual* level, to what extent one's disadvantages are unchosen or chosen. Even a person who is born with what are typically disadvantages is not, as an adult, simply the sum total of those unchosen disadvantages, and so it will be hard to tell to what extent she is responsible for her situation. Furthermore, it would be intolerably invasive of one's right to privacy to try to determine to what extent one's disadvantages are unchosen. (Imagine: "Hello, I'm from the government, and I'm here to find out to what extent your lack of initiative is your own fault.") But if we move to the level of *class*, occupations, social roles, etc., we can make some reasonable determinations, namely that the least affluent members of society, those in the most socially undesirable occupations, etc., generally suffer from the greatest number of involuntary disadvantages. Now since income, property, etc., can often compensate for or mitigate many of those disadvantages, some kind of redistribution from the affluent to the less affluent is justified. Admittedly, any such redistribution will end up subsidizing people's choices, for reasons set out in the tennis-gardening example, and some disadvantages cannot be compensated for by economic means; but under the circumstances, it is the best we can do.

That liberalism justifies *some* kind of redistribution from the affluent to the less affluent does not rule out *all* basic rights to free exchange or robust private property rights. There are many kinds of redistributive policies; an example of one which still leaves considerable protection for rights to free exchange is a "safety net," i.e., a straight redistribution of income

from the more affluent to the less affluent. One reason income redistribution leaves considerable protection for rights to free exchange stems from the concept of a free market. We already noted that the essence of a market is the right to exchange. Now when the government takes some of one's income that one derives *from* market exchanges, it is not thereby regulating or forbidding those exchanges.²⁰ A restriction on the right to one's income derived from market exchanges is not the same as a restriction of the right to exchange. Another reason redistribution of income is not a major threat to rights to free exchange or robust private property rights stems from the concept of private property. Jeremy Waldron has made a plausible argument that the basic element in the concept of private ownership is that the owner of a resource is the person who has the final say over how it is to be used; when there is more than one person who has authority to determine how a resource is used, the owner is the person who can be shown to have delegated that authority to the others.²¹ In free market capitalism, decisions about who should have the final say over how a resource is used are decided largely by voluntary transfers. Safety nets do not disrupt this; in this sense, a redistribution of income is not a redistribution of property.

However, some redistributive policies are clearly more of a threat to basic rights to free exchange or robust private property rights. Prohibition of certain voluntary exchanges (e.g., price, wage, and rent controls) would count as serious threats to free markets, while the policy of "property-owning democracy" favored by some liberals²²—which would redistribute property by, for example, compelling large firms to give workers shares of the firm—would count as a serious threat to private property rights, since it would significantly compromise the extent to which voluntary transfers determine who has final say over how resources are used.

We now arrive at the second step of the argument, which is that liberals disagree about the kind of redistributive policies that would move us closer to a society that instantiates liberal egalitarianism.²³ One reason they disagree is that presumably the most justifiable redistributive policies would be those that have the greatest chance of rectifying the chief sources of unchosen disadvantages, and liberals have no systematic theory about the main *sources* of unchosen disadvantages. (Notice that the view that many unchosen disadvantages can be mitigated by, e.g., redistribution of income or property does not imply that inequalities of income or property are the main source of unchosen disadvantages.) Indeed, liberals do not even have a developed theory of what the chief *disadvantages* are:²⁴ a disadvantage, as I noted earlier, is something which *ceteris paribus* makes one's life go badly or prevents one from pursuing one's projects or conception of the good; but whether the main disadvantages or causes of other disadvantages are due to property ownership, income, natural talents, character traits, etc., is not clearly articulated in liberalism. This takes us to the third and final

step of the argument, which is that since there is such disagreement, and since *justice* requires that we move in a liberal egalitarian direction, we need to leave open the possibility of many different kinds of redistributive policies. Basic rights to free exchange will block at least some of these policies, and so, this argument concludes, we must reject all of these rights, on the grounds that we need to leave open as many democratic means as possible for achieving the end of liberal justice.

I agree that liberalism requires some sort of redistributive policies. But the fact that liberalism has neither a systematic theory of disadvantage nor of the chief sources of unchosen disadvantages means that the basis for selecting any particular redistributive policy as the best justified within liberalism is likely to be highly speculative. To then use this speculation as a basis for arguing that any redistributive policy which *might* be required by liberal egalitarianism should be pursuable by democratic means is a quite suspect way of showing that liberalism must reject any basic right to free exchange. Arguments *for* basic rights to free exchange which employed premises that were more securely grounded within liberalism would defeat such a speculative argument. In the next section, I shall indicate how one could set out such arguments, by employing the kind of premises that liberals use to establish basic rights in the noncommercial realm. Since arguments for basic rights in the noncommercial realm are quite secure within liberalism, support for basic rights to free exchange which is based on those arguments provides a firm ground for those rights within liberalism. When a fairly well-grounded claim within liberalism meets a highly speculative claim, the former beats the latter; thus, whatever egalitarian policies are most consonant with liberalism must not infringe upon basic rights to free exchange.

3. How Liberals Can Justify Some Basic Rights to Free Exchange

With liberal egalitarianism no longer an obstacle to deriving basic rights in the commercial realm, I shall now show how liberalism could justify these rights, using one type of argument²⁵ liberals employ to derive basic rights in the noncommercial realm. My aim here is to make an in-principle case *that* liberalism supports such rights, rather than deriving specific basic rights to free exchange.

At the root of liberal arguments for basic rights is a notion of respect or concern for persons.²⁶ Liberals understand this idea, and connect it to arguments for basic rights, in three different (and overlapping) ways. First, respect for persons means allowing persons the freedom to develop and exercise those capacities that are considered essential or important to being a person. So, Rawls, for example, justifies basic rights by arguing that they are necessary for the development and exercise of a person's capacity for a

conception of the good (the capacity to form, revise, and act on beliefs about what ends are valuable and important) and a sense of justice (the capacity to apply, understand, and be motivated by principles of fair cooperation), which Rawls believes are the most important capacities of a person, as far as political philosophy is concerned.²⁷

Another liberal view is that to show respect or concern for a person is, in part, to show respect or concern for that person's *good*.²⁸ Liberals think that the freedom and protection from coercive interference provided by individual rights is instrumental to a good life (a necessary means) or is constitutive of that life. It is instrumental because the successful achievement of most if not all plans and projects requires the freedom to act in accordance with one's choices, and even if one's life plan *at present* does not require that freedom, a rational person will at some point need to evaluate and possibly revise his conception of the good, and thus needs that freedom in order to discover or construct a life which is best for himself.²⁹ That freedom is constitutive of one's good if a central aspect of a person's good is autonomy,³⁰ or if one believes that it is good to exercise and develop one's fundamental capacities as a person (e.g., one's capacity for a conception of the good and a sense of justice).³¹

A third liberal line of argument is that respect for persons is demonstrated by appealing to citizens' capacity for reason as well as their sense of reasonableness or fairness in order to decide or discover which principles of justice are legitimate.³² We do this by determining what principles of justice rational persons who are aiming to find principles of fair social cooperation would or do unanimously consent to, or would find justifiable. Principles of individual rights would unanimously be agreed to or found justifiable by such persons, since, for the reasons just mentioned, the freedom such rights provide is a means to their good and/or part of their good.

