

REASON PAPERS

A Journal of Interdisciplinary Normative Studies

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To Be, Perchance to Sue —Clifton Perry
Ethical Principles, Charity, and a Criterion for Giving —Kathleen Touchstone
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Jerry Kirkpatrick's *Montessori, Dewey, and Capitalism: Educational Theory for a Free Market in Education* —David Gordon

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Editorial

If you are reading this, I do not need to convince you that philosophy is important or that it is vital to have good, rational reasons for one's positions. But there are still those who believe the opposite. Academics need to spend at least a little energy on making their views comprehensible to non-specialists. This journal was founded to explore the nuances of liberal theory among an interdisciplinary community of scholars, but its slightly older sibling was a similarly titled popular magazine, now forty years old. I am sure I am not the only person who read *Reason* magazine long before discovering *Reason Papers*, and it continues to have great success as an outreach publication. It was instrumental in getting me to think more seriously about political ideas, and was one of the inspirations for my ultimate pursuit of academic specialization in political philosophy. On behalf of everyone at *Reason Papers*, I would like to wish *Reason*, and all of its staff, a happy birthday and best wishes for the next forty years.

Aeon J. Skoble
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How Not to Argue Against Paternalism

William Glod
Tulane University

1. Introduction

Paternalism “is the theory or principle that recognizes the need to prevent self-inflicted harm as a legitimizing reason for coercive legislation.”¹ Many liberal theorists have strongly antipaternalistic intuitions, some to the point where they believe the state should play no role in protecting people for their own good, that is, the state should play no role in protecting persons from their voluntarily assumed self-harmful actions. This is not to say intuitions are all liberal opponents have to offer—this essay will examine three (unsuccessful) strategies for delivering a principled argument against paternalism. The aim of this essay is primarily negative. I will not attempt to canvass why liberalism might require principled opposition by way of outlining a more promising set of arguments against paternalism.

I must emphasize the view these strategies argue against is hard, not soft, paternalism. Soft paternalism holds that, in the absence of competing moral factors (such as the paternalized agent’s obligations to others) interference is proper only with those: (1) whom we know to lack sufficient ability to make informed and voluntary decisions vis-à-vis the harmful action or omission, or (2) for whom we do not have sufficient evidence of their ability to do such.² A famous example of soft paternalism figures in John Stuart Mill’s “bad bridge” case.³ In this case, we are permitted to restrain a person set to cross a dangerous bridge in order first to ascertain whether he is aware that the bridge is dangerous, and to ensure that he is not in some delusional or distressed state that negates his ability to make a voluntary decision to cross it. Either way, we are not permitted to continue restraining the person if we obtain sufficient evidence of his voluntariness. Soft paternalism claims we would be wrong to continue restraining an informed person, all else being equal, should he voluntarily decide nonetheless to risk a

¹ Joel Feinberg, *Harm to Self* (New York: Oxford University Press, 1986), p. 8.

² *Ibid.*, pp. 12-16.

³ J. S. Mill, *On Liberty* (New York: Penguin, 1986), p. 111.

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foolish crossing. This is because soft paternalism holds “that the law’s concern should not be with the wisdom, prudence, or dangerousness of [a person’s] choice, but rather with whether or not the choice is truly his.”⁴ A significantly less than voluntary act may not even proceed from a person’s own free and informed choice, so it cannot be said to be *his* choice. Acts that proceed from unforeseen ignorance, delusion, or psychological compulsion may be considered as foreign to a person’s will as would acts that proceed from external coercion or threats. By contrast, hard paternalism holds that, in the absence of competing moral factors, interference is still sometimes proper even with those persons whom we know are making voluntary and informed yet self-harmful decisions. Hard paternalism thus takes a position on what would be worthwhile or best for a person to do, sometimes against what that very person judges to be worthwhile or best for himself. Unlike the soft paternalist, a hard paternalist may restrain Jones from crossing a dangerous bridge *despite* the fact that he knows Jones is well-informed of its danger, and voluntarily intends to proceed anyway. He may restrain Jones for a variety of rationales: foolishly risking one’s life is a crime against nature, one has a legally enforceable duty to preserve one’s life, Jones’s reckless decision to cross irrationally undermines his own settled ends and values, etc. Some of these rationales may not fit well in a liberal polity—for instance, religious or natural law justifications. But other rationales such as certain self-regarding duties—or the appeal to one’s own good reason(s)—to promote one’s good provide significant challenges that any argument against hard paternalism must counter, since these rationales are shared by a significant number of liberals.

Some arguments against hard paternalism⁵ fail to be persuasive. These defenses attempt to show that paternalism is generally self-defeating, autonomy-diminishing, productive of more harm than good, etc, and that is why we should not have paternalistic laws or policies. In what follows I reject three commonly used arguments as inadequately meeting the paternalist’s challenge. Particularly, they fail to show on their own terms that (allegedly) paternalistic interference is always wrong. These arguments face, moreover, what I call the “conceptual space problem.” This problem stems from the argumentative strategy of trying to show that allegedly paternalistic interferences normally defeat the purpose of protecting an agent’s good. If one successfully deploys this strategy, the very success reveals that his intended target is not a truly *paternalistic* interference. For if one can show

⁴ Feinberg, *Harm to Self*, p. 12.

⁵ I will henceforth use “paternalism” as shorthand for “hard paternalism.”

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the interference fails (directly or indirectly) to promote an agent's good better than does absence of the interference, then its failure to promote the agent's good also fails to render it a genuinely paternalistic interference. I must emphasize, however, that the conceptual space problem pertains only to an internalist account of practical reasons, which I will explain (very briefly) below.

The three failed antipaternalistic strategies I will now canvass are: (1) the Argument from Relative Paternalistic Ignorance, (2) the Arguments from the Instrumental and Non-Instrumental Value of Choice or Personal Autonomy, and (3) the Argument from Defending Vice as Value.

2. Argument from Relative Paternalistic Ignorance (ARPI)

One argument against paternalistic coercion makes two related claims: (1) The paternalist, as an external party, lacks sufficient knowledge of a potential recipient's own chosen structure of values and preferences to make an informed decision to coerce the recipient; (2) the person herself, as the creator of her own structure of values and preferences, is in the best position to know her good. As Mill writes: "[W]ith respect to his own feelings or circumstances, the most ordinary man or woman has means of knowledge immeasurably surpassing those that can be possessed by any one else."⁶

I will address these claims in turn, as each is mistaken if construed as generally able to give a persuasive case against paternalistic laws or policies. Two matters tell against (1). First, privileged access to subjective experience is often neither necessary nor sufficient for knowledge of an agent's own personal good. If it were, good advice or cognitive therapy would not be possible. Privileged access is not necessary for knowing an agent's good because we on the outside often can infer what an agent needs or wants from her own reasons, values, and actions. Privileged access is not sufficient for knowing an agent's good because while she may have such access to all of her inner beliefs and reasons, it does not follow that she has direct and immediate access. Agents cannot always hold all of their relevant beliefs and reasons in conscious awareness at the same time. We often need to be reminded of what we ourselves are already committed to believing. Privileged access also does not guarantee that an agent will make the appropriate logical connections between her reasons and beliefs. Second, an astute observer may more clearly see issues that pertain to the agent's good than does that very agent. Sometimes we can know another's good better than she knows it. Jones may lament his lack of motivation and sense of writer's block, mistakenly attributing them to the lack of an inspiring environment, while we have good

⁶ Mill, *On Liberty*, p. 143.

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reason to believe Jones's slump is due to his increased alcohol consumption, which he does not clearly sense as detrimental.

Similar considerations count against (2). Even if we grant Mill's premise, and surely it is true in *some* cases, this argument's chief difficulty is that the move from a claim that some agent generally has broader and more accurate self-knowledge to the claim that he generally knows better than the paternalist in most cases does not work. The mind is not wholly transparent as Descartes believed, and this lack of transparency manifests itself in various ways. One way is through distractions brought on by impetuosity. If Jones is gripped by an occurrent desire to go partying, he may let this desire distract him from deliberating about why partying is not a good idea the night before an important medical exam for which he needs to study. It strains credulity to say that Jones has temporarily redefined his good to mean satisfying his thirst for drink and revelry—this is true especially if Jones has not really abandoned his disposition to seek a medical career. His greater good *as he is disposed to conceive of it* is still to perform well on the exam and get his degree; Jones has simply not given his greater good much thought since he (presumably) has voluntarily let his mind grow occupied by a thirst for instant gratification. A person who acts foolishly or rashly may be aware of his own dispositions and his long-term good but push such considerations to the margins of his conscious awareness. He may vaguely sense that he should study but instead places the thought “out of sight, out of mind.” Perhaps he does not even ask himself the questions (Should I really go out tonight? How much work do I have left?) that motivate a process of deliberation and often lead a person to reconsider his hasty and foolish decisions.

A defender of ARPI might counter that we should construe self-knowledge as occurrent expressions of preference or revealed choice and not count dispositions in our characterization of a person's character or identity. A person defines what his good will be at each moment. This reply is not very powerful, however. Why should we accept episodic preference expressions rather than settled dispositions, especially since the latter usually reflect both how we conceive of the person and how he conceives of himself? These traits give him a settled rather than schizophrenic personality and accord with the narrative stability of his life. Moreover, this reply rules out by definition the possibility of hard paternalistic interventions. If a person's good is defined by whatever he happens to choose freely at a time slice, then it is impossible for him ever freely to act *against* his good so defined. He attains his good through fulfilling whatever random whims he happens to indulge, no matter how irrational they may be given his other, more settled beliefs and reasons. (And surely a person cannot instantaneously alter his entire belief system to incorporate such whims.) If Jones makes a poorly thought-out choice to play Russian roulette, even though he is not suicidal and even though this foolish risk may destroy his otherwise rational life, a rejecter

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of the “dispositional view” of agency holds that the whim better expresses Jones’s good than do the settled preferences and values he has developed over time. This stance is obviously not defensible. In addition to its other problems, an anti-dispositional view, one which asks us to conceive of agency as a series of disconnected occurrent preferences, makes the phenomenon of rational regret impossible. Returning to the party example, the view would have us regard Jones’s decision to live it up the night before the exam as his all-things-considered good in that moment. The next morning, when Jones is hung over and unable to focus on the exam, he would not have rational recourse to experience regret because his hedonistic preferences the night before had no connection to his newly occurrent preference to perform well on the exam. This view cannot be right, as it makes perfect sense for Jones to wish he had not thrown away months of work and succumbed to the temptation of fun distractions. Regret signals the fact that Jones conceives of himself as having enough stable identity to wish he had not made some decisions which, on reflection and in hindsight, undermine his deeper and more settled commitments.

Another way in which a person may not best know his own good is through miscalculation. Jones mistakenly believes that the risk of motorcycling without a helmet is, all told, outweighed by the pleasures of riding that way. This may be true of some thrill-seekers, but let us stipulate that in fact Jones is a risk-averse person who values what he risks losing in an accident, coupled with the sufficiently high probability of an accident, much more highly than any benefits of riding without a helmet. However, Jones has not done his homework as to assessing *his own* preference orderings and the relative importance he assigns to his various activities. Had he deliberated properly on these factors, he would rationally have chosen to wear a helmet. This point underscores the fact that people often fail to detect inconsistencies among their own beliefs and values, which is no surprise given two facts: the human mind is limited, and so persons cannot inspect all their beliefs at the same time, and people often succumb to inertia by not putting forth the requisite effort to think about or act to promote their good. Contrary to the antipaternalistic defender of ARPI, paternalistic laws could serve as safeguards against people’s naïveté or shortsightedness.⁷

Furthermore, a person may not best know his good even if he has not evaded or miscalculated; he may consciously hold beliefs and values that

⁷ The antipaternalist might note that these same concerns about inertia and shortsightedness could just as well apply to paternalistic agents. This is certainly a valid worry, and one that requires more attention than can be given here. Needless to say, if the paternalist could devise institutional safeguards to minimize abuse or misuse of otherwise justifiable paternalistic laws or policies, then the antipaternalist needs a more fundamental argument for why these laws or policies are, in fact, not justifiable.

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contradict what he subconsciously believes and values. Charlie is fairly satisfied with his career as a banker, but unbeknownst to himself he has the temperament and skill to develop a much more fulfilling career as a doctor. Perhaps he has memories of enjoying science that have since faded, but their return would spark a renewed passion in him. For instance, Drew remembers Charlie's interest in science and sets out to rekindle Charlie's memories. Now, it would be difficult to recommend that we paternalistically remove Charlie from his current situation and thrust him into medical school. The rude transition may breed resentment and a crippling sense of loss that backfires, that prevents Charlie from developing a passion for medicine. But we might legitimately be able to take smaller steps to protect Charlie in other ways, such as keeping him from good-undermining distractions like alcohol abuse, based on our more intimate knowledge of his good.

The antipaternalist might respond in two ways. First, he could observe that political philosophy only provides general arguments, not ones without exceptions. There will always be outliers and counterexamples at the margins, so it is unfounded to demand that ARPI be able to immunize an agent from every conceivable paternalistic interference.⁸ This observation is well-taken, but it merely shifts the argument to what should count as sufficient scope for an argument against legal paternalism. If ARPI is vulnerable to counterexamples (like the Charlie case) which many reasonably believe are not marginal, then we are stuck with a morass of conflicting intuitions and still hope for an argument that can help us resolve these conflicting views.

Second, more assertively, the defender of ARPI could claim that there is no reliable principle in the law that can be used for determining where exceptions to ARPI apply. This would, in fact, deliver a principled antipaternalism that does not admit of exceptions. This strategy is promising but for the observation that there seem to be fairly clear cases where an exception to ARPI obtains. Consider what I shall call Neutral Paternalism (NP): *If some action A performed by person P goes against P's own beliefs and values, then it might be legitimate to interfere with A in order to bring P's actions back into alignment with his beliefs and values.* I will employ NP as our paternalist argument for the remainder of the essay, as NP seems to pose the greatest challenge for antipaternalism in taking the person's own good to be as he defines it. Here we can understand rationality in subjective terms—a person whose actions contravene his own normative commitments is doing what he has no good reason to do given his commitments. If, out of deliberate ignorance, P ignores signs warning him not to swim in stormy waters—and P is not suicidal or a daredevil—then there is at least a strong *prima facie* case that P is acting out of voluntary ignorance of his own beliefs and values. If

⁸ I am grateful here and elsewhere for comments by an anonymous referee pressing me to address this issue.

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so, a level-headed paternalist might be said in this instance to have a better grip on P's good than P currently does. Perhaps there are still worries that there is no practical way to implement laws or policies which deal with this level of specificity. But the antipaternalist should not put all of his eggs in this basket, for if certain paternalistic policies are enforceable because they prevent actions which (almost) every reasonable or rational person would not perform, then it seems feasible to enact some policies (like a swimming ban or seat belt requirements) which coerce people not to act on their more foolish motivations.

None of the above considerations is meant to imply that we *generally* know less about ourselves than other agents gather. That would be quite an unusual circumstance. We likely know more than anyone else simply because we have constant introspective access to many of our beliefs and intentions. But unless we are masters of introspection and experts about all that pertains to our own good, it does not follow that we *always* know *every* aspect of ourselves better than any other person. ARPI is vulnerable to too many empirical contingencies to serve as a powerful argument against paternalism.

3. Arguments from the Instrumental and Non-Instrumental Value of Choice or Personal Autonomy

The first argument, from choice's instrumental value, maintains that paternalistic coercion is incompatible with the agency needed for a person to build his character and identity. (Call this the "argument from the developmental value of choice."⁹) It is certainly true that an agent can only develop his character and responsibility through making his own decisions and putting forth his own effort concerning the activities and pursuits that will come to define his identity. Character-building is like exercise; one atrophies psychologically if one does not work at the skills that define one's career or other life pursuits, the social skills and subtleties of mature and meaningful personal relationships, and moral virtues. Nobody can do these activities for another person—he must do them himself. Moreover, atrophied development raises a vicious cycle. Failure to build character keeps one from having a perspective on the fulfillment that comes through cultivating these features of a good life, which often leaves one without motivation to take the steps requisite for character-building and the chance for its attendant fulfillment. We could make a strong case against paternalism if we could show that it necessarily stifles motivation to build one's character. The same considerations apply when matters are writ large. As Mill argues eloquently,

⁹ John Kleinig, *Paternalism* (Totowa, NJ: Rowman & Allanheld, 1983), pp. 30-32.

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conformity on a large scale cripples a society, robs it of the initiative to seek progress, and saps its creative energies.¹⁰

However, like exercise, there can be such a thing as too much choice or too much license, since agents can abuse their freedom. The above argument has the same shortcoming as ARPI in that we cannot infer from its usual validity that some measure of hard paternalism is not legitimately called for in many instances. For instance, John Kleinig writes that this argument's force "diminishes when the paternalism is strictly limited, designed to curb only self-destructive or severely damaging behavior, and then only by means that are not excessively intrusive."¹¹ On many occasions, free choices are instrumentally valuable as a means for building a mature and responsible character, especially from gaining prudence by learning from one's mistakes. But surely not *all* instances or types of voluntarily chosen self-harm qualify as valuable by this standard. For instance, Jones chooses to be a couch potato who never does anything valuable with his life, never meets any interesting people, and wastes away his life in a vapid torpor. His choices are not active; they do not contribute to his development. He is not autonomous in the sense of exercising choice from among a large and complex set of incompatible options. Limited paternalistic interferences—most likely in the form of prohibiting certain self-harmful activities—may in fact be more conducive than noninterference to putting Jones in an environment, or triggering in him a motivation, whereby he avoids the vices that erode his character and distract him from his good.

We do not constantly hold a child's hand and try to protect her from every single misfortune; part of building character is of course to learn from one's mistakes. Neither do we step aside and let a child act however she wants in the name of "development." This laissez-faire approach would likely be disastrous for children, and it is not clear why matters are different when it comes to interfering with adults who should know better. The argument from the developmental value of choice is vulnerable to counterexamples which can use it to support some paternalistic measures, even as it rightly rejects other forms of paternalism. Choice's instrumental value in enabling a person to pursue substantive goods is not realized if her choices are not instrumentally good.

Perhaps focusing on choice's putative *non-instrumental* value will show that paternalistic coercion is wrong by oppressing individuality. Part of living is to become one's own person, and many people value being unique and (at least partially) independent because they understand these qualities as valuable in and of themselves. Paternalism threatens to undermine living by

¹⁰ Mill, *On Liberty*, chap. 2.

¹¹ Kleinig, *Paternalism*, p. 30.

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one's own initiative and judgment as something valuable for its own sake. Indeed, many oppose paternalism not on the grounds that it fails to be the optimal policy for bringing about the best consequences in one's life; rather, they argue that, apart from any consequentialist aims, paternalism infringes on a person's living *his* life. The realization of freely chosen activities instantiates itself in many ways, depending on the background, values, and temperament of a given individual. The "pursuit of happiness" manifests itself in various ways, from the relatively minor (e.g., freely motorcycling on the open road), to the sweeping (e.g., excitement at anticipating and participating in a series of artistic projects). Freely undertaken activities are intrinsically valuable as constitutive of a person's free choices and actions. One is not merely flailing one's limbs or acting under thrall to exogenous forces but doing what one believes in or cherishes for its own sake.

Nonetheless, an argument from the non-instrumental value of individuality faces three difficulties. First, individuality is a term of art, and defenders do not always have the same concept in mind. If we construe it in terms of absolute license or trivial habits of nonconformity, such an ideal fails to draw much support. It may not be difficult for epicures to comprehend how a person might value a licentious life full of whimsical pursuits. However, defenders of objective flourishing could object that such a life fails to be meaningful or to realize the human flourishing that a life of rationality, purpose, and virtue constitutes. A paternalist could even add that the superficiality of the former kind of life constitutes part of his motivation for advocating paternalism. Contrast the heroin-addicted couch potato who has never been interfered with, and the initially coerced but now free former heroin addict, who is now a successful writer and who would probably never have picked up a pen if not for the initial paternalistic prohibition of her drug use. Surely in many cases we could give lots of good reasons why the latter person has more individuality than the former.

A second problem is that the attractiveness of this ideal brings its own difficulty for antipaternalism. As the argument from the developmental value of choice makes evident, sometimes personal freedom is saved in the long run through temporary and short-term diminutions of freedom. A serious notion of individuality that stresses the value of independent thought and action can still invite hard paternalism if that is necessary to maximize, intrapersonally, one's exercise of independent thought and action. Moreover, constraining options undermine antipaternalistic appeals to the value of freedom, specifically freedom construed as the number or quality of options a person has available. A constraining option is "one that, if chosen and acted upon, is likely to impair [a person's] future autonomy"¹² A person who

¹² James S. Taylor, *Stakes and Kidneys: Why Markets in Human Body Parts Are Morally Imperative* (Burlington, VT: Ashgate, 2005), p. 73.

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decides frequently to use methamphetamine and heroin risks compromising his ability to perform autonomous actions in the future, either through incurring serious physical and mental injury, or even death.¹³ One with allegiance to freedom's intrinsic value should abhor options which, if chosen, restrict in turn the number of long-term options one has. Surely there are some expressions of "individuality" which are anathema to a life of sincere and long-term devotion to the values of autonomy and freedom.

Some will no doubt argue that these two objections do not capture the whole story of what we can mean by the intrinsic value of freely chosen activities. They will counter that a freely chosen life is not one that admits of paternalistic cost-benefit trade-offs, at least not trade-offs which are forced on the person. The very fact that one's life is *one's* life makes paternalistic impositions defeat the purpose of a person's *living her life well*. On this view, one's life is "complete at each moment," a tapestry of ventures successful or failed, a self-contained narrative where the person strives to approach asymptotically—that is, never attain as completed end-states—the various excellences or virtues which constitute a well-lived life. Freedom of choice is a *sine qua non* of flourishing, as it constitutes the process or activity of living well. I will not pause to assess the merits *per se* of this attractive notion of human flourishing.¹⁴ Even given the very brief sketch I have made of it, the ideal seems reasonable *and* reasonably contestable. This is the third objection. The ideal's reasonable contestability I also cannot discuss here in much detail, other than to indicate that some people might reasonably choose different ways of life—for example, hedonistic indulgence, religious self-denial—which do not require allegiance to the value of non-instrumental free choice. Although the non-instrumental aspect of freedom's value with regard to living well bears more emphasis, it remains far from clear that every person is rationally required to adopt this account of freedom's value. So long as these competing, incompatible accounts of the good stand as reasonable contenders to freedom's non-instrumental value, it is not clear we can use the latter conception to ground an antipaternalistic argument relevant to significant numbers of agents, including those who do not accept (or are not

¹³ But see note 19 on the issue of relative drug safety given prohibition versus legalization.

¹⁴ Kleinig's example of how agents may non-instrumentally value the exercise of freedom refers to the story of Jonathan Livingston Seagull; see Kleinig, *Paternalism*, p. 51.

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rationally required to accept) freedom's non-instrumental value.¹⁵ Since the ideal is contestable, those who reasonably do not accept it might still be vulnerable to paternalistic suppression on grounds separate from appeal to the non-instrumental value of free self-determination.

4. Argument from Defending Vice as Value

A final misguided strategy for arguing against paternalism is to take putatively vicious or self-harmful activities and attempt to recast them in a more appealing light. This mistake is made especially obvious in some of David Richards's writings critical of morals legislation. Though I share Richards's antipathy toward legal moralism, I consider his strategy to be ineffective and easy for paternalists to attack.

Far from maintaining that drug use or prostitution are vices that the state nevertheless has no business forbidding, Richards defends the liberty to perform each of these activities based on their value to the participants.¹⁶ He holds that "even psychological devotion to drugs may express not a physiological bondage, but critical interests of the person." Of the world's oldest profession he writes: "[T]he moral condemnation of the prostitute rests on and expresses such isolation and denial [of the prostitute's common humanity], disfiguring the reasonable perception of the forms sex takes in our lives, drawing sharp moralistic distinctions between the decent and the indecent when, in fact, there is a continuum of varying personal modes of sexual expression and fulfillment"¹⁷ This moralism, according to Richards, is itself a reflection of secularized Puritanism.

Aside from the controversial claim that all condemnation of prostitution stems from a Puritan disapproval of sex *per se*—rather than an *affirmation* of its value as something not appropriate for market exchanges—Richards's general strategy itself will not deliver principled antipaternalism. It may work in showing the eligibility of certain unorthodox but not unhealthy ways of life that are wrongly condemned by entrenched social prejudices or natural law moralities. It may explain to a sometimes ossified majority opinion that homosexual marriage or occasional marijuana use in the privacy of one's home does not bring significant harm to anyone. But it is hardly clear that Richards's strategy can work for behavior with *obviously* little or no

¹⁵ Moreover, we will see below that the non-instrumental account of freedom is vulnerable to the charge of leaving no conceptual space for paternalism.

¹⁶ See Richards, *Sex, Drugs, Death, and the Law* (Totowa, NJ: Rowman and Littlefield, 1982), pp. 126-27 for critiques of drug laws, and pp. 176-77 for critiques of prostitution laws.

¹⁷ *Ibid.*, pp. 176-77.

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redeeming value. Consider George Sher's reference to a news feature on female teenage crack addicts:

At the crack houses, which are usually decrepit rooms in abandoned buildings, they go on binges that typically last for two or three days.... The girls often perform oral sex in exchange for a smoke. Between binges they sleep in alleyways or abandoned buildings. Adults at the crack houses become the only family the girls have. They often call the older women Ma and the older men Poppy.¹⁸

As Sher notes, there are many reasons to be appalled by this phenomenon. It is doubtful that these young women are happy or fulfilled in the least. They spend their mindless days in squalor rather than productive activity. They run grave risks of illness and disease, and their ties to the older adults are likely rooted in exploitation rather than genuine human affection. I cannot see how Richards's claims about the psychological value of drug use, or the value of prostitution, apply to persons who sell themselves for crack cocaine. Our culture's use of the epithet "crack whore" does not elicit the slightest tinge of positive valuation, nor should it. Now, even the most degrading behavior *might* have potential value in, say, providing a basis for artistic expression that can only come from actually experiencing debasement. But most self-harmers are not countercultural icons like Hubert Selby or Lou Reed; they do not aim at or obtain aesthetic inspiration or edification from walking on the wild side. One need not accept paternalism to agree with Sher that such a life as the one described in the crack houses could never offer the fulfillment, self-respect, or joy that a life of commitment to positive goals can offer.¹⁹ Even if Richardsian arguments could accommodate harmful behavior that at least *seems* valuable to self-harmers, moreover, it cannot account for those who indifferently or self-consciously destroy their lives for no rational purpose, out of self-loathing, depression, or desperation. Strategies that attempt to wring value out of these kinds of harmful behavior are strained and unconvincing. Moreover, they seem to accept the paternalist's premise that *truly* self-harmful

¹⁸ *The New York Times*, August 11, 1989, p. A13; quoted in George Sher, *Beyond Neutrality* (Cambridge: Cambridge University Press, 1997), p. 179.

¹⁹ I cannot resist mentioning at this point that the squalor and sense of hopelessness surrounding these young women is partly a result of the (mixed) paternalistic War on Drugs. The illegality of certain drugs drives up their price, leading many users to resort to crime or prostitution. This is not to say that crack use is perfectly natural. But laws which marginalize or make criminals out of persons who are already sick or despondent about their lives do not help them; they usually only drive them underground and away from avenues of genuine recovery.

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behavior is rightfully subject to coercive restraint, which leaves antipaternalists in the unenviable position of having to explain why no behavior is truly self-harmful. This concession to the dominance of a strategy more conducive to paternalism is unwarranted. We seek an argument showing that paternalism is *wrong*, not merely impractical or purpose-defeating in most cases. A better strategy for the antipaternalist is not to flinch at bad behavior or pretend that it is anything other than it is, but nonetheless to explain why persons should be left free to partake in such behavior if they so choose. Of course, the admission that certain self-harmful activities are so destructive that they have no compensating value will press an opponent of paternalism to identify what is the wrong-making feature of interferences which would save persons from themselves in ways that, quite possibly, they will come to be grateful for. Say what one will about some of the negative unintended consequences of paternalistic policies—it is plausible, I think, that a great many lives have been saved due to legal prohibitions of activities which would be much easier to partake in absent such prohibitions. This claim would require important empirical research that is beyond the scope of this article. Informational constraints aside, a purely cost-benefit analysis on the number of lives saved (or the quality of life saved) might tilt the balance in favor of paternalism.

Defending the freedom of persons to perform patently irrational actions is not easy, especially when rotten behavior's ugly aspects stare us in the face. Supporters of (some measure of) legal paternalism properly raise questions about why antipaternalists are so doggedly committed to letting persons be free to act foolishly or in a self-degrading manner. One might worry that the antipaternalist is not so much defending an oft-unappreciated aspect of personal freedom as he is fetishizing freedom beyond any recognizable purpose. It is one thing to defend the freedom of persons to think, to pursue a business, or to associate with whom they like; it seems another matter entirely to defend their freedom to destroy themselves for often the most frivolous and irresponsible reasons. Why in the world would any rational person want *that* kind of freedom? Dan Brock asks: "Why should our basic moral principles prevent others from interfering with our doing what we want when their interfering would be for our own good, while our doing what we want would be contrary to our own good?"²⁰ Brock's question is a good one and ultimately needs to be addressed by opponents of legal paternalism.

²⁰ Dan Brock, "Paternalism and Promoting the Good," in *Paternalism*, ed. Rolf Sartorius (Minneapolis: University of Minnesota Press, 1983), p. 247.