The respect-for-persons theme justifies standard basic rights in the noncommercial realm such as freedom of speech, freedom of religion, and privacy, on the grounds that communication, religion, and private and intimate relationships are areas of choice which are central to and/or necessary for projects and plans of life, regardless of the particulars of the project or life plan. Thus, these areas of choice are means to and/or part of everyone's good (the second interpretation of the respect theme); accordingly, each rational person could and would want protection for such choices (the third interpretation), and they would likely be involved in the exercise of one's capacity for a conception of the good (the first interpretation).

However, one's choices as a seller or buyer are means to and/or constitute one's good as much as do one's noncommercial activities. Choices about what to buy, where to shop, where to work, the tradeoff between work and leisure, the degree to which one takes risks, investment decisions, one's time-preference, etc., all clearly constitute and reflect one's concep-

tion of the good as much as do decisions about communication, religion, etc. Thus, the respect-for-persons theme supports basic rights in the commercial realm.

One response to the above argument is that one's commercial activities are means to and/or constitute one's good *only if* one has an adequate or significant amount of resources. Inadequate resources³³ prevent choices in the commercial realm from being means to and/or constitutive of one's good because they force one to make significant tradeoffs. If most of one's time and energy is spent trying to earn a rather meager living, one cannot really achieve what one really wants or what is of genuine value. Thus, commercial choices are not important for everyone or almost everyone's projects or plans of life.

This objection presupposes that making tradeoffs and the pursuit or construction of a good life are mutually exclusive. They are not: the good life is not limited to those values or activities that one is unwilling to trade off or sacrifice. Indeed, in making tradeoffs, one's conception of the good life often plays a role. Even if one's commercial choices are more constrained than one would prefer, or constrained to the point that one is not in an effective position to choose those options that would best reflect one's view of the good life, so long as there are some choices and different bundles of options, one's view of the good can play a nontrivial instrumental or constitutive role in the commercial realm. Another problem with the objection is that tradeoffs are ubiquitous in life, and exist in both the commercial and noncommercial realms. In the latter realm, we often cannot assign a monetary value to the option forgone, but clearly there are costs of forgone options. So if the existence of tradeoffs in a certain realm precludes the possibility of defending basic rights on the grounds that the freedom they protect is a means and/or part of one's good, then rights in general cannot be defended this way.

At this point, the objection may shift to the claim that at times one's choices are so constrained that, for all practical purposes, it is fair to say one has *no* choice in the commercial realm. In that case, basic rights in the commercial realm cannot possibly be justified in the ways set out above, for that defense required that the freedom basic rights protect be understood in terms of protected choices or options. Thus, the objection now shifts from the case of someone with inadequate resources to someone who is on the verge of starvation, or something to that effect. I grant that as options get narrower or fewer, at some point it becomes fair to say that one has no choice, and that this can occur in the commercial realm. However, once one reaches this point, the person's options are narrowed everywhere. If one is on the verge of starvation, it is not as if one can be said to have a choice about whether or not to engage in a political demonstration—one simply has to get food, or die. So if the existence of cases of dire necessity precludes the defense of basic rights in the commercial realm, it would

similarly preclude the defense of many³⁴ rights in the noncommercial realm.

A different objection to my argument that the respect theme can support basic rights in the commercial realm is that commercial activities have only an accidental connection with a person's understanding of her own good. A remark made by Rawls might favor this view:

The capacity for a conception of the good is the capacity to form, revise, and rationally to pursue a conception of one's rational advantage, or good. In the case of social cooperation, this good *must not be understood narrowly* but rather as a conception of what is valuable in human life. Thus, a conception of the good normally consists of a more or less determinate scheme of final ends, that is, ends we want to realize for their own sake, as well as attachments to other persons and loyalties to various groups or associations. . . . Moreover, we must include in such a conception a view of our relation to the world—religious, philosophical, moral—by reference to which the value and significance of our ends and attachments are understood.³⁵

It is true that commercial activities are not a necessary means or an essential part of "a conception of the good" as defined above by Rawls. But the same is true of the basic rights that liberals defend. Even the right to freedom of religion, which seems to fit best what Rawls has in mind, might fail to be a necessary means or an essential part of a conception of the good as he understands it, because many people in modern democratic societies do not even in the realm of religion have a relatively determinate set of final ends and/or a definite sense of the value and significance of those ends.

Rawls's motivation for a broad characterization of a conception of the good is understandable; the term has an inherent vagueness and presumably should not cover every preference, or every view about value. But it is a mistake to characterize the term so that only the unusually thoughtful have a conception of the good. In this regard, Dworkin's statement that "the scholar who values a life of contemplation has such a conception [of the good life]; so does the television-watching, beer-drinking citizen who is fond of saying 'This is the life', though he has thought less about the issue and is less able to describe or defend his conception"³⁶ is more on target. In this more modest notion of a conception of the good (where it need not be fully determinate, articulated, or comprehensive in scope), commercial activities are clearly an essential part of or means to it, for reasons already mentioned.

Since interferences with commercial activities or choices can undermine respect for persons as much as does interference with noncommercial

activities or choices—and since (as noted in the last section) of the various private property rights that constitute or define free markets, the right to exchange or transfer is clearly a central right—I have shown that at least *some kinds* of interferences with free exchange violate basic rights. I cannot here argue for specific rights to free exchange. But I can provide some considerations which suggest two likely candidates for such rights: the right to exchange at free market prices and the right to free entry.

Elsewhere I have argued that price (or wage, or rent) controls disrupt people's plans by producing shortages and surpluses, and that they do this by blocking and distorting information about the results of constantly changing economic realities—information that would be more available and accurate were it communicated by free market prices.³⁷ Assuming that earlier argument is sound, then price controls—that is, interference with free market prices—are the kind of interference with decisions to exchange that manifests gross disrespect for persons. If the government blocked and/or distorted information which was essential for people's (peaceful) choices in the noncommercial realm, this would suffice to ground the liberal judgment of gross disrespect for persons and the judgment that a basic right (the right to free expression) had been violated. By parity of reasoning, liberals should judge that such blockage and/or disruption in the commercial realm also violates basic rights.³⁸

Another systematic interference with free markets that liberals should condemn as a basic rights violation is the imposition of barriers that block innovation and the discovery/creation of new opportunities. Liberalism supports an economic system which provides a wide scope for innovation and creativity because, as we have seen, one argument for basic rights is that they provide for the freedom to revise one's plans and projects, so that people can discover what is really good for them or gives value to their lives. This process is blocked when the state places barriers to participating or entering into markets. The state barriers that most clearly block free entry are restrictions on the type of occupation or business one wishes to enter, since for most people decisions about what type of job or business to enter are a central means (either instrumentally or constitutively) by which they pursue and/or revise their conception of the good. Thus, laws forbidding one to enter a certain business or offer a certain service—laws creating state monopolies—violate the basic right to free entry. So do licensing laws, which sharply limit who can enter an occupation or business by making it a crime to offer one's services unless one has taken a lengthy and costly state-approved program of study. Concerning the latter, it needs to be emphasized that licensing goes beyond certification, which is a method of indicating that a person has undergone a certain type of study or passed certain requirements. Certification of certain professions allows noncertified people to practice in the field and is compatible with the right to free entry. Licensing is a violation of the right to free entry not because of the

information-supplying feature it shares with certification, but because it goes beyond certification by making it a criminal offense for nonlicensed practitioners to offer their services.

Since I have only provided argument sketches for specific basic rights to free exchange, I do not claim to have provided an iron-clad case that contemporary liberalism must support free market capitalism as a matter of justice. However, since liberal egalitarianism poses no barrier to the recognition of basic rights to free exchange, and since the kinds of considerations that support basic rights in the noncommercial realm apply in the commercial realm, I have laid the groundwork for such a case.³⁹

1. In this paper, this term refers to the liberalism found in the writings of Bruce Ackerman, Ronald Dworkin, Will Kymlicka, Charles Larmore, Thomas Nagel, John Rawls, and David A. J. Richards.

2. A basic right has a considerable degree of moral weight, so that it typically defeats perfectionist claims and claims of societal or aggregate well-being. A more stringent definition of a basic right, favored by Rawls, is that it has, for all practical purposes, an *absolute* weight vis-à-vis perfectionist claims and claims of societal or aggregate well-being. See Rawls, "The Basic Liberties and Their Priority," in *Tanner Lectures on Human Values III* (Salt Lake City: University of Utah Press, 1982), p. 8. Rawls's definition is a bit idiosyncratic and will not be used here.

3. Since basic rights to free speech, freedom of religion, etc., have implications for private property rights, they could be considered to be "in" the commercial realm as well. For example, the right to free speech protects the right of an owner of a newspaper or television station to publish or broadcast unpopular and even subversive political opinions. However, rights to free speech, freedom of religion, etc., are not usually taken by contemporary liberals to be private property rights, nor are arguments for such rights taken to be arguments for private property rights. The implications these rights have for private property rights are usually considered by liberals to be secondary or derivative.

4. A right to the exclusive use of X does not necessarily give one the right to exchange or alienate X; that is why the recognition of a basic right to the exclusive use of personal property does not imply that there are basic rights to free exchange or basic rights in the commercial realm.

5. Not all of the liberals mentioned in note 1 *explicitly* deny (a) that there any basic rights in the commercial realm, or (b) that free market capitalism is required as a matter of justice. Rawls, Ackerman, and Kymlicka do explicitly deny (a) and/or (b). For Rawls, see "Basic Liberties," p. 12; for Ackerman, see *Social Justice in the Liberal State* (New Haven: Yale University Press, 1980), pp. 261-64; for Kymlicka, see *Contemporary Political Philosophy* (Oxford: Clarendon Press, 1990), pp. 85-89. Others do not explicitly deny (a) and/or (b), but in their discussion of basic rights there is rarely any mention of basic rights in the commercial realm. This is true, roughly, for Larmore and Richards. See Larmore, *Patterns of Moral Complexity* (NY: Cambridge University Press, 1986) and Richards, *Tolerance and the Constitution* (NY: Oxford University Press, 1986). Still others are harder to pin down. Thomas Nagel is rather unclear about this matter; see his *Equality and Partiality* (NY: Oxford University Press, 1991), pp. 75-76, 142, versus pp. 141, 144. Dworkin supports robust private property rights at the level of what he calls the ideal world, but when we get to what he calls the real, real world, such rights become fairly weak; see his

"What Is Equality? Part III: The Place of Liberty," *Iowa Law Review*, vol. 73 (1987), pp. 48-52. Thus, as a general group it is fair to say that they do not grant (a) and (b).

6. Notice that "free market capitalism" is *not* equivalent to libertarianism. That free market capitalism places significant limits on legislatures' power to interfere with free markets does not imply that all limitations are unjustified. Thus, as I use the term, free market capitalism is compatible with some redistributive policies. See Section 2.

7. For the rest of the paper, "liberals" and related terms refer to those liberals cited in note 1 or to other writers who have advanced our understanding of contemporary liberalism.

8. Kymlicka, *Contemporary Political Philosophy*, pp. 73-74.

9. Assuming that there is no strange psychological compulsion or the like which makes the gardener and tennis-player have no choice about which occupations they choose.

10. Someone might argue that this example does not show that egalitarian principles like the difference principle cannot be liberal principles, since the inequality in income did not make the tennis-player worse off, because he is pretty much doing what he wants and he achieves a high level of satisfaction. This argument has three flaws. First, Rawls's usual definition of the worst off is in terms of their income and wealth positions. Second, for reasons to be discussed shortly, liberals cannot define the worst off or the disadvantaged simply in terms of low levels of satisfaction, happiness, or some favorable psychological state. Third, even if one objects to Kymlicka's example, it is not difficult to come up with an alternative example that makes the same point: inequalities that result from one bearing responsibility for one's choices or the cost of one's choices cannot be considered by liberals to be unjust, and hence any principle of distributive justice which condemns them is mistaken.

11. Ronald Dworkin, "Liberalism," in *A Matter of Principle* (Cambridge: Harvard University Press, 1985), p. 193. This idea is essential to the egalitarian theory Dworkin calls equality of resources. See "What is Equality? Part I: Equality of Welfare," and "What is Equality? Part II: Equality of Resources," *Philosophy & Public Affairs*, vol. 10 (1981), pp. 185-262, 283-345. Nagel also builds a responsibility condition into his formulation of egalitarianism; see *Equality and Partiality*, p. 71.