5. The Conceptual Space Problem

Ironically, a *successful* move to defend vice as value may render paternalism an empty notion. This “conceptual space problem” lurks in the background even assuming the strategies discussed above could avoid the other concerns I raise. For instance, if all (putatively) vicious or harmful activities could really be recast in terms of their value, this would undermine the case against paternalism, since paternalism involves coercing people for their own *good*, and interference that suppresses seemingly vicious but actually valuable activities would not be a *paternalistic* interference. If, in fact, it is genuinely part of a person’s all-things-considered good to be a crack whore, then preventing *him* from pursuing that way of life is an infringement on *his* well-being so defined. This seems bizarre. What makes opposition to paternalism interesting is the fact that it requires us to bracket concern for well-being in light of, say, the competing moral demand of respect.²¹ Redefining putative vices or self-harms as really comprising a person’s good undermines such opposition, for then interferences that block a person’s liberty to act for these revisionist goods would in fact be impositions on (his own view of) his good. Richards need not find this implication bothersome, but it spells trouble for an antipaternalist motivated by the crucial presumption that paternalistic theories are not empty sets.

This may puzzle a reader who believes legal paternalism is best defined in terms of the intentions or rationales of the laws. Regardless of whether, in fact, a putatively paternalistic law actually prevents a person from harming himself or advances his good, the primary issue is that the law is crafted with the *intention* of advancing what the lawmaker takes to be that person’s good, even if the lawmaker is mistaken. My hesitation in describing such a law as paternalistic comes primarily from acceptance of internalism about practical reasons. Such internalism maintains that R is a justifying reason for person P if P, acting from his subjective motivational set and with all relevant factual information and a sound deliberative route, would endorse R.²² If, given P’s reasonable commitments, factual information and a sound deliberative route would not lead P to endorse R as a reason for him to act on its basis, then R is not a reason for P. Since R is not a reason for P, R cannot be said to be for P’s good. Coercion on R’s basis would not be justified to P, nor would it be for P’s good. So I believe it mistaken to label such coercion paternalistic regardless of what the interferer’s intentions might be. Of

²¹ For a discussion of the distinction between concern and respect, see Stanley Benn, *A Theory of Freedom* (Cambridge: Cambridge University Press, 1988), pp. 6-11.

²² This (admittedly rough) characterization of internalism receives its classic formulation in Bernard Williams, *Ethics and the Limits of Philosophy* (Cambridge, MA: Harvard University Press, 1985).

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course, discussion of the debate between rival internalist and externalist views—and arguments for the superiority of practical reason internalism—goes well beyond the space available here. So I must beg the reader to take this section as a conditional argument. *If* one rejects practical reason externalism and accepts some version of internalism, then one should also accept the relevance of the conceptual space problem.

I now indicate how the conceptual space problem also applies to ARPI and varieties of arguments from the value of choice or autonomy. With regard to ARPI, in cases where the subject of interference knows her good better than does the interferer, the interference at least risks bringing about worse states of affairs for the subject. Mistaken “paternalists” who act from a distance toward the subject—who incorrectly presume to understand the subject’s good better than she does in a given instance—turn out to do more harm than good, all things considered. But if they do more harm than good, then whatever the so-called paternalists’ intentions, the wrong-making feature of their interferences is that these interferers *harm* their subjects, not that they wrong their subjects despite benefiting them. An antipaternalistic argument cannot identify the wrong-making feature as the harmfulness of an interference; rather, the wrong-maker must have to do with the impropriety of an interference that, in fact, *benefits* the subject. Otherwise, paternalism has no distinct territory and we can instead just evaluate all interferences in terms of, say, Mill’s Harm Principle. With regard to arguments from choice or autonomy’s *non-instrumental* value, building free choice into a person’s good does not defeat a paternalist argument either. Instead, it rules out the very possibility of there being a paternalist argument. Again, if freedom partially constitutes a person’s good, then by definition interferences with that person’s freedom *prima facie* go against his good.

These considerations might lead one to wonder whether there is any conceptual space for paternalism at all, or whether it is a bogeyman that disappears in the very attempt to formulate arguments against it. No doubt, arguments favoring paternalism are often cast in terms of what the paternalist *alleges* to be for the subject’s good, quite apart from whether the subject agrees about his alleged good. The three arguments I discuss each, in their own way, attempt to undermine this “objective” notion of paternalism in which subjects may suffer suppression on the basis of values or considerations which the paternalist claims apply to everyone, regardless of their own systems of beliefs and values. Arguments against this “objective paternalism,” like the three above which show the paternalist mistakenly or without warrant attributes goods to his subjects which they are not rationally required to share, risk inviting the conceptual space problem. In showing he is mistaken about his subjects’ good, the arguments also show the “paternalist’s” interferences are not genuinely for his subjects’ good, and hence not genuinely paternalistic.

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Fortunately, neutral paternalism does not befall the conceptual space problem. One might consider NP to be a sort of “endogenous” view which, unlike objective paternalism, defines the subject’s good in terms of his own internal commitments. One advantage of NP from the paternalist’s standpoint is that it does not obviously seem unduly intrusive. We are taking the agent’s own commitments and then seeing whether those commitments make it unreasonable for him to reject interferences with actions that go against his own good *as he defines it*. Whether there is a viable argument against NP, and whether this argument can avoid the conceptual space problem, are matters which must occupy us another time.

6. Conclusion

I hope to have drawn attention to two matters which debates over paternalism often fail to address. First, if we are to have a powerful enough argument against paternalism, we need to search for our case outside of appeals to its potential harmfulness or unreliability, especially if we seek a liberal argument showing how such interferences are *wrong*. Of course, I lack the space even to outline what such a philosophically adequate strategy needs. Suffice it to say we would need to explore deeper issues such as practical reason internalism versus externalism, whether reasons internalism can yield a principle or principles that defeat neutral paternalism, whether any viable liberal theory has the equipment to levy a justificatory burden that neutral paternalists cannot meet—without having troublesome implications in other areas of political morality, etc. Second, in order to have a distinctively paternalistic position to argue against, we must frame the issue in such a way that interferences with a person are genuinely for his own good however construed, not defined away in every case by reducing the paternalist’s efforts to promotion of an ersatz understanding of the subject’s good. The interesting project is to see whether we can find convincing arguments for why it is (almost always, if not always) wrong to interfere with persons even when they benefit, all things considered, from such interferences.²³

²³ In fact, I believe such a project can successfully argue against liberal paternalism. I argue for such in my Ph.D. dissertation “Liberalism’s Case against Legal Paternalism” (Tulane University 2008). I would like to thank Chris Freiman, Gerald Gaus, Eric Mack, Kevin Vallier, and an anonymous referee for many helpful comments and suggestions on earlier versions of this article.

To Be, Perchance to Sue

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1. Introduction

To prevail successfully in a tort action for negligence, the plaintiff must demonstrate, at a preponderance of the evidence, that the defendant was duty bound to the plaintiff; that the defendant breached the duty owed; that the breach altered the plaintiff's position, state, or status; and finally, that the change suffered by the plaintiff constitutes an injury. The plaintiff's failure to demonstrate any of the above-noted provisions will result in a decision in favor of the defendant. The provisions, therefore, are individually necessary and jointly sufficient for the plaintiff's case.¹

Tort actions for negligence cover most medical malpractice suits.² However, perhaps nowhere have tort actions for negligence raised more legal and logical problems than in the area of wrongful birth and wrongful life suits. In the former type of suit, parents sue physicians, hospitals, and testing institutions for negligence resulting in injury to themselves by virtue of harm to the child. In the latter suit, the resultant child sues the same party defendants for experiencing the defective state. Neither suit endeavors to show that the responsible medical sector caused the child's affliction.³

¹ Joseph W. Glannon, *The Law of Torts*, 2nd ed. (New York: Aspen Publishers, 2000), chap. 2. See also *Prosser and Keeton on Torts*, 5th ed. (St. Paul, MN: West Publishing Co., 1984), chap. 5.

² Few malpractice suits are brought in tort under battery; see *Mohr v. Williams*, 104 N.W. 12 (MN 1905). Fewer still are brought in under the intentional tort of causing emotional distress; see *Rockhill v. Pollard*, 485 P. 2d 28 (OR 1970). There are classic malpractice cases brought in contract law; see *Hawkins v. McGee*, 146 A. 641 (NH 1967).

³ Marcia M. Boumil and Clifford E. Elias, *The Law of Medical Liability* (St. Paul, MN: West Publishing Co., 1995), chap. 5; B. R. Furrow, et al, *Health Law* 2nd ed. (St. Paul, MN: West Publishing Co., 2000), chap. 17. Contrast cases where the physician, through negligence, is the actual cause of the unborn's affliction or where the health care provider fails to warn the pregnant woman of the untoward effects a given drug

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Rather, in both types of suits the plaintiffs argue that each is harmed because the child would not have *suffered* his or her abnormality but for the remiss behavior of the health care provider that resulted in the child being born alive. With regard to the class of child plaintiffs, the vast majority of jurisdictions have been unsympathetic to such suits and for essentially one major reason.

The purpose of this article is the investigation of the nature of wrongful life suits and the problems raised by such suits. Section 2 introduces the paradigmatic wrongful birth suit, while Section 3 discusses the general structure of a wrongful life suit. Section 4 covers various problems raised by wrongful life suits, and Section 5 deals with the problem of assessing damages in such suits. Section 6 presents an analogy for such an assessment. Section 7 poses one untoward ramification of finding such suits actionable.

2. Wrongful Birth Suits

In 1967, the New Jersey Supreme Court reviewed a case, *Gleitman v. Cosgrove*,⁴ in which the plaintiff-parents argued that the defendant-physician had breached his duty to inform the plaintiffs that suffering German measles during the first trimester of pregnancy will, in 20-50% of the pregnancies, produce newborns afflicted with defects. With the birth of a defective child, the plaintiffs argued that the defendant knew or should have known the effect of German measles during pregnancy and that the defendant suffered a duty to inform them of same. The plaintiffs contended that the defendant failed to disclose said information and that by such failure, their defective child was born and that, by such birth, they suffered economic and emotional injury.

The New Jersey Supreme Court noted that the plaintiffs were correct in most of their contentions in the “wrongful birth” suit. The defendant was duty bound to disclose the information deemed material to the parents’ decision to continue the pregnancy. The physician breached the duty owed the parents. Finally, the parents argued that “but for” the remiss behavior on the part of the physician, they would have aborted the fetus causally altered by the German measles.⁵ Nevertheless, the Court did not find that the parents had been injured.

might have upon the unborn; see *Morgan v. Christman*, 1990 WL 137405 (KS 1990); *Velazquez v. Portadin*, 751 A. 2d 102 (NJ 2000).

⁴ *Gleitman v. Cosgrove*, 227 A. 2d 689 (NJ 1967).

⁵ It would appear odd that notwithstanding the illegality of abortion in New Jersey at the time of the case, the New Jersey Supreme Court nevertheless rendered a decision. Unless the New Jersey exceptions to the abortion proscription could be construed to cover this case, the plaintiffs were arguing a case that failed for want of actual causation. That is, informing the patient of the harmful effect of German measles upon

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Generally, damages due to negligence are calculated by comparing what the plaintiff's state would have been without the defendant's negligence with the plaintiff's caused state by the breach. Since the parents in this case had anticipated certain monetary expenditures usually associated with raising a normal child, they sued for the excess or extraordinary costs associated with raising a child so afflicted, for the same period. The parents also sued for the emotional distress associated with having a defective child, that is, the difference between the joy of having a normal child or the disappointment of having no child against the distress associated with having to care for a defective child.

The Court, however, "found" that the benefit bestowed upon parents suffering a defective child outweighed the emotional distress and the excess medical expenses.⁶ If the plaintiffs were benefited beyond being injured, then the breach of the duty notwithstanding, the parents were not harmed, that is, they suffered no compensable damage. Subsequent wrongful birth suits in New Jersey and in other states, however, have resulted in favorable verdicts for the plaintiffs. In these cases, some courts have awarded only emotional damages to the parents, while others only permitted recovery for economic damages.⁷

3. Wrongful Life Suits

Also raised in *Gleitman v. Cosgrove* was the contention that not only had the parents been injured by virtue of the physician's negligence but so too had the newborn child.

The plaintiff-child argued that by virtue of the physician's breach of the duty owed, the child had been harmed, that is, had been forced to endure his affliction by not being aborted. It was not contended that the physician's negligence caused the child's problems nor was it contended that physicians must now guarantee perfect children. All that is required is that the at-risk parents be notified of said risk. If there is no evidence of risk or no medical procedure capable of determining the risk, then there is no breach of duty,

the fetus would not alter the state of the parents or the resultant child. The child did not suffer the alleged harm "but for" the failure to inform.

⁶ The court noted that abortion was proscribed and that it was unseemly to allow parents to profit from their loss of opportunity to eliminate their child.

⁷ *Berman v. Allan*, 404 A. 2d 8 (NJ 1979); *Becker v. Schwartz*, 386 N. E. 2d 807 (1987), respectively. See also *Park v. Chessin* (companion case with *Becker*); *Speck v. Finegold*, 408 A. 2d 496 (PA 1979). But see *Keel v. Banach*, 624 SO. 2d 1022 (AL 1993) allowing both types of damages. See also *Bader v. Johnson*, 732 N. E. 2d 1212 (IN 2000), recognizing both types of damages.

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since the duty is to disclose risks that were known or should have been known. Thus, the plaintiff was alleging that the defendant-physician suffered a duty to the parents to disclose the known or should-have-been-known risk, the defendant did not do so, and that but for the breach, the plaintiff's parents would have aborted the fetus and the child would not have had to suffer a "fate worse than death."

4. Problems with Wrongful Life Suits

The suit in question involves a claim by a newborn that the health care provider was negligent and that but for the provider's negligence, the child would not have life the experience of which constitutes an actionable harm to the newborn. But such a suit is plagued with problems from the start. For instance, one defense to an action for negligence is that there is no duty owed the plaintiff. That there is a duty suffered by the physician to the plaintiffs in the wrongful birth suit seems obvious. However, in the wrongful life suit the physician's alleged negligence occurs prior to the birth and frequently prior to the conception of the defective child. To whom is the duty owed? Even if it would make sense to talk of a physician or anyone else owing a duty to a fetus or to an otherwise foreseeable fetus it would still leave the nature of the duty owed unclear. Would the health care provider owe the fetus or foreseeable fetus the same duty owed the mother? If so, how might the duty be satisfied? The plausible answer to the considered questions is at least hinted at in *Renslow v. Mennonite Hospital*.⁸

The issue before the Court was whether the physicians could be held liable for erythroblastosis fetalis (i.e., either Rh incompatibility disease or ABO incompatibility disease) suffered by a child due to the negligent transfusion of the mother nine years prior to the child's conception. The court noted that the harm from the negligence did not evaporate after its commission, but rather continued. Moreover, the plaintiff-child was a foreseeable victim of the negligence. Additionally, pursuant to the *Restatement (Second) of Torts*, "One who negligently gives false information to another is subject to liability for physical harm caused by action taken by the other in reasonable reliance upon such information, where such harm results to the other, or to such third persons as the actor should expect to be put in peril by action taken."⁹

Though convoluted, the claim that the third party referred to in the *Restatement* may become a third party *through* the very breach of the duty to inform the agent of the foreseeable third party does not render the third party

⁸ *Renslow v. Mennonite Hospital*, 367 N. E. 2d 1250 (IL 1977).

⁹ *Restatement (Second) of Torts*, §311 (1) a-b (1965).