12. John Rawls, "Social Unity and Primary Goods," in *Utilitarianism and Beyond*, ed. Amartya Sen and Bernard Williams (NY: Cambridge University Press, 1982), pp. 168-69; italics added. Rawls also emphasizes the role of responsibility in "Kantian Constructivism in Moral Theory: The Dewey Lectures," *Journal of Philosophy*, vol. 77 (September 1980), p. 545. Rawls's criticism shows what is wrong with egalitarian principles that are purely welfarist, that is, that aim solely at rectifying or reducing deficiencies or inequalities in happiness, satisfaction, or some valuable psychological state of the person. Rawls's (and Dworkin's) version of egalitarianism is resourcist; that is, it aims at reducing deficiencies and inequalities in resources, opportunities, capacities, and the like. For my purposes here, the dispute between resourcist and welfarist egalitarian theories is not important, except insofar as it bears on the question of choice and responsibility for inequalities and disadvantages.

13. It will not do to reply that the difference principle is concerned with the basic structures, that is, the fundamental institutions in society, rather than to micro-examples such as the Kymlicka tennis-gardening example. The point is that the statement of the difference principle is completely insensitive to the difference between inequalities which are produced through choice and those which are not. And once fundamental social and political institutions are directed to follow the difference principle, this can easily justify these institutions subsidizing people's choices.

14. Since the difference between what is chosen and what is unchosen lies on a continuum, presumably liberals favor correcting for disadvantages to the extent that they are significantly unchosen, or nonvoluntary.

15. For a superb summary of much of this literature, see G. A. Cohen, "Currency of

Egalitarian Justice," *Ethics*, vol. 99 (July 1989), pp. 906-44.

16. Dworkin mistakenly places talents and abilities completely on the unchosen side. For an exhaustive discussion of Dworkin's theory, see *ibid.*, pp. 916-34.

17. The principle is not simply equal opportunity for advantage, for as Cohen points out in *ibid.*, pp. 916-17, one may have deficient personal capacities, and this could not be plausibly described as a lack of opportunity. Your opportunities are the same whether or not you are weak or stupid; but if you are either of these, you cannot use these opportunities very well, and thus you are disadvantaged.

18. Unfortunately, the principle of equal access to advantage has the rather unnatural-sounding implication that something one has is something one has access to, but it is hard to know what other term would suffice.

19. For a clear discussion of the concept of an egalitarian principle, see Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1986), pp. 216-33. Raz provides convincing arguments against Dworkin's view that any principle is egalitarian if it expresses the moral equality of persons, i.e., any principle of respect or concern for persons. On Dworkin's understanding of egalitarian principles, see his "What is Equality? Part III," pp. 10-12.

20. Of course, as the level of the tax rises, the *effects* could be the same as a prohibition or a restriction on one's right to exchange. The point, though, is that the tax per se is not a restriction on that right.

21. See Jeremy Waldron, *The Right to Private Property* (Oxford: Clarendon Press, 1988), pp. 37-39, 47-53, 55-57. The concept of (private) ownership should be distinguished from different conceptions of that concept. One gets those different conceptions by arguing that different combinations of claims, liberties, powers, and immunities best capture the rationale for private ownership.

22. For example, by Kymlicka; see *Contemporary Political Philosophy*, pp. 88-89.

23. Thus, Rawls favors a redistribution of property, while Dworkin favors a redistribution of income. For a discussion of the disagreement, see *ibid.*, pp. 87-89.

24. Cohen acknowledges this in "Currency of Egalitarian Justice," pp. 920-21. He refers there to his own theory, but one can find the same problem in all the liberal theories I am concerned with here.

25. I believe that *all* of the arguments liberals use to derive basic rights in the noncommercial realm can be applied in this way, but I do not need to show that given my purposes here.

26. I have avoided the phrase *equal* respect or concern, because the notion of equality is not necessary here. If some aspect of personhood is the property which is the basis for someone being entitled to a certain type of treatment, then of course anyone who has that property is entitled to that treatment. See Peter Westen, *Speaking of Equality* (Princeton: Princeton University Press, 1990), pp. 72-74; and Raz, *The Morality of Freedom*, pp. 218-20.

27. Rawls, "Basic Liberties," pp. 17-18, 22. (Strictly speaking, Rawls views basic rights as specifying fair terms of social cooperation on the basis of mutual respect, but this point need not concern us here.) For related notions of respect, see Ronald Dworkin, *Taking Rights Seriously* (Cambridge: Harvard University Press, 1977), p. 272; and Wojciech Sadurski, *Moral Pluralism and Legal Neutrality* (Dordrecht: Kluwer Academic Publishers, 1990), pp. 118-19.

28. Dworkin, "What is Equality? Part III," pp. 7-9. Strictly speaking, what Dworkin says is that "government must act to make the lives of those it governs better lives, and it must show equal concern for each" (p. 7). The "and" implies that equal concern is a separate or separable issue from whether people's lives go well. This, however, is dubious, as Gerald Postema argues in "Liberty in Equality's Empire," *Iowa Law Review*, vol. 73 (1987), pp. 66-70.

29. On rights being means to one's ends, see Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971), p. 92, and "Kantian Constructivism," pp. 526-27. On the freedom provided by rights allowing one to discover and revise one's life plan, see Rawls,

"Basic Liberties," p. 27, and Dworkin, "What is Equality? Part III," pp. 34-35 (this is one way of interpreting Dworkin's "principle of authenticity").

30. For a valuable discussion of the complex concept of autonomy, see Joel Feinberg, *Harm to Self* (NY: Oxford University Press, 1986), pp. 27-44.

31. See Rawls, "Basic Liberties," pp. 28-29.

32. This idea is developed in different ways by Larmore, *Patterns of Moral Complexity*, pp. 64-66; Richards, *Toleration and the Constitution*, p. 84; Jeremy Waldron, "Theoretical Foundations of Liberalism," *Philosophical Quarterly*, vol. 37 (1987), pp. 136-46, esp. pp. 145-46; and Nagel, *Equality and Partiality*, p. 36. Ackerman also implicitly employs this notion of respect for persons in *Social Justice in the Liberal State*, pp. 3-4, as does Rawls in his model of the original position.

33. "Inadequate resources" can be understood comparatively or noncomparatively. In the comparative sense, the objection is that if one has significantly less than the person(s) with whom one is exchanging, then these exchanges are not necessary means to and/or part of a good life. In the noncomparative sense, the problem is not that one has less, but that one does not have enough in an absolute or nonrelational sense. In the text, I operate with the noncomparative sense, but I think the first argument I raise against the objection would apply to both senses.

34. Many, but not all, because some rights cannot be defended in terms of the choices or freedoms they provide the rightholder. Some rights do not have liberties or powers as their central elements, and thus do not involve the rightholder's freedom to *do* anything—e.g., the right not to be assaulted.

35. Rawls, "Justice as Fairness: Political, Not Metaphysical," *Philosophy & Public Affairs*, vol. 14 (1985), pp. 233-34; my emphasis.