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any less an injured third party. The duty of the health care provider to the mother, the breach of which results in the existence of a party injured by the existence, does not render the injured party any less an injured third party by virtue of the breach.

That a duty might be owed contingently to the unborn would not seem so very untoward when it appears clear that the nature of the duty so described is derivative both as to its existence and its nature. That is, the duty owed by the health care professional to the unborn is contingent upon the parents' decision freely to have a child. The nature of the duty to the child is derived from the duty owed to the parents and is satisfied or not by the health care practitioner's actions toward the parents in the light of the duty owed. Arguably, therefore, the health care provider, in satisfying or breaching the duty owed the parents, does likewise with the derivative duty owed to the principal (child) through the agents (parents).

Another problem rests with the issue of damages. If the duty to the parents is breached, the breach is the actual and proximate cause of the parents' altered state, and that altered state is both different from and worse than the state the parents would have experienced without the breach, then the parents experience injury. But such a comparison of states for the defective child would yield a comparison between life in a defective state with the state of nonexistence. Recognition of compensable damages would be cognizable if but only if the former state really were a state worse than the latter state.

Yet it has been argued that such a comparison of states is not just difficult, but completely unintelligible. To be sure, in other contexts, objections might be raised about awarding money damages for emotional distress. How much, it might be asked, is extreme disappointment worth compared with extreme joy? Nevertheless, no matter how arbitrary the attachment of a certain economic sum to an emotional state might seem, the comparison of the plaintiff's extreme disappointment with the plaintiff's extreme joy is at least *intelligible*. But how can the court compare the harm of the child's existing in a circumventable but defective state with the "harm" of the child's nonexistence? The required comparison seems not merely difficult to make but *unintelligible*. It is maintained that it is impossible to compare the harm of existence in a defective state with the supposed harm of nonexistence because we have no cognitive access to the latter state.¹⁰ Therefore, awarding damages where damages can never be calculated, would (on this view) be absurd.

¹⁰ George Annas, "Righting the Wrong of Wrongful Life," *Hastings Center Report* 10, no. 6 (December 1980), p. 8; Barry Furrow, "The Causes of 'Wrongful Life' Suits: Ruminations on the Diffusion of Medical Technologies," *Law, Medicine, and Health Care* 10, no. 1 (February 1982), p. 11; Barry Furrow, "Diminished Life and Malpractice: Courts Stalled in Transition," *Law, Medicine and Health Care* 10, no. 3 (June 1982), p. 100.

5. Assessing Damages

Are the defective child's pleadings in such suits really such a travesty? There are three general responses that might be considered in answering this question. First, as one court has held, it might be thought that "... meditation on the mysteries of life ..." is unnecessary and that attention can be focused instead on the resulting condition of the child. Such an approach, however, is not a solution for or resolution of the problem of the impossible comparison, but a simple rejection of it. As such, the court will take any defect as actionable so long as the plaintiff demonstrates that the defendant breached the duty to inform the plaintiff's parent(s). This approach arguably eliminates the oddity of wrongful life suits by ignoring the traditional method of assessing damages in negligence. This approach saves the defective newborn's cause of action by eliminating a *sine qua non* of the action itself.

A second approach is to note that the favorable findings in the parent's suit (i.e., wrongful birth) entails the intelligibility and favorable finding for the plaintiff-child in the wrongful life suit. If, that is, the child's defect is an injury to the parents, how could such a defect be anything less than an injury for the child who suffers the defect? Conversely, if the child's defect is not an injury to the child, how could it be an injury to the parents who do not suffer the defect? For example, if, on the one hand, a defect D is an injury to parent P, how could D be anything but an injury to child C who actually suffers D? If, on the other hand, D is not an injury to C who actually suffers D, how might D constitute an injury to P who does not actually have D? It might, therefore, be concluded that wrongful births suits are intelligible only if wrongful life suits are. Thus, two courts have held that it is unreasonable to award damages to the parents for the medical expenses of their child through the child's minority and yet deny compensation to the child for the resultant medical expenses incurred during majority.¹²

As cogent as such reasoning may initially appear, it arguably conflates the child's defect with the civil law damage to the child by virtue of negligence. The argument overlooks the necessity of comparing the plaintiff's states due to negligence with the plaintiff's alternative state in determining damages. The parents' state without negligence is quite different from the defective newborn's state without negligence. It is this comparison

¹¹ *Curlender v. Bio-Science Laboratories*, 165 Cal. Rpts, 477 (CA 1980).

¹² *Harbeson v. Parke-Davis*, 656 P. 2d 483 (WA 1983); *Procanik v. Cillo*, 478 A. 2d 755 (NJ 1984), on remand, 502 A. 2d 94 (NJ 1985). Bonnie Steinbock, "The Logical Case for Wrongful Life," *Hastings Center Report* 16, no. 2 (1986), p. 15.

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and the required reference to the parent's state without negligence, in the wrongful birth suit, that allows the parents to claim extraordinary medical expenses and/or emotional distress as damages. Without negligence the parents would not experience the distress of a defective child nor would they suffer the extraordinary medical costs of rearing such a child.¹³

It would seem possible that a defect might constitute an injury due to the alternate state afforded by the law to the parents. However, it is also possible for a child actually to suffer the defect yet the defect not constitute an actionable injury because the empirically alternate state for the child is arguably much worse than the experience of the defect. A newborn's severe mental retardation may constitute a harm to the parents charged with the care of the newborn in terms of extra medical costs and emotional disappointment. The suffering of those harms by the parents, if due to provider negligence, may be covered in a negligence action because the parent's state without the negligence would not be as financially and/or emotionally injurious as their state brought about by the negligence.

Yet, by the same reasoning, it would seem quite possible that C might be denied recovery for the negligent suffering of D because suffering D was not a state deemed a greater harm than the state C would have experienced but for the negligence. Thus, a child's severe mental retardation, experienced by the newborn through the provider's negligence, may not prove a state more harmful to the newborn than the newborn's alternative of nonexistence. In a phrase, the plaintiff cannot recover damages for a state brought about through the negligence of the defendant if the plaintiff is benefited rather than injured by the defendant's breach.

6. An Analogy for Assessing Damages

If the above is correct, two arguments for the intelligibility of wrongful life suits seem suspect. It might, however, be suggested that the comparison of the harm of existing in a defective state with the harm of nonexistence not only may be made but is actually made in many decisions involving the withholding or withdrawing of life support.¹⁴ It is recognized that both the competent and incompetent enjoy the right to refuse medical intervention, even that medical intervention determined to be essential for the patient's life. This right of liberty to refuse necessary medical intervention is

¹³ Indeed, since the health care provider did not cause the newborn's defect but rather only the parents' suffering the manifestation of the defect through negligence, it is arguable that the provider might well be liable for all of the medical cost of rearing such a child if the parents would not have conceived or would have aborted the defective newborn otherwise.

¹⁴ *In Re Quinlan*, 355 A. 2d 647 (NJ 1976).

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protected by the United States Constitution's Fifth and Fourteenth Amendments.¹⁵

But, it will be countered, such protected patient and surrogate acts are directly or indirectly, respectively, expressions of patients' autonomy. But such patient or surrogate acts are not necessarily the expressions of the weighing of the harm of continued existence against the harm of existence. Moreover, even if the patients' or surrogates' actions are the result of weighing harms, it need not be the sort that is commensurate with the weighing of harms necessary for showing damages in a wrongful life action. In the case of rejecting or refusing life-sustaining medical intervention as an expression of patient self-governance, the focus is the patient's personal interests, irrespective of whether those interests accord with what is in the patient's best medical interests. But it is the weighing of best medical interests, not the weighing of personal interests, that is required for determining appropriate damages in a wrongful life suit. The argument that the comparison of the harm of nonexistence cannot be compared with the harm of continued existence in a defective state is not a denial that any given patient might not prefer one state to another. It is a remark that neither choice can be known to accord with an objective balance of harms. That an autonomous patient may directly or indirectly through a surrogate, prefer nonexistence to continued existence in a defective state and may act upon such a preference in no way demonstrates that such a choice evidences that the weighing of the material harms of each state is possible.

Nevertheless, personal autonomy is not the only standard state legislatures and state courts reference when discussing removal or withholding of necessary, life-sustaining medical intervention.¹⁶ Consider, for instance, the case of *Superintendent of Belchertown State School v. Saikewicz*.¹⁷ In said case, Joseph Saikewicz had been institutionalized all of his life. He had an I.Q. of ten. At sixty-seven years of age, he was diagnosed as suffering from a terminal form of leukemia. Chemotherapy would be painful for the patient and offer only a 50% chance, at best, of prolonging his suffering for another six months. The Massachusetts Supreme Court ruled that the patient could refuse the necessary medical intervention. The court noted that were Saikewicz a competent and rational person who could view the entire medical situation to which he was subjected, he would reject

¹⁵ *Cruzan v. Director, Missouri Department of Health*, 497 U.S. 261 (1990).

¹⁶ *In Re Conroy*, 486 A. 2d 1209 (NJ 1985).

¹⁷ *Superintendent of Belchertown State School v. Saikewicz*, 370 N.E. 2d 417 (MA 1977); see also *Strunk v. Strunk*, 445 S.W 2d 145 (KY 1969) .

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treatment. But for a presently incompetent patient to make a decision about withholding or withdrawing necessary life support as an expression of the patient's competent interests, the patient must, of necessity, have enjoyed a previous state of competency. Saikewicz had been denied required previous state. It would take a prodigious act of casuistry to allow Saikewicz to make a decision on the basis of his expression of competent interests. Indeed, it might very well be argued that the use of the model of making Saikewicz a reasonable, prudent, and competent person is just to weigh, objectively, the respective burdens of continued life against the harm of nonexistence. The comparison, after all, could not have been made on the basis of competent, subjective interests, as Saikewicz never had any such interests.

If the above is right, then in some cases of withholding or withdrawing necessary life support, comparisons may indeed be made between the harm of existing in a defective state and the harm of nonexistence. If such a comparison of harms is intelligible for such patients, why is it not also intelligible in the case of defective newborns? Likewise, if the comparison of harms is unintelligible in wrongful life suits, it should likewise prove unintelligible (not merely difficult) in cases of withholding or withdrawing extraordinary life support.¹⁸

If, as has been argued above, there is some *prima facie* reason for suspecting that the requisite comparison of harms may be intelligible in wrongful life suits, it would not mean that every defect experienced by the plaintiff-child would be compensated. There is a vast difference between the harm of moderate retardation associated with trisomy 21 and the harm associated with Tay-Sachs Disease.¹⁹ It might well prove that the latter condition is a harm that is worse than nonexistence yet the former condition, while not desirable, is not a harm that is worse than the harm of nonexistence.²⁰ As difficult as such a comparison might prove, it is not, given the above, unintelligible. Moreover, given the intelligibility of the

¹⁸ *Anderson v. Saint Francis, Saint George*, 671 N.E. 2d 225 (OH 1996) (plaintiff argued that hospital's failure to follow a "No Code" was wrongful life).

¹⁹ Trisomy is the "presence of an additional (third) chromosome"; trisomy 21 is Down's Syndrome. See *Dorland's Medical Dictionary*, 26th ed., p. 860. Tay-Sachs Disease is characterized by a child who appears normal at birth and, due to a deficiency of hexosaminidase A, experiences increasing physical and mental deterioration. The condition is fatal; there is no cure and death occurs within five years; see *Professional Guide to Diseases* (1982), pp. 62-64 (on trisomy) and pp. 51-52 (on Tay-Sachs).

²⁰ But see *Turpin v. Sortini*, 643 P. 2d 954 (CA 1982); *Harbeson v. Park-Davis Inc.*, 656 P. 2d 483 (WA. 1983).

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comparison of such harms, the difficulty with such a comparison should not prove more difficult than the calculation of emotional damages.

7. Actionability and Wrongful Life Suits

Even if the requisite comparison of harms is logically possible, there is at least one ramification of allowing such suits that may render the suits undesirable. Although it constituted dictum, the California Supreme Court has noted that a child born with a defect the experience of which is deemed a greater harm to the child than the harm of nonexistence, may bring a cause of action against the person who knowingly fails to avail herself of the necessary and available means to circumvent the child's harm.²¹ That is, it might well be possible for the defendant in a wrongful life suit to be the biological mother of the child or perhaps the gestational carrier of the child.

Some scholars have argued that the plaintiff-child in a wrongful life suit against a health care provider could not also bring such a suit against the mother of the plaintiff-child. The wrong of wrongful life is the wrong of being denied the opportunity of choice between existence in an objective state and nonexistence. But that *choice* may only be made by the mother and guardian of the child.²²

This argument, while telling against the health care provider in a wrongful birth suit, is not clearly successful at eliminating the mother from potential liability in a wrongful life suit. The duty to inform is one suffered by the health care practitioner to the mother but is not equally suffered by the mother of the newborn to the newborn. Rather, a mother incurs not only an obligation not to harm her child but, within reason, not to allow harm to befall her child. If a pregnant woman decides to give birth after it is determined and she is informed that she is carrying a fetus afflicted with a problem, the experience of which is a harm greater than the harm of nonexistence, then it might reasonably be argued that the defective child would not have suffered his existence "but for" the mother's remiss behavior. Knowingly and intentionally bringing a defective child into the world where the defect is a harm in excess of the harm of nonexistence, might constitute a violation of the parental obligation not to allow harm to befall the child. If the basis of a wrongful life suit is that the defective child has been harmed through the remiss behavior of those parties duty bound to him, then given parental obligations, the mother might be argued to be duty bound to prevent an

²¹ *Curlender*; see note 11.

²² See, for example, Alexander Capron, "The Wrong of 'Wrongful Life,'" in *Genetics and the Law*, vol. 2, ed. Aubrey Milumsky and George Annas (New York: Plenum Publishing, 1980), p. 81.

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actionable harm from occurring to the newborn by acting appropriately to the information the medical sector is duty bound to disclose. Thus, the carrier may be obligated to act on the information that she is at risk for having or actually carrying an actionably harmed child. The possibility of the mother being sued by her actionably harmed child for not aborting the child is an actual risk anticipated by certain state legislatures.²³

Notwithstanding the preceding possibility, the duty that parents generally suffer to their children, the duty to protect the ward from harm, is one suffered within reason. That is, these are limits to the affirmative duty guardians suffer to those in their care. Self-sacrificing, heroic guardian action on a ward's behalf, while laudable and to be encouraged, is not required in order to satisfy the duty.

It is arguable that the bodily invasion required by an abortion would be deemed an act not required by the duty of the guardian to protect the ward from a harm in excess of the harm of nonexistence.²⁴ The biological parent of a child, while possibly subject to moral castigation, would not be deemed in violation of her duty to protect her child by refusing bodily invasion necessary to save the child from the harm of nonexistence. While, for the sake of argument, the harm appropriate for wrongful life is greater than the harm of nonexistence, it would not necessarily require a greater than reasonable sacrifice on the part of the duty bound party. Thus, a mother would arguably never be an appropriate defendant in a wrongful birth suit for not terminating the pregnancy.

It would seem reasonable to surmise that the progenitor's knowledge of the risk of passing a genetic problem on to progeny would not be sufficient to require the progenitor to refrain from conceiving. Unlike the issue of bodily invasion necessary in the case of abortion, refraining from conceiving does not clearly indicate the sort of invasion that could not be more easily justified. Nevertheless, it would be extremely difficult to justify a duty not to conceive because of the uncertainty of the transference of the defect. That is, with only a risk of transmitting a defect to a child the experience of which would be a greater harm to the child than the harm of nonexistence, the taking of the risk by conceiving the child is not likely to constitute a violation of a duty not to allow the manifestation of the greater harm, notwithstanding the

²³ California Civil Code §46.6 (1984). The statute prohibits only those suits brought by children against their parents for wrongful life.

²⁴ *McFall v. Shimp*, 10 PA D & C. 3d 90 (PA 1978); *In Re A. C.* 573 A. 2d 1235 (DC 1990); *In Re Baby Doe, A Fetus*, 632 N. E. 2d 326 (IL 1994); *Rochin v. California*, 342 U.S. 165 (1952). But see, *Jefferson v. Griffin Spalding County Hospital Authority*, 274 S. E. 2d 457 (GA 1981) and *Buck v. Bell*, 274 U.S. 200 (1927).

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absence of bodily invasion involved in not conceiving. Moreover, the potential parent would always have the option of aborting the afflicted fetus.

The more troubling situation is where the progenitor is informed of the significant risk to the child but takes the risk by conceiving and the risk is materialized and the progenitor then refuses to abort. Would the potential parent have an obligation to abort the fetus if the conception were intentional, in the face of the known risks and both the harm of the defect were greater than the harm of nonexistence and could have been prevented by an abortion? One simple argument would reconsider the two above arguments and conclude that no suit could prevail against the mother. If there is no duty not to conceive and there is no duty to endure bodily invasion under the reasonable duty not to allow harm to befall the child, then the conjunction of the two would yield a negative answer to the question of reasonable duty under the scenario.

But, it might be reasonably argued that the circumstance where a progenitor knowingly took the risk of creating a being with a defect which would exceed the harm of nonexistence, and knowingly continued the pregnancy to birth, would be naturally different from either the progenitor who knowingly took the risk, or the carrier who continued the pregnancy to birth without having knowingly assumed the risk at conception.

Whatever the difference, it is not clear that such a situation would render the mother liable for not aborting the sufficiently defective fetus. The reason the above scenario might appear to suggest otherwise is the possible conflation between the knowing creation of a being with sufficient problems and the knowing creation of sufficient problems for a being. A mother who caused a sufficiently serious defect in a fetus is different from one who knowingly conceived and carried a sufficiently defective fetus to term. There is a material difference between causing a problem and causing a being with its own problems. In the former case, liability may obtain if sufficiently remedial measures are not engaged. In the latter case, it is again suspect that a harm has been caused. Rather a harm has been allowed and the affirmative duty to prevent it, if such a duty obtains, would again not entail the duty to abort. If there is no duty to abort, there can be no liability for the failure to do so.

If the above considerations are correct, then the specter of wrongful life suits, while intelligible, enjoy a narrow scope of applicability and entail a narrow scope of defendants.²⁵ There is no need legislatively to disallow such

²⁵ It perhaps goes without argument that the government, state or federal, are inappropriate candidates for defendants in a wrongful life suit. It may be correct that a mother may not be in a position to abort a sufficiently defective fetus due to state and federal restrictions on funding abortions (see, e.g., *Maier v. Roe*, 432 U.S. 464 [1977] and *Harris v. McRae*, 448 U.S. 297 [1980]). The argument proffers as to why the government may restrict funding that abortion is a liberty right and the government is

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suits altogether because of the parade of horrors thought to follow from recognizing such a suit.

not responsible for the mother's indigency or the pregnancy. Moreover, the government is not charging the carrier for the abortion; a third private party is. This same set of considerations might prove sufficient to eliminate the government as a defendant in a wrongful life suit where the mother would abort but for sufficient funds. But, of course, the government, especially the state government, is the ultimate guardian of the child (see *In Re Sampson*, 317 N. Y. S. 2d 641 [NY 1970]) and thus suffers an affirmative duty, like that of the mother to prevent harm from befalling the ultimate ward of the state. That this consideration has been taken seriously, see MN. Stat. Ann 145-424, S. D. Codified Laws Ann. 21-55-1, Utah Code Ann 78-11-23.

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Ethical Principles, Charity, and a Criterion for Giving

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1. Introduction

One of the purposes of this article is to develop further some of the ideas that appear in my book *Then Athena Said: Unilateral Transfers and the Transformation of Objectivist Ethics*.¹ The book examines unilateral transfers within the framework of Objectivism, the philosophy of Ayn Rand. The type of unilateral transfer on which this article focuses is charity. I extract from the book some of the key principles it addresses, stating them in the form of propositions. I also refine some of the definitions of the key concepts that appear in the book.

2. A Principle Is a Strategy that If Followed Consistently Will Lead to Long-Run Success

The first definition to revisit is that of a (moral) principle. Rand defines a principle as “a fundamental, primary, or general truth, on which other truths depend.”² Ronald Merrill claims that Rand’s ethics are based on long-run success.³ Rand is aware of the stochastic in life, but believes that consistently following principles is the best way to bet.⁴ My revised definition of a moral principle is that it is a strategy that if followed consistently will lead to long-run success.

¹ Kathleen Touchstone, *Then Athena Said: Unilateral Transfers and the Transformation of Objectivist Ethics* (Lanham, MD: University Press of America, 2006).

² Ayn Rand, “The Anatomy of Compromise,” in Ayn Rand, *Capitalism: The Unknown Ideal* (New York: Signet, 1967), p. 144.

³ Ayn Rand, “The Objectivist Ethics,” in Ayn Rand, *The Virtue of Selfishness* (New York: Signet, 1964), p. 24.

⁴ Ronald E. Merrill, *The Ideas of Ayn Rand* (LaSalle, IL: Open Court, 1991), pp. 114-15.

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In decision theory, this strategy is consistent with the maximization of utility for binary choice. According to Herbert Simon:

How would a utility-maximizing subject behave in the binary choice experiment? Suppose that the experimenter rewarded “plus” on one-third of the trials, determined at random, and “minus” on the remaining two-thirds. Then a subject, provided that he believed the sequence was random and observed that minus was rewarded twice as often as plus, should always, rationally, choose minus. He would find the correct answer two-thirds of the time, and more often than with any other strategy.⁵

Rand’s aim is to ground ethics in human nature.⁶ A pertinent question then is, is this the way individuals behave? Simon notes that more often, subjects of these kinds of experiments tend to *event match*; that is, they tend to select between two alternatives with approximately the same relative frequencies as those that underlie the experiment.⁷ However, William K. Estes points out that if the test subject is rewarded for successful predictions and punished for unsuccessful ones, the inclination is to predict based on the greater probability.⁸ Moral principles should be based on long-run success; however, does that necessarily mean that the alternative will result in failure (i.e., punishment)?⁹ To deal with this question, what needs to be addressed is what constitutes “success.”¹⁰

3. Survival Is the Basis for Success

The second proposition deals with the question, what is the basis for success? The answer is consistent with Rand’s position that survival is the

⁵ Herbert A. Simon, “Theories of Decision-Making in Economics and Behavioral Science,” *The American Economic Review* 49, no. 3 (June 1959), p. 260.

⁶ Rand, “The Objectivist Ethics,” p. 22.

⁷ Ibid.

⁸ William K. Estes, “Research and Theory on the Learning of Probabilities,” *Journal of American Statistical Association* 67, no. 337 (March 1972), p. 83.

⁹ Conditions surrounding ethical choice are not the same as those described for these experiments.

¹⁰ It could be argued that decisions cannot always be described as binary. However, in their most basic form, ethical issues are. Honesty versus dishonesty is fundamentally dichotomous.

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basis for success. According to Rand, life is the ultimate value.¹¹ J. Charles King objects that life may more properly be considered an instrumental variable.¹² For the purposes of this article, it is a moot point, since, in any case, if one does not live, one cannot achieve any other value. It is acknowledged that a man cannot live forever, and that there is always a non-zero probability that he may die due to unforeseen events. That being said, it is still the case that death cannot serve as the objective of one's actions in the normal course of a person's existence. Death, then, cannot be the end of one's actions nor can it be a measure of success.

Rand's fundamental alternative is existence or non-existence—life or death. Ethics inherently involves choice. If there were only one course of action to take, there would be no ethical issue involved.¹³ Yet there must be something attractive about the alternative in order for it to be considered “choiceworthy.” Death is not, generally speaking, an alternative a person would choose. However, there are choices that may appear to have perceived or short-term gains, yet not be strategies that are successful long-range. The principled alternative is the one that results in long-term success. This does not mean that the principled choice will always yield success. There is a stochastic component to ethical decisions. Nevertheless, the ethical alternative is the one that should be acted upon since consistency results in long-run success.

4. To Sustain One's Life, Productivity Is Required on the Part of the Individual

The third proposition addresses what actions a person must take in order to sustain himself. The focus is on the individual. Care should be taken in applying the long-run probabilities approach to deriving ethical principles. If this technique were employed, then it would be concluded that women should not marry or have children since these are correlated with lower life expectancies for women. To the extent the word “probable” applies, it should probably be “within the confines of the definition of ‘that which can be supported by good argument.’”¹⁴

¹¹ Rand, “The Objectivist Ethics,” p. 17.

¹² Charles J. King, “Life and the Theory of Value: The Randian Argument Reconsidered,” in *The Philosophic Thought of Ayn Rand*, ed. Douglas J. Den Uyl and Douglas B. Rasmussen (Urbana, IL: University of Illinois Press, 1986), p. 111.

¹³ Rand, “The Objectivist Ethics,” p. 15.

¹⁴ Touchstone, *Then Athena Said*, p. 7.

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One method of approaching this question is to examine a man in isolation, for example, on a desert island. Murray Rothbard uses this device in his books *The Ethics of Liberty* and *Man, Economy, and State*.¹⁵ Although Rand does not use it as an analytical tool, she uses the desert island as a metaphor.¹⁶ To survive, a person would have to consume. However, a person must produce before he can consume. This assertion is consistent with Gary Becker's definition of production.¹⁷ Production can be defined broadly to be those actions taken that (ultimately) result in consumption. Adam Smith regards consumption as the end of production.¹⁸ Thus, in order to sustain one's life, a person would have to produce. Although the man would own the product of his efforts, property rights would not be relevant to a man in isolation.

Of course, men do not live in isolation. They live among other men. In order to produce, and thus consume and survive, resources must be used. If resources are sufficiently abundant, the problem of scarcity is not an issue. A person may use abundant resources to produce. Problems may arise, however, once a resource becomes scarce, particularly if property rights to the resource have not been established. Then disputes may arise over dispensation of the resource. Without property rights, the outcome of interaction between two individuals with respect to a scarce resource could be zero-sum; that is, there could be a winner and a loser.¹⁹ Using game theory, an example of a zero-sum outcome under the assumption of a maximin decision criterion (for Player A and minimax for Player B) is shown in Appendix A.

¹⁵ Murray N. Rothbard, *Man, Economy, and State* (Auburn, AL: Ludwig von Mises Institute, 1993); Murray N. Rothbard, *The Ethics of Liberty* (New York: New York University Press, 1998).

¹⁶ Ayn Rand, "This Is John Galt Speaking," in Ayn Rand, *For the New Intellectual* (New York: Signet, 1961), p. 127.

¹⁷ Ramon Febrero and Pedro S. Schwartz, "Introduction," in *The Essence of Becker*, ed. Ramon Febrero and Pedro S. Schwartz (Stanford, CA: Hoover Institution Press, 1995), p. xxi; Gary S. Becker, "De Gustibus Non Est Disputandum," in *The Essence of Becker*, p. 186.

¹⁸ Adam Smith, *The Wealth of Nations* (New York: The Modern Library, 1937 [1776]), p. 625.

¹⁹ Touchstone, *Then Athena Said*, p. 80. Although these are two-person cases, the point I am making here can be generalized. Without property rights, disputes can arise over resources. That is, in disputes over unowned resources, the outcome may be that there is a winner (or winners) and a loser (or losers).

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Also shown is an example of a mixed strategy. In his book *The Economics of Rights, Co-operation, and Welfare*, Robert Sugden discusses the emergence of conventions in a state of nature.²⁰ There are situations in which a resource, such as geographical space, may be used “in common” without established rules for its use. An example would be on which side of the street to drive. Some drivers may always drive on the right, others always on the left, and still others may drive on the right at times and on the left at others. Intuitively, it would seem preferable for all drivers always to drive either on the right or on the left. Thus a mixed strategy would be suboptimal. Sugden describes a convention as a strategy that emerges spontaneously from two (or more) alternatives in which both (all) are arbitrary.²¹ A convention is more likely to be established if there is some salient feature about one of the alternatives that is recognized by the “players.” Once a convention is established, then the individual will follow the single strategy. It is in the interest of the person to do so (even if an alternative convention would have brought about more favorable results).²² There is no longer a “choice” between (or among) the two (or more) alternatives. The way in which I approach ethical choice is very similar to conventions in the sense that once a principle is determined, there is no longer a “choice” concerning whether to follow it or not. A difference between conventions and principles is that the initial alternatives are arbitrary for conventions, but not for principles. The principled alternative is the one that results in long-term success.

5. The Principle of Reciprocity Results in Long-Run Success

Once property rights are defined, it is no longer necessary for an individual to rely solely upon himself to produce all that he needs for his consumption. He may produce and exchange part of what he produces with another (or others). Ownership is a prerequisite for trade, since one must own something in order to exchange it for something else. Individuals have an incentive to engage in exchange. As Adam Smith recognized, there are mutual benefits to trade.²³ Rand elevates this to a principle. She defines the Trader Principle as the bilateral exchange of value for value between independent equals.²⁴

²⁰ Robert Sugden, *The Economics of Rights, Co-operation, and Welfare* (Oxford: Basil Blackwell, 1986).

²¹ *Ibid.*, p. 33.

²² *Ibid.*, p. 48.

²³ Smith, *The Wealth of Nations*, p. 423.

²⁴ Rand, “The Objectivist Ethics,” p. 31.

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The Prisoner's Dilemma (PD) can be used to examine the decision process that underlies exchange between two players. A hypothetical payoff matrix for a PD situation is shown in Appendix B. The incentive structure is such that if both "players" follow the dominant strategy, both will defect. If exchange takes place, then there are greater benefits for both players than if each defects. Exchange is positive sum. There are apparent benefits to one person unilaterally defecting, since by doing so the defector keeps his own goods and is a receiver of goods from the other player. This is the default or theft option in which one of the players forces a zero-sum outcome.

Principles are those strategies, that if consistently followed yield success. Productivity is a life-affirming strategy. Alternatively, theft as a principle—that is, as a strategy that is consistently followed—will not lead to success. A person may steal all the time and be "successful." However, if he is, it is because he has been "lucky." Principles cannot be based on "luck," since luck is stochastic.