36. Dworkin, "Liberalism," p. 191.

37. See my "Free Speech, Free Exchange, and Rawlsian Liberalism," *Social Theory and Practice*, vol. 17 (Summer 1991), pp. 47-68.

38. This does not mean that the right to exchange at free market prices is part of a right to free expression, or derived from it. The point is that some of the same kinds of considerations used to ground the right to free expression can be used to ground the right to exchange at free market prices.

39. This paper emerged from a longer paper, "Liberalism, Basic Rights, and Free Market Capitalism," which I wrote while I was a Visiting Scholar at the Social Philosophy and Policy Center at Bowling Green State University in the summer of 1992. I would like to thank the directors of the Center for their support, and N. Scott Arnold, Jim Child, John Gray, Loren Lomasky, Edward F. McClennen, and Fred Miller for comments on that paper. A version of this earlier paper was presented at a Current Research Workshop at the Institute for Humane Studies at George Mason University in December 1992. I would like to thank the Institute for sponsoring the workshop, and David Copp and Will Kymlicka for written comments on that version of the paper. I would also like to thank the other workshop participants for their comments: John Hasnas, George Klosko, David Luban, Roderick Long, Geoffrey Sayre-McCord, David Schmidtz, Peter Vallentyne, and Viktor Vanberg. The Earhart Foundation of Ann Arbor, Michigan, provided support for me to do research on this topic, for which I am most grateful.

WHO OWNS THE CHILDREN? LIBERTARIANISM, FEMINISM, AND PROPERTY

Susan Moller Okin's
Justice, Gender, and the Family
(New York: Basic Books, 1989)

Karen I. Vaughn
George Mason University

Susan Moller Okin's *Justice, Gender, and the Family*¹ attempts to explicate a theory of justice that applies equally to both men and women. She argues, often persuasively, that other more commonly held theories, such as those that appeal to tradition, shared community values, or justice as fairness, implicitly assume that the only people to whom they need apply are men—frequently heads of households with wives providing household services for them. A theory of justice that applies to only fifty percent of the population, she argues, cannot be a general theory of justice.

Classical liberals and libertarians (whom she characterizes as “extreme” classical liberals [Okin, 74]) would wholeheartedly agree. Indeed, by developing a political theory of individuals as opposed to groups or families, libertarians might well believe they have already accomplished Okin's task. Yet, Okin argues that libertarian thought suffers from the same gender biases, and hence selective blindness to true justice, that mar other theories of justice. And while she sees some hope for a feminist reinterpretation of Rawlsian arguments for justice as fairness (Okin, 108-9), she sees no hope at all for the individualist philosophy of libertarianism.

Okin's charge of gender insensitivity in libertarian theory raises interesting questions about the problems of dependency in a libertarian world of rights, property, and contract. By calling attention to the presence of children in the real world, she calls attention to an under-explored area of

libertarian philosophy where individuals who own property and engage in contracts are presumed to be rational or at least competent and responsible adults. But the presence of children suggests that some inhabitants of this world are not fully rational and therefore not fully competent to assert their own rights as human beings. Further, because adults bring children into the world, libertarians cannot ignore questions about the rights and responsibilities of parents and children.

Unfortunately, while Okin's critique of libertarian theories causes one to think about these questions, it does not direct one toward a way of finding answers. Rather than leading us to see the real problems that childhood dependency creates for an individualist philosophy and a theory of the minimal state, she tries to demolish libertarian thought through a *reductio ad absurdum* which amuses but does not instruct, and which is certainly not nearly as devastating as she seems to believe.

1. Entitlements and Property in Children

As her representative libertarian, Okin chooses Robert Nozick and his entitlement theory of property as found in *Anarchy, State, and Utopia*.² There, as part of his critique of redistributionist theories of justice, Nozick defines justice in property holdings in terms of rules rather than patterns of outcomes: "Whoever makes something, having bought or contracted for all other held resources used in the process . . . is entitled to it. . . . Things come into the world already attached to people having entitlements over them" (Nozick, 160). Okin argues, however, that Nozick fails to consider that people (babies) are among the "things" that most assuredly come into the world already attached to other people (their mothers) (Okin, 83). If children are the product of their mother's labor, why don't libertarians view them as their mothers' property? In fact, Okin argues, the production of children seems to be an archetypical case of legitimately created property:

Once she is freely given a sperm (as usually happens) or buys one (as is becoming no longer very unusual)—in either case amounting to a legitimate transfer—a fertile woman can make a baby with no other resources than her own body and its nourishment. . . . [I]t is the complex capacities of the female reproductive system and its labor that achieve the transformation of two cells into an infant. . . . Since he [Nozick] so firmly upholds in all other cases the principle that persons are fully entitled to whatever results from their natural talents and capacities, he would seem to have no way of avoiding the conclusion that only women own the children they produce. (Okin, 83)

And since in Nozick's theory, people are entitled to do with their property

as they see fit, a woman presumably would be entitled to use her child in any way she wishes: "to keep it in a cage to amuse her, perhaps, as some people keep birds, or even to kill it and eat it, if she were so inclined" (Okin, 84). Okin's conclusion, then, is that the entitlement theory of property is absurd since it leads to this absurd conclusion. It is not a candidate for a general theory of justice.

How might a libertarian respond to this argument? A staunch advocate of property rights might respond that children *are* in fact owned by their mothers—or parents³—until such time as they achieve adulthood. This advocate might also hold that, as property, children may be treated by their parents as they see fit. However, this does not necessarily mean that parents would routinely eat their babies or keep them in cages; inherent parental feelings and the expectations of the community would place limits on acceptable parental behavior. Of course, relying on cultural norms and parental affection may not be sufficient to prevent all cases of exploitation, but after all, the world is imperfect in any case. The property-rights advocate might point to the experience of Roman law, where the paterfamilias had the right of life and death over his children but, at least as far as we know, rarely exercised it, and indeed, paid enough attention to the welfare of his family to face death rather than see them suffer financial loss.

However, this response does not avoid the larger problem of establishing human autonomy when humans are the product of other human's efforts. To say that children are property until they reach adulthood only postpones explaining how persons achieve autonomy and also requires one to come up with a definition of adulthood.

A more compelling reason for rejecting the children-are-property argument, however, is an empirical one. There are places in the world today where children are regarded more or less as property, and the results are not pretty. In some places parents do sell children, and especially daughters, into slavery, or otherwise exploit them for the parents' advantage. Unless we are prepared to regard children as less than human, no libertarian could deny that children's rights preclude such activities. If children are human beings, libertarians must hold that they have the right not to be used for other's purposes regardless of how they come into being. Libertarians might argue over the proper remedies for outrages against children, and debate the degree to which the state could legitimately (or efficiently) respond to parental aggression, but the aggression could not be ignored on the grounds that the children "belonged" to their parents.