Unilateral defection (or theft) would seem to be the best strategy for a "golden opportunity" in which the probability of detection is low for the defector. (This is analogous to the one-shot PD in which the players are anonymous and there is no chance of subsequent interaction between them.) However, calculating the probability for a single event is difficult, if not impossible. Also, as Robert Frank points out in his book *Passions within Reason*, commitment to principled behavior sustains the emotions necessary to maintain that behavior.²⁵ If a person indulges in cheating when detection is low, he will not be able to sustain the emotions necessary to act on principle when detection is not low. It follows that if one is "caught," the outcome will be unsuccessful. Based on this reasoning, grounded in human nature, even in the one-shot PD case, it "pays" to follow the principled course.

The benefits to unilateral defection are more apparent than real, particularly if there is the expectation of retaliation. In *The Evolution of Cooperation*, Robert Axelrod finds that a strategy of reciprocity known as Tit-for-Tat results in long-term success in repeated games of the PD.²⁶ Thus, the principle of reciprocity results in success in the long-term. The principle of reciprocity entails the exchange of value for value. It also prescribes (proportional) retaliation if an individual defects on payment for value received.²⁷ If unilateral defection appears attractive, it may be because there

²⁵ Robert H. Frank, *Passions within Reason* (New York: W. W. Norton & Company, 1988), pp. 90-91.

²⁶ Robert Axelrod, *The Evolution of Cooperation* (New York: Basic Books, 1984), pp. 50-55.

²⁷ Touchstone, *Then Athena Said*, pp. 53-55.

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are costs, such as those associated with retaliation, that have not been explicitly accounted for in the payoff structure underlying the PD.²⁸

As a general strategy, theft (or, more generally, involuntary unilateral transfers) will not lead to success. However, when living among others, rather than in isolation, it is possible for a nonproductive person to survive through *voluntary* unilateral transfers. Two such examples might be inheritance and charity. Of course, these transfers are made possible as the result of the productivity of others. Someone must produce. Adam Smith regards consumption to be the end of production, but production must precede consumption. I state above that “a person should be productive.” A more complete statement is that a person should not consume more than he produces. An individual’s productivity should equal or exceed his consumption.

6. Production Should Equal or Exceed Consumption (Over the Course of One’s Life)

At varying times in one’s life, production may exceed consumption in some instances, and consumption may exceed production in others. But over the course of one’s life, one’s production should not fall short of his consumption. There may be temporary setbacks, but the norm in human life, as Isabel Paterson points out in *The God in the Machine*, is not misfortune.²⁹

²⁸ Axelrod’s model goes beyond the one-shot PD. This is required in order that there be retaliation. The above discussion is vague about what is meant by retaliation. Axelrod examines spontaneous cooperation without a central enforcement authority; see Axelrod, *The Evolution of Cooperation*, pp. 3 and 138. In a “state of nature” (that is, with no government), retaliation would be the responsibility of the individual. In Axelrod’s model, the definition of retaliation is simplistic and narrow; specifically, it means not trading in the future with a defaulter. Even within Axelrod’s framework, retaliation could be made more onerous; for example, the defector could be required to pay damages. In the real world, the form that retaliation would take would depend on the nature of the “crime.” One objective would be that punishment would fit the crime; that is, retribution should be proportional. Once a centralized governing authority has been established, retaliation is taken out of the hands of the individual. Government enforcement of contracts (property rights) “solves” the PD in the sense that the costs of defection are more generally recognizable and explicit. If properly accounted for in the payoff matrix, defection would no longer be the dominant strategy for either player. Retaliation against defectors (thieves) is delegated to government. The basis for retaliation would still be the principle of reciprocity, but retaliation would no longer be a factor in an individual’s ethical code.

²⁹ In Stephen Cox’s biography of Isabel Paterson, he indicates that Rand was disappointed with Paterson’s failure to acknowledge Rand as the source of the ethical theory presented in *The God in the Machine*. In Cox’s view, there is no indication that Paterson’s views were altered by exposure to Rand’s theory; see Stephen Cox, *The*

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Misfortune is the exception in life.³⁰ This principle is referred to by Leonard Peikoff as the Benevolent Universe Premise (BUP).³¹ It follows that, except for temporary setbacks, a person should not accept charity. In fact, long term, it should not be necessary.

Charity is inconsistent with the principle of reciprocity because it is unilateral in nature. There is no exchange of value for value. However, the principle of reciprocity, or more narrowly, the Trader Principle as defined by Rand, is the bilateral trade between independent equals. Some individuals are dependent by nature; children, for instance. They rely on unilateral transfers for their survival, but this typically does not pose a problem since their parents provide for them. However, there may be children or those with diminished capacity who are abandoned or abused by their caregivers and have no means of support.³² The circumstance for these individuals may be more than a temporary setback.

Of course, another person's need cannot be the sole reason for charitable giving even if the need is justified. Although in relative terms, the number of those in such a situation should be few, a single person cannot give even a modest amount to all of them, much less enough to sustain their existence. A principle has been defined as a strategy that if consistently followed will yield success in the long-run. Being productive is principled behavior because it sustains a person's life. If charitable giving were regarded as principled behavior, then a person should be able consistently to give to others. If charity were on par with productivity, then it would seem to follow that devoting the equivalent time, energy, and resources to charitable activities as one would spend on one's work would be justified. If charity were regarded as more important than productivity, then more than half of one's time, effort, and other resources should be devoted to others. In the limit, the elevation of charity as a strategy of behavior to be pursued on a large scale would be suicidal. It would not be a strategy that would yield success in the long-run.

Woman and the Dynamo (New Brunswick, NJ: Transaction Publishers, 2004), pp. 307-11.

³⁰ Isabel Paterson, *The God of the Machine* (Caldwell, ID: The Caxton Printers, Inc., 1968), pp. 250-51.

³¹ Leonard Peikoff, "The Philosophy of Objectivism," Lecture Series, no. 8 (1976), quoted in *The Ayn Rand Lexicon*, ed. Harry Binswanger (New York: New American Library, 1986), pp. 50-51.

³² Touchstone, *Then Athena Said*, pp. 332-33. These cases for charitable giving are illustrative, not exhaustive.

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Not only would the individual's life be at risk, but also the potential recipients of charity would be as well.

Can it be concluded that charity is not principled behavior since it does not contribute directly to a person's own survival? To clarify, it was not Rand's position that a person should not give to charity.³³ However, Peikoff asserts that when it comes to a person's purpose, even mild self-sacrifice "is to declare war on life at the root."³⁴ There are three related principles that are relevant to the question of whether charity is a sacrifice. One is that "one should be productive." The fuller statement of this is that "one should not consume more than he produces." The third is that "value should be exchanged for value."

With regard to the last of these statements, it would seem that most individuals benefit from the productivity of others without paying or fully paying the costs. For example, most, if not all, individuals benefit from the advancements in knowledge made by others, whether the benefactors are living or deceased.³⁵ Advancements in knowledge could be the result of basic research, invention or innovation, and/or creative work. There is an "inheritance" of knowledge with which most individuals are endowed. The reason that individuals do not pay or fully pay for this "inheritance" is because there is a lack of property rights in the discovery of basic knowledge and limited property rights (copyrights and patents) in creative work and inventions. Therefore, the discoverers or creators cannot charge or indefinitely charge for their use. They are uncompensated or under-compensated. In that sense, the beneficiaries have "consumed" more than they have "produced." Value has not been exchanged for value. A debt is owed that cannot be repaid to those who have bestowed advancements in knowledge upon others.³⁶

Similarly, as Isabel Paterson notes, those who live in free countries have a great inheritance of freedom.³⁷ Although freedom may be a right, it is not without cost. There is a debt owed to those who have discovered, established, defended, and preserved freedom. They were not fully compensated for the endowment they bestowed on others. Of course, these

³³ Ayn Rand, "The Ethics of Emergencies," in Rand, *The Virtue of Selfishness*.

³⁴ Leonard Peikoff, *Objectivism: The Philosophy of Ayn Rand* (New York: Dutton, 1991), p. 232.

³⁵ Rand, "This Is John Galt Speaking," p. 186.

³⁶ Touchstone, *Then Athena Said*, pp. 326-28.

³⁷ Paterson, *The God in the Machine*, p. 306.

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benefactors, many of whom are dead, cannot be reimbursed. Therefore, individuals who live in free countries are, by and large, net beneficiaries. They have received a benefit without having paid the cost.³⁸

7. In Deciding between an Ethical Action and an Unethical Action, the Expected Loss Should Be Ignored for the Ethical Choice, but Not for the Unethical Alternative

Generally speaking, an ethical person would not include an unethical alternative among those in his decision set. However, in the event that this was the case, the decision should be based on the expected gain of the ethical choice versus the expected value of the unethical choice.³⁹ In other words, the expected loss for the ethical choice should be ignored (when making the decision). This follows from the BUP, which states that if one chooses rationally (ethically), one should expect success. Failure could occur, because it would be unexpected. Peikoff asserts that with respect to failure, “if there’s a chance at all,” then a person should not succumb to it.⁴⁰ I interpret this to mean that for an ethical choice, the loss should be ignored.⁴¹ This would not be true for the unethical alternative, however.⁴²

³⁸ Touchstone, *Then Athena Said*, pp. 328-34.

³⁹ *Ibid.*, pp. 286-93. The expected value is equal to the sum of the expected payoffs for each “state of nature.” Associated with each state of nature is a probability. In the most fundamental decisions, the states of nature would be life and death. The loss under the death state would equal the person’s human capital. This could be expressed in utility terms rather than dollars or some other unit of account. The loss would be factored by the probability of dying to obtain the expected loss. This would be added to the expected gain under the life state to obtain the expected value. This assumes that the probabilities are known or estimable. There are other decision criteria that may be used for decisions under risk or uncertainty. The point is that in making a decision between an ethical choice and an unethical alternative, the loss for the ethical alternative may be ignored, but it cannot be ignored for the unethical one.

⁴⁰ Peikoff, “The Philosophy of Objectivism.”

⁴¹ Touchstone, *Then Athena Said*, pp. 342-43.

⁴² As mentioned, for an ethical person, the choice between an ethical and an unethical action should be rare. This does not mean that it could never happen. As Chris Sciabarra notes, it is unlikely that a parent would be truthful to his child’s kidnapper; see Chris Matthew Sciabarra, *Ayn Rand: The Russian Radical* (University Park, PA: The Pennsylvania State University Press, 1995), p. 245.

8. In Deciding Between Two Ethical Alternatives, Either the Expected Gain or the Expected Value May Be Used

It would seem to follow that when a decision is limited to ethical alternatives, the decision should be based on the respective gains of the alternatives, since success is the to-be-expected for ethical choices. This would be the case if the expected loss for each alternative were relatively incidental. However, there are some instances in which the expected loss for an alternative may be quite large. Although success is the to-be-expected, this does not mean that there is no chance of loss. In some circumstances, it would not be wise to ignore the expected loss of a decision. (It is not only the loss that is relevant, but also the probability of its occurrence. The loss would be weighted by that probability.) For these kinds of decisions, the expected values of each of the alternatives would be relevant. The expected value may also be used in decisions that have no ethical content, such as deciding between whether to purchase a white shirt or a blue shirt.

9. Because Many Individuals Are Net Beneficiaries of the Productivity of Uncompensated Others, It Would Not Be a “Sacrifice” to Make Unilateral Contributions to Others

Since many individuals have benefited from the productive efforts of others who have not been fully compensated, many individuals have on balance consumed more than they have produced. Value has not been exchanged for value. Therefore, for many individuals, it would not be a “sacrifice” to make charitable contributions (unilateral transfers) to others if those contributions are believed to be justified. However, as noted, a single individual could not give to all of those other individuals who are justifiably in need, even if those in need represented a small percentage of the population. Even if a person devoted all of his time and income to others, it would not satisfy the need. Thus, it would be helpful if there was some “rule-of-thumb” or heuristic to guide a person’s charitable giving.

The rule-of-thumb that I have devised is based on my interpretation of the BUP, which, in effect, states that if a person behaves rationally, then he can expect success. Misfortune is the exception in life—incidental. Success is the norm. Since survival is the measure of success, in the most basic terms, this would mean that the expectation is that if one is rational, one can expect to survive. Ultimately, death is inevitable, but even if one lives rationally, there is always a probability of unexpected death. For a given year, then, a person’s expected income equals the probability that he will survive multiplied by his income for that year plus the probability he will die multiplied by zero—since he would earn zero income from his “human capital” if he died. If he survives the year, then the difference between the

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actual income he receives and his expected income is a bonus, so to speak—the result of “good luck.”⁴³

Since it is unexpected and “incidental,” it can be given to charity, without “sacrifice.” A person who had suffered misfortune (other than death) would be under no (moral) obligation to give to charity, since his needs would need to be met.

10. A “Heuristic for Giving” Is Useful Because Charitable Giving Is Outside the Market System

A rule-of-thumb for giving to charities is useful because charity is outside the market system. There is a cost to charitable giving, and organizations exist to facilitate it; however, it is unlike other market goods in that there is no pricing mechanism as such.⁴⁴ The market system tends to be self-regulating because prices perform the function of signaling information to consumers, producers, and input providers as well as providing the incentive to act on that information. There is no such mechanism for charitable giving. There may be people in need, but those who may be willing to give may be unaware of who they are. There may be people willing to give, but may not have sufficient information about those in need. Individuals tend to be very generous when they have information. An example of the generosity of individuals is the outpouring of giving that followed September 11. The media supplied the information in this instance. However, when charitable organizations experienced bottlenecks, there was no mechanism to inform those who gave. Again, reliance was on the media, but it was a blunt tool in comparison to the price system.

Additionally, for those who envision charitable giving as an absolute virtue, there may be a tendency to sacrifice too much. For those who see charitable giving as a sacrifice, the tendency may be not to give at all. A rule-

⁴³ This would equal the probability of dying multiplied by the actual income received for the year. For example, if the probability of death was 10 percent, and a person’s actual income for a year was \$50,000, then his expected income for the year would have been \$45,000 (the probability of survival multiplied by the amount of the yearly income if one lives plus the probability of dying multiplied by zero—the amount received if one dies). The difference between the actual income and the expected income would be one’s expected loss, which would equal the probability of dying multiplied by the yearly income.

⁴⁴ A defining characteristic of a market is a price mechanism. Charitable organizations exist to match givers with recipients, but, although costs are involved, because there is not price *per se*, there is no market as such.

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of-thumb can be helpful to limit giving to some reasonable amount for the former and encourage the latter by providing an objective standard.⁴⁵

11. Further Discussion

Rand thinks that a person *should* help another person during an emergency situation, with the proviso that it is not at the expense of one's own life. She describes emergencies as unexpected circumstances that are limited in time. Examples would be natural disasters, such as earthquakes or floods. It is strictly in emergencies that a person should help strangers, so long as one is capable of it. Rand views non-emergencies, for instance, poverty and illness, as normal risks of being alive. A person *may* provide assistance to a person in need, out of a sense of benevolence not because of need *per se*, if it is limited in duration. Thus, assistance would not extend to providing help for the recipient's entire life. Nor would it encompass spending one's life searching for needy people to help.⁴⁶

Rand uses the verb "should" as pertaining to emergencies, but "may" with regard to helping others in non-emergencies. The way I interpret this is that an emergency is exceptional in the sense that a person would not estimate the benefits and costs of taking action and compare these with other alternatives that might be open to him. There could be other things that he could do instead that would have greater value, but he would forgo those in order to provide assistance during the emergency. The only qualification would be that the action would not risk his life.

For non-emergencies, the verb "may" is used: a person may help another (if that person is not evil) with the added qualifications that the contribution should be within the giver's means and that the assistance ought to be of limited duration. This would seem to indicate that calculation in these instances would be warranted. Rand opposes sacrificing one's own life to relieve suffering. Because disasters are not the norm in life, assistance to others should be "marginal and incidental."⁴⁷ This follows from the BUP.

In *Unrugged Individualism*, David Kelley extends the motivation for benevolence by arguing that, generally speaking, it is "a kind of investment in this sense: one invests one's time, attention, and concern in people in order to create opportunities for trade, even though many of them won't pan out."⁴⁸

⁴⁵ Touchstone, *Then Athena Said*, pp. 325 and 343-47.

⁴⁶ Rand, "The Ethics of Emergencies," pp. 47-48.

⁴⁷ *Ibid.*, p. 49; *cf.* Paterson, pp. 250-54.

⁴⁸ David Kelley, *Unrugged Individualism* (Poughkeepsie, NY: Institute for Objectivist Studies, 1996), p. 47.

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That is, benevolence is a “*nonspecific investment in their potential.*”⁴⁹ Kelley’s reasoning is that since trading opportunities do not simply emerge unaided, individuals must initiate them by “treating other people as potential traders.”⁵⁰

Rand views charity as being of secondary importance. Since, based on the BUP, suffering is not-to-be-expected, virtues that are related to suffering are of lesser significance.⁵¹ However, because Kelley regards benevolence as a response to the trade potential of others and not to their suffering, he promotes it to a major virtue.⁵² Kelley views this kind of giving as non-sacrificial and in one’s self-interest.⁵³ The decision process is not unlike any other economic decision.⁵⁴ Of course, the key difference is that the “investor” is not a direct beneficiary of this kind of expenditure.

Tibor Machan’s focus is on generosity in his *Generosity: Virtue in Civil Society*. He regards generosity as one among many benevolent virtues, which also include charity, kindness, compassion, and thoughtfulness. Although the boundary lines among these are not always well-defined, generosity would encompass such activities as bestowing gifts, rendering counsel, and being tolerant.⁵⁵ Unlike charity, which typically requires deliberation, generosity is spontaneous; that is, it is second-nature.⁵⁶ Like other virtues, generosity is a trait that is self-cultivated.⁵⁷ It requires discretion and intent, but does not involve calculation.⁵⁸ Unlike exchange, it is not self-interested in the sense that it involves a *quid pro quo* or tit-for-tat.⁵⁹ However,

⁴⁹ Ibid., p. 50.

⁵⁰ Ibid., p. 26.

⁵¹ Ibid., p. 14.

⁵² Ibid., pp. 17 and 33.

⁵³ Ibid., p. 7.

⁵⁴ Ibid., p. 50.

⁵⁵ Tibor R. Machan, *Generosity: Virtue in Civil Society* (Washington, DC: Cato Institute, 1998), p. 1.

⁵⁶ Ibid., pp. 2-3.

⁵⁷ Ibid., pp. 4-5.

⁵⁸ Ibid., pp. 23 and 6.

⁵⁹ Ibid., pp. 3 and 20.

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generosity is self-beneficial by virtue of contributing to a morally good life. Yet, there is no self-sacrifice in generosity as there can be with charitable giving.⁶⁰

In “The Right to Welfare and the Virtue of Charity,” Douglas Den Uyl views charity as “supply-sided” rather than “demand-sided.” That is, the focus is on the giver rather than the recipient.⁶¹ Charity is a self-directed virtue that springs from the classical, self-perfective ethical model.⁶² The central theme of the classical paradigm in ethics is that “the good is brought into being by the achievements of the self.”⁶³ One of Den Uyl’s aims is to examine whether there exists a reductionist tendency inherent in liberal philosophy to collapse charity and justice and, if so, to inquire whether the existence of the virtue of charity is at risk.

Justice in Objectivism is defined by the Trader Principle. I view justice to be reflected in the more encompassing principle of reciprocity, which subsumes the Trader Principle. Den Uyl examines Lawrence Becker’s reciprocity argument as it applies to giving. The basis for Becker’s argument, given in his book *Reciprocity*, is that people are benefactors of positive externalities.⁶⁴ It follows that, in response, people should feel a sense of obligation about giving. Den Uyl notes that Becker’s case is recipient-oriented.⁶⁵ The case that I have made may seem to be reciprocity-based in Becker’s sense. It is not. My point is that, because the giver is not the primary beneficiary, charity may appear to be self-sacrificial, based on a literal reading of some passages of Objectivist Ethics (OE). However, if it is recognized that most people have benefited from others without reciprocating, then it need not be viewed that way. Since many individuals are net beneficiaries of actions of others (whom it would be impossible directly to repay), then a person who chooses to make a charitable contribution will not necessarily be “worse off” on balance.

⁶⁰ Ibid., p. 3.

⁶¹ Douglas J. Den Uyl, “The Right to Welfare and the Virtue of Charity,” *Social Philosophy & Policy* 10, no. 1 (1993), p. 205.

⁶² Ibid., p. 202.

⁶³ Ibid., p. 205.

⁶⁴ Lawrence Becker, *Reciprocity* (Chicago, IL: University of Chicago Press, 1990).

⁶⁵ Den Uyl, “The Right to Welfare and the Virtue of Charity,” p. 222.

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The emphasis here is not on the recipient. Individuals may give to others out of good will. Others' need, however, cannot be a justification—or a sole justification—for giving, since there are always others in need. This does not mean that misfortune is not marginal in a global sense, as the BUP suggests. However, from a single person's perspective, one cannot satisfy all of the need, however insignificant it may be in a "universal" sense. Den Uyl rightly points out that if reciprocity formed the basis for giving, "each of our lives could be perpetually mortgaged to whatever someone's conception of our obligation to reciprocate might be."⁶⁶ Thus, even though the "net beneficiary" argument that I present may explain why charitable giving need not be a sacrifice, it provides no guidance for how much to give. In this sense, not unlike the altruist doctrine, there is no limit provided. Giving is open-ended. My aim has been to provide a heuristic, or rule-of-thumb, as a reasonable guide to giving.

12. Concluding Remarks

Homo economicus is a calculator. He is seen as measuring benefits and costs, applying the principle of maximization to the alternatives that face him for every decision.⁶⁷ Economists point out that the decision process may not be a conscious effort. As an analogy, pitching in baseball does not require knowledge of physics, even though physical laws are involved. Even so, as illustrated in texts on consumer theory, the process of utility maximization would seem to entail some deliberation. Machan envisions virtues as ingrained characteristics. As cultivated traits, they require no deliberation.⁶⁸

Fred Groh says that Machan challenges "the rule-following conception of morality, which implies that one must deliberate and calculate about what to do."⁶⁹ I view "rule-following" as non-deliberative, that is, as applying a rule with little or no thought involved. Calculating behavior, on the other hand, would be typified by "pure economic man"—estimating benefits and costs at every turn. OE would seem to me to be at odds with these two approaches to decision-making. In OE, the decision-maker neither applies a rule nor in all cases does he calculate. The former is non-thought; the latter requires constantly weighing and measuring. Rand envisions ethical decisions as contextual. As such, it would seem that some decisions would require less deliberation than others—although as Machan notes, all decisions would

⁶⁶ Ibid., p. 223.

⁶⁷ Machan, *Generosity*, p. 72.

⁶⁸ Ibid., p. 1.

⁶⁹ Fred Groh, "Helping Hands," *Navigator* 2, no. 3 (November 1998), p. 15.

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require discretion.⁷⁰ Machan's view seems to me in some respects to be consistent with the way in which I have interpreted the application of the BUP. Ethical decisions do not require that a person estimate the loss for an ethical choice since failure is the not-to-be expected, at least in the long-run. In deciding between an ethical choice and one that is not, no deliberation at all should be required. The ethical choice leads to success long-range. Only in deciding among ethical alternatives might the expected gain become relevant so long as the expected loss for each alternative is similar in magnitude. The expected values may pertain if the expected losses significantly vary in size.

The problem with charity is that the giver does not directly benefit from his decision. If charitable giving ranked first on one's scale of values, then it could justifiably consume all of one's productive capability, income, and time. At the limit, it would be suicidal, potentially robbing the charity recipient of his life as well. Viewed in this way, it is understandable that Rand relegates charity to a secondary virtue and regards it as parasitical. Using the reasoning I have set forth in making ethical decisions, an altruist, who by Rand's definition consistently puts others above oneself, would consider only the expected benefits that would accrue to another or others. The personal losses would be ignored. An approach of only recognizing the expected benefits of a decision may be justified so long as adherence to the ethic leads to the decision-maker's survival. The same approach as applied to altruism leads to the polar outcome.⁷¹

At the other extreme, a strict interpretation, or perhaps misinterpretation, of OE might lead one to conclude that any amount of charitable giving would be sacrificial. Peikoff views ethics as being either/or in nature. Even a small sacrifice is self-denying, and, therefore, evil.⁷² Kelley is aware of this dilemma, stating that altruism "offers no principled guidance on how to draw the line" between ourselves and others.⁷³ As for benevolent non-specific investments in potential traders, Kelley views these expenditures as being no different from any others that we do for ourselves. Machan sees generosity as non-sacrificial, but recognizes that charity could be.⁷⁴ As Den Uyl notes, some arguments for charity, such as the reciprocity-based

⁷⁰ Machan, *Generosity*, p. 23.

⁷¹ Touchstone, *Then Athena Said*, p. 339.

⁷² Peikoff, *Objectivism*, p. 273.

⁷³ Kelley, *Unrugged Individualism*, p. 50.

⁷⁴ Machan, *Generosity*, p. 3.

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arguments, are open-ended.⁷⁵ I offer, as a guideline for charitable giving, the rule-of-thumb discussed above—that is, an amount equivalent to the expected loss for a year equal to the probability of dying multiplied by one’s income. I believe a reasonable guideline is helpful as an antidote to the altruist doctrine of “giving until it hurts,” and the possible misinterpretation of Rand, that anything that is not directly life-preserving is evil. A guideline is also helpful because there is no market mechanism for charitable giving that deals with “shortages” and “surpluses” in the way in which they are automatically handled when prices are present.

Charitable giving should create no significant hardship on the giver, particularly since suffering, according to the BUP, is marginal in nature. There is the potential problem, known as moral hazard, that the supply of recipients may increase as giving increases. The rule-of-thumb aids in fitting charitable donations in perspective in relation to a person’s other expenditures.

APPENDIX A

Dominant Strategy

In a zero-sum game, one person’s payoff is simply the negative of the other person’s, since a person’s gain is the other’s loss. Therefore only one payoff matrix is needed. Consider the following, where A’s and B’s strategies are shown in the first row and column, respectively:

		B			
		1	2	3	
A	1	4 ^b	1 ^{a,b}	5 ^b	1*
	2	3	0 ^a	2	0
		4	1*	5	

In zero-sum games, amounts can be redistributed but not created or produced.⁷⁶ If each player knew what the other was going to do, the game would be trivial. It is assumed that each does not. So if player A was to choose his Strategy 1, player B would choose his Strategy 2 with a value of 1

⁷⁵ Den Uyl, “The Right to Welfare and the Virtue of Charity,” p. 223.

⁷⁶ Alpha C. Chiang, *Fundamental Methods of Mathematical Economics*, 2nd ed. (New York: McGraw-Hill Book Company, 1974), pp. 743-44.

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for A; because of the three values (4, 1, and 5), this involves the least gain for A. If A chose Strategy 2, B would choose Strategy 2, so that A would gain 0. If B chose his Strategy 1, A would choose Strategy 1 with a gain to A of 4. If B selected his Strategy 2, A would opt for Strategy 1 with a gain of 1. And if B played Strategy 3, A would again prefer Strategy 1, with a gain of 5.⁷⁷ There will be only one equilibrium point. It has the value 1 (shown above with an asterisk). This results in a maximin result for player A. That is, the maximin reasoning for player A is that the least A could gain using Strategy 1 is 1, and the least he could gain employing Strategy 2 is 0. Of these two values, the greater is Strategy 1. For B, his is a minimax result. That is, if he plays his Strategy 1, the most A can get is 4. With B's Strategy 2, the most A can win is 1. If B tries Strategy 3, the best A can do is 5. Of these three, the least is 1. The value of the game is said to be 1. Also if A's two strategies are examined for overall gain, regardless of what B does, A is better off choosing Strategy 1. Similarly if B's strategies are compared, B does best by choosing Strategy 2 regardless of what strategy A follows because B's Strategy 2 offers the least return to A of the three strategies open to B. So A should play Strategy 1 and B should play his Strategy 2, and if they both pursue these courses of action, they will end up at 1, the value of the game.

When there are two players, the maximin and minimax principles have certain properties that can work to the advantage of each player. By following the maximin strategy, A attains the largest value that can be prevented from being reduced further by B, whereas by following the minimax strategy, B attains the lowest payoff that can be prevented from being increased further by A.⁷⁸ If A chose a strategy other than the maximin, he would be unprotected against a countermove by B. By using their respective conservative strategies, each player has the maximum protection against his opponent's countermove. At the equilibrium point, each player's conservative strategy is the most advantageous, so long as the other player selects his respective conservative strategy. However, a maximin strategy may not be the best strategy as a countermove to a player who does not follow the minimax criterion. A prudent strategy is only guaranteed to be good in response to another prudent strategy.⁷⁹

⁷⁷ William J. Baumol, *Economic Theory and Operations Analysis*, 4th ed. (Englewood Cliffs, NJ: Prentice-Hall, Inc., 1977), pp. 438-40.

⁷⁸ *Ibid.*, p. 440.

⁷⁹ *Ibid.*, pp. 441-42.

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Mixed Strategies

Suppose the payoff structure for two players in a zero-sum game was as follows:

		B			
		1	2		
A	1	90 ^b	30	30	
	2	50 ^a	100	50*	
		90*	100		

Player A will choose Strategy 2, his maximin. Player B will select his Strategy 1, the minimax. There is no equilibrium.⁸⁰ If the combination of plays begins with (2, 1), where 2 stands for A's strategy and 1 indicates B's, B will favorably be surprised since a 50 unit gain for A is preferable to B than a 90 unit gain. But if B has selected his Strategy 1, A can improve his payoff by switching to his Strategy 1 (and win 90 instead of 50). Now, however, with A having switched to his Strategy 1, B will be better off with his Strategy 2, where A has only 30 units instead of 90. But if B changes to his Strategy 2, A will prefer his Strategy 2 with a 100 reward. Once A switches to his Strategy 2, B will countermove with his Strategy 1 where A's gain falls from 100 to 50. Now the two are where they began and the cycles will recommence. The solution is unstable.⁸¹

When one player can predict the pattern of play of another, this can be disadvantageous—in military plans or business or any zero-sum arena. In a “rational” plan, no player should be capable of deducing his opponent's strategy. Conservative gamesmanship suggests that a mixed strategy would yield the optimal results.⁸² Suppose that the payoff matrix were as follows:

		B			
		1	2		
A	1	4	2		
	2	1	3		

⁸⁰ Ibid., p. 444.