Rather than proving that libertarians cannot escape from the conclusion that mothers own their children, Okin seems to be revealing a conflict between two fundamental libertarian principles: the rights people have to determine their own actions—to own themselves, as Locke would say—and the rights people have to acquire property through the exercise of their own talents and efforts. In the case in question, most libertarians would

argue that the first principle takes precedence over the second: you can own things but not people. But how do they come to this conclusion? How are these conflicting principles reconciled to avoid the conclusion that children are property?

In the context of a critique of Locke's theory of property, Nozick offers several kinds of arguments that could be constructed to avoid this conclusion:

(1) [S]omething intrinsic to persons bars those who make them from owning them . . . (2) some condition within the theory of how property rights arise in productive processes excludes the process whereby parents make their children as yielding ownership, or (3) something about parents bars them from standing in the, or a particular, ownership relation, or (4) parents do not, really, make their children. (Nozick, 289)

While Nozick believes (1) and (2) offer the most promising route out of the dilemma, he offers no explicit argument in favor of either. Further, Okin argues that Nozick's own theory precludes his constructing an argument along the lines of (1) since he asserts people's rights to sell themselves into slavery, thereby denying that there is something inherent in people that precludes their being owned.⁴

Okin seems to believe that to avoid the conclusion that an entitlement theory of property implies that parents own their children, it is necessary to partition off human beings from the rest of the world's resources. While Okin may not see how it is done, and while Nozick may not have offered explicit arguments for such a partitioning, it seems that it should not be a very difficult task.

2. Locke, Self-Ownership, and the Workmanship of God

Okin argues that the necessary assumption for Nozick's entitlement theory is the Lockean concept of self-ownership. While Nozick does not himself argue for this proposition, he presupposes it to get the result that people own parts of their bodies and have the right to control their bodies (Okin, 79). Perhaps by studying how Locke reasoned about self-ownership and property, we can find our way toward solutions to the puzzle Okin sets us in the relationship between autonomy and property.

Locke's discussion of self-ownership and property is presented within the context of a carefully developed theory of government. The *Two Treatises*⁵ were written to argue against a theory of hereditary monarchy and for a theory of limited constitutional government based on the consent of the people. Consent is the linchpin of Locke's theory and is a prerequisite for

all just interpersonal relationships: between magistrate and citizen, husband and wife (*ST*, par. 78), employer and employee (*ST*, par. 85).

The *First Treatise* is a refutation of Sir Robert Filmer's divine right of kings doctrine, which traces the king's right to rule back to God's grant of dominion over the earth to Adam. Among the arguments Locke summons to refute Filmer is his strong claim that fatherhood does not convey power over the lives of the children (*FT*, par. 52-54), that even if heredity counted for sovereignty, both parents would have to be sovereign, since both are equal in their relationship to their children (*FT*, par. 55).⁶ Further, he argued explicitly against the view that parents could regard their children as property (*FT*, par. 88-89).

Locke's argument about the origin of property in the *Second Treatise* (ch. 5) is designed to address a very particular problem: how is property legitimately established in a world God has given to people in common for their use? Locke's theory of property proposed to show how the right of self-ownership, coupled with the act of appropriation for use, led to the establishment of property rights in previously unowned resources. He addressed this problem by invoking a powerful metaphor: man mixes his labor with unowned resources to create something new that is his property. However, it would have been inconceivable to Locke to apply his theory to the production of children.⁷ Children are not produced by appropriating free resources from the common pool; more importantly, they cannot be owned by their parents because they are inherently selves that are not subject to ownership.

Self-ownership, in Locke's view, refers to one's status vis-à-vis other human beings. We own ourselves because no one else owns us. Self-ownership does not refer, however, to man's relationship to God. Man is God's handiwork, and is in some sense owned by Him just as all the earth is owned by Him (*ST*, par. 56). God grants us life and enjoins us not to take our own lives. Thus, we may not sell ourselves into slavery; we would be disposing of that which we do not own, our power over our own lives (*ST*, par. 24). Nozick criticizes this position by claiming that if we cannot own other people because God owns them, this could apply to "plants, non-human animals; and perhaps it applies to everything" (Nozick, 288). Nozick's interpretation is correct but incomplete: Locke would agree that God does own everything, but He has explicitly granted us the right to use the earth's nonhuman resources for our own benefit; He has not granted us the right to use other people.

Locke had no problem distinguishing human beings from everything else, because he had no difficulty in distinguishing humans from God. His theory of self-ownership, property rights, and consent was expounded within a larger context of his religious/moral beliefs which he referred to as natural law.⁸ In this system of belief, people were subservient to God's will, but equal to each other in the sight of God. One could and should own

pieces of the world and the products flowing from one's activities there, but one could never own another person, since a person was more than a piece of the world: a person was a creature of God possessing a soul (*ST*, par. 6).

Locke avoided the conclusion that children were the property of their parents by invoking man's relationship with God and relying on a long moral tradition that placed limits on legitimate human behavior and clearly distinguished between men and beasts. Within this tradition, children were entrusted to parents to be cared for and nurtured; they imposed responsibilities on their parents rather than ownership (*ST*, par. 66). To pluck Locke's ideas about property out of their religious context is to misread and manipulate Locke.

In developing his theory of property, Nozick attempts to move beyond Locke. Not only does he drop Locke's labor-mixing formula because of its logical difficulties (Nozick, 178), he ostensibly drops the religious context as well (though one might argue that Nozick implicitly accepts the background assumptions that allow Locke to treat people as creatures with a soul). But if Nozick does not want to rely explicitly on the moral/religious assumptions that give humans a special status in nature, should he not offer explicit arguments about why people are different from the rest of the world and hence not legitimate property of their human creators? Certainly, Okin would have us believe that Nozick's theory—indeed, all of libertarian philosophy—collapses into a hopeless contradiction without such arguments.

But why should Nozick, or libertarians in general, have to provide arguments in political philosophy about the special status of human beings to anyone (except perhaps the extreme animal rights people, who see no such difference on their own)? If there seems to be a conflict in the theory of property between people's rights to autonomy and self-ownership, and their rights to own the products of their labor, why is it not sufficient to stipulate that people aren't things and hence their autonomy precludes their involuntarily being owned by others?

Even if libertarians reject the Judeo-Christian moral heritage that gives human beings a special status, they still may stipulate the categorical distinction that allows them to apply rules of justice to humans and not everything else. Indeed, such a stipulation is a move that would command widespread assent, including the assent of liberals such as Okin. The question isn't "Why are people different from trees?" so much as "Given that people are different from trees, what does this imply about how we treat them?" An entitlement theory of property is an important component of an answer to that second question. Moreover, an entitlement theory is not invulnerable to sensible criticism from the left. If Okin had foregone the temptation to be clever and had instead offered a serious challenge to libertarian theories of property rights and justice in general, an important examination of the implications of libertarian doctrine for women and chil-

dren might have been encouraged to begin.

3. Libertarianism, Feminism, and the Problem of Dependency

Despite Okin's insinuations to the contrary, one would expect libertarian thought to be congenial to feminists who regard themselves as fully equal to men, since libertarian principles of individualism and individual rights apply equally to men and to women. Claiming common cause with many of the early feminist writers,⁹ libertarians oppose laws that discriminate against women in overt ways, and in general oppose paternalistic arguments that regard women as inferior. Marriage, if it is thought of at all, is regarded in the Lockean fashion as a contract between equals. Libertarian thought has no presumption that women should always do home work and men market work; the division of labor within a household is considered a negotiable part of the marriage contract. Indeed, libertarian philosophy, more than most others, is content to let people, men and women, live their lives as they choose.

In contrast, Okin believes women in contemporary culture really can't be thought of as having the kinds of choices libertarians routinely assume are open to adults. She argues that while equality is the ideal, real equality does not exist for women in modern society. If libertarians really took women seriously, they would see that women need special protection until such time as culture is rearranged. Okin argues that the gender difference that underlies modern beliefs about male and female is itself unjust (Okin, 4). Our notions of gender presume that women will not only bear children, but take primary responsibility for rearing them, and this is the crux of the problem. This traditional household division of labor limits women's ability to maximize their income in market work, leaving them dependent upon their husbands and financially vulnerable in the case of divorce (Okin, 160-62). As long as this is the case, she argues, women will not achieve full equality. The answer is to eliminate all gender-related divisions of labor within the household by eliminating gender itself (Okin, 17).

According to Okin, gender is a social construction that is not based in nature (Okin, 6-7). Social constructions are inherently arbitrary. Hence, if we judge some social constructions to be unjust, we can and should "reconstruct" them, which in this case means eliminate them entirely.

There is much to unpack here, and this is not the place to do all the unpacking. Suffice it to say that Okin has made a number of bold assumptions that she backs up in only the sketchiest manner. We are to take for granted that the "traditional division of labor," for example, has no roots in nature. Women have no special attachment to their children or expertise in child rearing that sets them apart from men (Okin, 5), nor any special concern with households that is not a product of cultural conditioning. This

strikes me as an iffy proposition at best, and certainly no more than a hypothesis that requires further investigation—a hypothesis too uncertain to justify sweeping policy decisions. Further, she assumes that institutionalized child care is as good or better than home-provided child care and the attentions of a present mother. Again this is at best conjecture. Additionally, she takes it for granted that market work is always more fulfilling and desirable than home work. As one who has done both, I am certainly not prepared to argue that case.

Perhaps the most disturbing assumption is that socially constructed ideas of gender can be rationally reconstructed according to her (or anyone's) theory of justice (Okin, 15). It might well be true that gender is a social construction without it also being true that (a) we can do anything about it except at the margins, or (b) even if we could, that we *should* do anything about it. It might be a "bad" social construction by some standards, but it also might be better than the untried alternative. Friedrich Hayek¹⁰ has shown persuasively why attempts at sweeping social reconstruction in the economic area are doomed to ignominious failure as unintended consequences heap upon unintended consequences. Such an outcome is no less likely in an attempt at sweeping cultural reconstruction. While libertarians are often as reluctant as liberals to acknowledge limits to humans' ability to create their ideal social orders, both would do well to heed Hayek's warning.

While I am skeptical of many of Okin's claims for the arbitrariness of gender constructs and while I also believe libertarian philosophy is compatible with full feminine equality at one level, there is another level at which Okin has a point. Women have babies, and babies come into the world dependent and incomplete. They require years of parental nurturing, a huge investment of resources, and what they offer in return is not generally thought of as consideration in a legal contract. If we are not to regard babies as property of either mothers or parents, what theories do we have to tell us how they are to be regarded and how they are to be treated in political society?

To those who would argue that child rearing is not the concern of the state, I would partly side with Okin; we cannot avoid having the state concerned with child rearing at least on one level (Okin, 111). Even the minimal state is supposed to protect its citizens against force and fraud. But the protection of the state requires that there be competent individuals to assert their rights; people sue each other or bring charges against aggressors. What if, however, the perpetrators of force and fraud are parents, and the victims, children? Certainly, no one could claim that unaided children are competent to protect their rights vis-à-vis their parents. But libertarians are understandably unenthusiastic about the idea of bureaucratic child-welfare services vigilantly inspecting homes for violations against children. Yet short of some such process, who or what will protect children from violent

or fraudulent parents?

This raises an even more interesting question. How would a libertarian define force or fraud against a child? To raise children means to protect them from harm and to socialize them so that they can live in the world peacefully with others. But this means teaching, and sometimes punishing children. When is a punishment justified and when is it excessive force? Rearing a child also means providing for his or her well-being. What is the extent and what are the limits of the child's claim on the parents' assets? Should a child be allowed to sue his parents for failure of specific performance? Should children be allowed to divorce their parents if they are dissatisfied customers? Should parents be allowed to sue their children for failure to perform their duties to their parents? When is parental authority invoked for the good of the child and when is it a destructive ego trip?

These questions may seem absurd to some; certainly there are conventional standards of child rearing that most parents subscribe to, and the problem faced in affluent societies is often parents' doting on children and giving them too much rather than too little, but that is beside the point. The point is that a libertarian society that had laws against force and fraud would also in justice have to apply those laws or some variant to children as well.

While it might be possible to incorporate laws against excessive force against children into a libertarian minimal protective state, it is not clear that an even more difficult issue could be handled by libertarian philosophy. That is the question of community externalities. Libertarians generally subscribe to the view that personal behavior that does not involve force and fraud should not be the concern of the state. Most would argue that sexual behavior, reading material, eccentricity, and people's values in general are their own business as long as they are not harming others. Libertarians also presumably believe people have the right to raise their children to share their values. But is this a viable position when we acknowledge that children must learn values before they can act in accordance with them? That is, does not the right parents have to raise their children according to their own values conflict with the individual's right to live any way he pleases?

Values are not learned in a cultural vacuum; they can only be passed on in the context of a valuing community. This is a fact that conservatives recognize, that troubles Okin (hence her desire to use schools as indoctrination centers for the new utopia [Okin, 177]), and that libertarians have not fully come to grips with. It might be that, for example, raising children to be responsible, self-sufficient, and hard-working adults, all characteristics of people who can respect property rights and refrain from force and fraud, is incompatible with a freewheeling attitude toward drug use, promiscuous sex, and pornography. Certainly many people, some feminists among them,

claim that to be the case. Short of denying that there are value externalities in human behavior, and of ignoring the process by which children learn from their environment, I do not see how an “anything goes” attitude toward personal behavior is consistent with the right of families to live unmolested according to their own values.¹¹ But if communities have the right to enforce certain behavioral standards, how far can they go without trampling on the rights of the eccentric?

In short, once we recognize the fact that children are born dependent and have to be raised to be fully competent and moral human beings, the unproblematic definition of the minimal state becomes difficult to sustain.¹² This does not mean that libertarians must embrace rampant political liberalism. There are still good reasons for being wary of an extensive state and for developing a theory of property rights based predominately on processes rather than end states. But taking human reproduction seriously means taking uncontracted-for dependency seriously as well. If we are to be wary of the state’s intrusion into private life—as I am and as Okin would be if the state were, for example, a fundamentalist Islamic one—then we must consider well the state’s position with regard to dependent children.

4. Conclusion

Let us conclude by asking why Okin is so hostile toward private property and the limited state that she chooses to ridicule libertarianism rather than to argue seriously against it. So many of the personal behaviors she advocates are clearly compatible with libertarian philosophy. Further, given the history of how the apparatus of the state has repeatedly been used to oppress women, one wonders why she would not find libertarian hostility toward the state and reliance on voluntary contract at least somewhat appealing. One can only speculate that she cannot afford to give up the coercive powers of the redistributive state because her plan for bringing about the ideal order she recommends requires it.

Not content to try to convince others of the truth by the power of her argument, as libertarianism recommends, she wants to use taxes, subsidies, and regulations to make the public an offer it can’t refuse. She needs taxes to subsidize day care so that even where a household division of labor would be more efficient to the creation of wealth than market work, we will get market work (Okin, 175). She needs a public school system to teach children that their misguided mothers who prefer to stay at home—even part time—are victims of their fathers’ injustice (Okin, 177). She needs a powerful government bureaucracy to mandate hiring practices and internal management issues of businesses to bring about the “major changes in the work place” she sees as necessary for parental equality (Okin, 176).¹³

While much of what Okin says about justice and women is congenial to libertarians, her wholly trusting attitude toward government creates an unbridgeable gulf between her "liberal" view of justice and the libertarian one. The crux of libertarian thought is a deep and abiding suspicion of government and its monopoly of force. The government that can mandate family-leave policy or affirmative action enforced by quotas when in the hands of liberals, could also mandate excluding women from employment or preferential hiring for men when in other hands. As amusing as it might be, no argument about how a woman's labor in childbirth is or is not equivalent to a farmer's labor in producing crops can touch this core of libertarian thought.

1. Susan Moller Okin, *Justice, Gender, and the Family* (New York: Basic Books, 1989); page references will be given parenthetically in the text.
2. Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974); page references will be given parenthetically in the text.
3. The conclusion that only mothers own their children has to be one of the most misleading slights of hand in Okin's critique. Men do not in all cases simply "freely give" their sperm to the female without any regard to consequences. At least within marriage, and perhaps in other long-term cooperative living arrangements, there is an explicit contractual agreement concerning the mutual responsibilities both parents have toward their children. Even if we were to assume children are "owned" like property in such cases, they would have to be jointly owned. Of course, this does not apply in cases of rape, or casual sex with no long-term commitment, but these are situations that neither libertarians nor feminists would presumably recommend as normative.
4. Actually, Nozick offers the opinion in passing that a free society should permit adults to sell themselves into slavery, since they are presumed competent to judge whether such a contract would be in their best interests. Nozick admits the position is debatable, and he explicitly denies the right of anyone to sell someone else into slavery. Okin regards this as a quibble, but in fact it is an assertion of the primacy of autonomy and self-determination over property rights (Nozick, 331).
5. John Locke, *Two Treatises of Government*, ed. Peter Laslett (Cambridge: Cambridge University Press, 1988); references to the *First Treatise* (FT) and the *Second Treatise* (ST) will be given parenthetically in the text.
6. Whatever Okin may claim about other theorists ignoring women and children, she cannot in justice include Locke in that indictment. Locke was very much aware of the implications of two sexes and human procreation in his work. He regarded women as fully politically equal to men, regarded marriage as a negotiable contract, and considered women biologically more responsible for the production of children than men, although not morally more responsible for their upbringing (FT, par. 55). While it is also true that Locke assumed women were physically weaker and therefore would be the subordinate power in a marriage, husbands had the obligation of caring for and loving their wives. While modern feminists may cringe at this last assumption, Locke was probably one of the most liberal of philosophers in his day on the subject of women.
7. Locke's discussion of why parents do not own their children is found in two places. In FT, par. 52-56, in conjunction with his argument about the absence of natural sovereignty, he argues that children are a gift of God and are not the products of their parents. Despite

Nozick's criticism of that argument, it is more serious than he realizes. Locke makes a similar argument in *ST*, ch. 6, where he describes in detail the responsibilities parents have to their children until they reach adulthood.

8. Since natural law was given by God, Locke saw no conflict between God-given law and the law of nature. In fact, he used reason and revelation interchangeably as sources of natural law (*ST*, par. 25).

9. See, for example, Wendy McElroy, ed., *Freedom, Feminism, and the State* (Washington: CATO Institute, 1982).

10. Friedrich Hayek, *Law, Legislation, and Liberty*, vol. I (Chicago: University of Chicago Press, 1973).

11. The standard libertarian response to worries about the influence of corrupting culture is to advise individuals to shut it out. In the case of television, for example, parents are literally advised to pull the plug. These suggestions can only come from people who either (a) have no children or (b) are raising their children on a farm miles away from the nearest neighbor. Otherwise, they would realize that pulling the plug in one house does not constitute pulling the plug at every house one's child visits. And one has only marginally more control over the activities of one's child at his playmate's house than one has over the weather.

12. Nozick recognizes the problem of externalities and tries to overcome it by envisioning the coexistence of differing communities where social experiments can be carried out. These communities avoid the charge of coercion by permitting free exit. However, he devotes no more than three sentences to the problem children present to his utopia (Nozick, 330).

13. The one part of Okin's program for reform that I can subscribe to wholeheartedly is her proposed reformulation of divorce laws (Okin, 163-65). Women are disadvantaged under current "no-fault" divorce, and given current patterns of female employment decisions, a woman who specializes in home work is often devastated by the kinds of financial settlements meted out in divorce courts. Interestingly, the current divorce laws were originally supported by feminists who viewed alimony as demeaning to women and thought it important to give women an incentive to go into the workplace.