⁸¹ Frederick S. Hillier and Gerald J. Lieberman, *Introduction to Operations Research* (San Francisco, CA: Holden-Day, Inc., 1967), pp. 269-70.

⁸² Chiang, *Fundamental Methods of Mathematical Economics*, p. 754.

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If player B selects his Strategy 1 (a pure strategy), the second column becomes irrelevant to A's decision. If player A uses a mixed strategy, he will choose his Strategy 1 x_1 percent of the time, and his Strategy 2 x_2 percent of the time where $x_2 = (1 - x_1)$. So the expected value of this mixed strategy is $E_1 = (x_1)(4) + (1 - x_1)(1)$. If player B chooses Strategy 2 exclusively, then the expected payoff for A would be $E_2 = (x_1)(2) + (1 - x_1)(3)$. If B chose a mixed strategy, A's expected payoff would be between E_1 and E_2 . E_1 and E_2 can be graphed (with E on the vertical and x_1 on the horizontal axes). The maximin (the maximum of the minimum expected payoffs) will be given by the intersection of the two lines. This will correspond to the optimal mixed strategy for A. Regardless of what B does, this will be A's best strategy.

The same procedure can be followed for player B. That is, if A follows Strategy 1, B's expected payoff is $E_{(1)} = (y_1)(4) + (1 - y_1)(2)$. And if A follows Strategy 2, B's expected payoff is $E_{(2)} = (y_1)(1) + (1 - y_1)(3)$. Graphing both lines and finding the minimax (where the two lines intersect) will give B's optimal expected payoff along with the optimal percentages for y_1 and y_2 . The expected payoff found above for A (maximin) will be the same as that found for B (minimax). Thus, if A adopts his optimal mixed strategy he cannot receive less than the optimal expected payoff E, and if B follows his optimal mixed strategy his opponent can received not more than E.⁸³ If the payoff matrix is beyond a (2 x n) or an (m x 2) in dimension, the problem can be transformed into a linear programming problem for ease of solution.

APPENDIX B

A hypothetical payoff structure for a PD may look as follows (where c = cooperation and d = defection):

		A		
		c	d	
B	c	5, 5	0, 10	
	d	10, 0	2, 2	

Suppose Player A offers Player B a quantity of dried fruit if B will provide him with a quantity of firewood. If they cooperate, that is, trade takes place, each will receive a payoff of 5 (measured in units of satisfaction—utility). If one player fulfills his part of the bargain and the other does not, the defector has a payoff of 10 and the sucker has a payoff of zero. If both defect—or decide not to interact—the payoff for each is 2. No exchange takes

⁸³ Ibid., p. 758; Hillier and Lieberman, *Introduction to Operations Research*, p. 272.

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place. In a one-shot (one-time) exchange the dominant strategy for each player is to defect—the non-interaction result. Consider Player A. If Player B decides to cooperate, Player A's best strategy is to defect (for which he will receive 10 instead of 5). If Player B decides to defect, A's best bet is to defect (receiving 2 instead of 0). Regardless of what B does, A's best strategy is to defect. Likewise for B.⁸⁴ So if each person reasons in this way both will mutually defect, in which case both will receive 2. They would be better off, however, if they cooperated, receiving payoffs of 5 apiece.

⁸⁴ Axelrod, *The Evolution of Cooperation*, p. 9.

On Hummel on Austrian Business Cycle Theory

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1. Introduction

Jeffrey Rogers Hummel criticizes Austrian Business Cycle Theory (ABCT), and it is our intent in the present article to reply to his criticisms,¹ defending this viewpoint against the difficulties he raises with it. Hummel sees six separate problems with the Austrian or praxeological analysis of the

¹ Why expend so much time and effort here to respond to Jeffrey Rogers Hummel, “Problems with Austrian Business Cycle Theory,” *Reason Papers* 5 (1979), pp. 41-53, which was, we readily admit, published a long time ago? This is because no matter that this author mischaracterizes ABCT, and thus his criticisms of it fall wide of the mark, we are appreciative of the fact that they are serious criticisms. On that ground alone they deserve a serious reply. Additionally, there are few thought-provoking negative assessments of ABCT. See, e.g., Gordon Tullock, “Why the Austrians Are Wrong about Depressions,” *Review of Austrian Economics* 2 (1987), pp. 73-78; Gordon Tullock, “Reply to Comment by Joseph T. Salerno,” *Review of Austrian Economics* 3 (1989), pp. 147-49; Richard E. Wagner, “Austrian Cycle Theory: Saving the Wheat While Discarding the Chaff,” essays in honor of James Buchanan (2000), available online at <http://www.gmu.edu/jbc/fest/files/wagner.htm>; J. Snippe, “Intertemporal Coordination and the Economics of Keynes: Comment on Garrison,” *History of Political Economy* 19, no. 2 (1987), pp. 329-34. For Austrian defenses, see Joseph T. Salerno, “Comment on Tullock’s ‘Why Austrians Are Wrong about Depressions,’” *Review of Austrian Economics* 3 (1989), pp. 141-45; Walter Block, “Yes, We Have No Chaff: A Reply to Wagner’s ‘Austrian Business Cycle Theory: Saving the Wheat While Discarding the Chaff,’” *Quarterly Journal of Austrian Economics* 4, no. 1 (2001), pp. 63-73; Roger Garrison, “Intertemporal Coordination and the Invisible Hand,” *History of Political Economy* 17 (1985), pp. 309-21; Roger Garrison, “Full Employment and Intertemporal Coordination,” *History of Political Economy* 19, no. 2 (1987), pp. 335-41. There is also Tyler Cowen, *Risk and Business Cycles* (London: Routledge, 1997), which has had no reply. This by itself would be sufficient to justify a reply to Hummel. In sharp contrast, many critiques of ABCT amount to no more than name-calling. For example, Leland Yeager, “The Significance of Monetary Disequilibrium,” *Cato Journal* 6, no. 2 (1986), p. 378, says that ABCT is an “embarrassing excrescence.”

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business cycle, and we shall comment on each of them. To wit, following Hummel's outline, we devote Section 2 to Asymmetry, 3 to Definitions of the Money Stock, 4 to Net Investment, 5 to Deflation, 6 to the Constant Rate of Credit Expansion, and 7 to International Aspects of the ABCT. We conclude in Section 8. Since Hummel prefaces his remarks with his "fundamental assumption," we shall follow him in that regard here.

Hummel states:

According to Austrian theory, the boom or cyclical upswing consists of a lengthening of the structure of production induced by credit expansion. The depression or cyclical downturn consists of a shortening of the structure of production until it is back into coordination with consumers' time preferences.²

What is Hummel's "fundamental assumption?" It

consists of the observation that, because the boom is a lengthening of the structure of production while a depression is a shortening of it, violent fluctuations in time preferences that generate similar alternations between lengthening and shortening can theoretically

² Hummel, "Problems with Austrian Business Cycle Theory," p. 41. Hummel's statements in the text above are fully in keeping with Austrian understanding of ABCT; in contrast, ours are not perfectly congruent. There are really three distinct views of the business cycle now in play, and we do well to distinguish between them. First is what we will call mainstream Austrianism. This, roughly, is the perspective of Ludwig von Mises, *Human Action*, Scholar's ed. (1998 [1949]), available online at <http://mises.org/Books/HumanActionScholars.pdf>; Friedrich Hayek, "The Present State and Immediate Prospects of the Study of Industrial Fluctuations," in Friedrich Hayek, *Profits, Interest, and Investment* (Munich: Augustus M. Kelley, 1975 [1939]); Murray Rothbard, *Economic Depressions* (Lansing, MI: Constitutional Alliance, Inc., 1969); Murray Rothbard, *Man, Economy, and State* (Auburn, AL: Ludwig von Mises Institute, 2001 [1962]); and Roger Garrison, *Time and Money* (London: Routledge, 2001). Second is Hummel's view, which is a critique of the former. Third are our views. For the most part, we side with the Austrian mainstream, but not always. In the present instance, although we do not wish to divert our critique of Hummel's article away from his analysis of this understanding, we note that there is a difference between lengthening (shortening) the structure of production and lengthening (shortening) the period of production. During the credit-expansion-initiated boom, the period of production might be shortened, not lengthened, and the bust might be characterized by a lengthening, not a shortening, of the period of production. Because the critique in this present article of Hummel's criticism of mainstream ABCT is from that latter perspective, this does not mean that we are in full accord with standard ABCT; in fact, though we agree with the essence of ABCT as we see it, we disagree with several specific aspects thereof.

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cause a business cycle.... [T]his assumption means that the lengthening of the structure of production that occurs as the result of credit expansion and the lengthening of the structure of production that occurs as the result of a genuine shift in time preferences are basically identical *except* for the fact that the lengthening due to credit expansion must in the future be reversed because it is inconsistent with underlying consumers' tastes.³

It cannot be denied that there is an eerie similarity between the two scenarios. Even an otherwise highly accurate outside observer who was not acquainted with the very different causal antecedents between the two of them might well be forgiven for failing to distinguish one from the other. Nevertheless, there is all the world of difference in these two cases. It is, at first approximation, the distinction between a human-like marionette, ruled by strings pulled above his head, and a human being, making volitional choices. The similarities, nay, the identities in the movements may fool the unwary, but the first is mere movement of a human look-alike creature, and the second is human action.

Consider the following two scenarios. In the first, the government subsidizes (or taxes), initially, only the umbrella industry, and then, secondarily, the sunglass industry alone, and then continually repeats this process. People are led by prices to first purchase more of the one good and less of the other than they otherwise would, and, then, the reverse, in never-ending iterations. In the second scenario, the weather is first rainy, and then sunny, in continuously altering patterns. People first buy more umbrellas, and then sunglasses, to suit their tastes that change in response to the weather, and so on. In both cases, let us suppose, the identical acquisitions occur. And, yet, the first scenario, engendered by governmental fiscal policy, is analogous to alterations in credit expansion (and contraction), and the second, to "violent fluctuations in time preferences." The first full well deserves the appellation "Austrian Business Cycle." The second does not; it constitutes merely the working out of endogenous changes in taste or time preference in the case under discussion.

Nor is this merely a matter of nomenclature, as important as that is for clarity of analysis. There is more. For with the alterations in taste, whether rainwear vis-à-vis sungear or a future orientation versus a present one, entrepreneurs will eventually figure it out⁴; certainly, they will if this pattern long endures. In very sharp contrast, there is no such expectation regarding the prediction of which side of the bed the fiscal authorities or, in

³ Hummel, "Problems with Austrian Business Cycle Theory," p. 41.

⁴ Israel M. Kirzner, *Competition and Entrepreneurship* (Chicago, IL: University of Chicago Press, 1973); Mises, *Human Action*.

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the case of money, Alan Greenspan, will arise from on any given day. That is, there is an element of arbitrariness intrinsically related to government operation that simply does not hold true for market decision-making. The latter is predictable, at least in theory, whereas the former is radically unpredictable.⁵

States Hummel: “If the changes in the structure of production induced by credit expansion are different from changes in the structure of production caused by changes in time preferences in some essential respect other than that they must in the future be reversed, no one has explicitly identified this additional difference.”⁶ Not so, at least not anymore; the issue of predictability in principle has now been explicitly articulated.

It is easy to sell predictability short as a distinction between the two cases, but this would be an error. For, if entrepreneurs can foresee consumer changes in a way that does not apply to Federal Reserve currency manipulation, they can take steps to reduce or even eliminate its otherwise disruptive qualities. Perhaps, for example, a sufficient supply of both sunwear and raingear can be planned in advance; when the inevitable (stipulated) changes occur, businessmen can stand ready to supply that which is needed, in a way they cannot do for changes inaugurated by central banking authorities.

Moreover, that the one necessarily will be reversed and the other reversed only with radical fluctuations in the mass of individuals’ preferences, especially given the essentially conservative behavior of the mass of people, is far from a trivial matter. That is, the credit/money expansion necessarily creates discoordination between the actions of producers and the preferences of consumers. It leads to misallocations of resources and distortions in the structure of production⁷ from the outset, that is, as soon as the new money that was lent into existence is spent. These misallocations give rise to discoordination between the actions of producers and the preferences of consumers. These are *ex ante* misallocations/distortions. However, if subsequent to them the preferences of consumers should somehow change in precisely such fashion that they align themselves with the altered

⁵ Ludwig Lachmann, “From Mises to Shackle: An Essay on Austrian Economics and the Kaleidic Society,” *Journal of Economic Literature* 14, no. 10 (1976), pp. 54-62.

⁶ Hummel, “Problems with Austrian Business Cycle Theory,” p. 42.

⁷ It also creates distortions in the time structure of consumption, which is analogous to the structure of production. For example, at any one time, there will be an ideal allocation between the following consumer goods: houses that last for hundreds of years, medium-enduring cars and refrigerators, and short-lived soap and tissue paper. Artificial central bank-created alterations in interest rates will play havoc with these allocations, just as they do for producers’ goods.

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allocation/structure, neither would there be a crisis nor would there be a bust, that is, there would not be a cycle.⁸ In such a case, what had been *ex ante* mistakes would prove to be wise decisions *ex post*. However, that possibility does not in any way challenge the validity of ABCT. Note that absent the subsequent change in preferences: (1) the boom is necessarily self-reversing, (2) necessarily the actions of producers and preferences of consumers were discoordinated, (3) resources were necessarily misallocated, and (4) the structure of production was necessarily distorted.

Compare that with Hummel's hypothesized violent fluctuations in preferences. If there is no such fluctuation—if, that is, subsequent to the initial change in preferences, there is no further violent change in them—then (1) the “boom” is not self-reversing, (2) the actions of producers and preferences of consumers are not discoordinated, (3) resources are not misallocated, and (4) the structure of production is not distorted.⁹ That is, there are no entrepreneurial mistakes, save for ever-present random errors.

Hummel's assumption regarding violent fluctuations must be just that, fluctuations, swings back and forth. Consider, for example, a situation in which consumers' preferences changed to prefer a group of goods, A, relatively more and a group of goods, B, relatively less, and producers responded to this change by reallocating relatively more resources to A and relatively less to B, say, from (A_0, B_0) to (A_1, B_1) , $(A_1 > A_0, B_1 < B_0)$. Suppose that subsequently consumers' preferences changed again, but in the same direction—an even greater preference for A relative to B—and producers responded by again reallocating relatively more resources to A and relatively less to B, (A_1, B_1) to (A_2, B_2) , where $(A_2 > A_1, B_2 < B_1)$, that is, by allocating, relatively, yet more resources to A and yet fewer to B. In such a case, then there would be no cycle; rather, the situation would be the same as if consumers' preferences had changed originally from (A_0, B_0) to (A_2, B_2) , $(A_2 > A_0, B_2 < B_0)$, but entrepreneurs' adjustments to the change would be slower, that is, there would be no cycle, but only what appeared to be slow response to an original change from (A_0, B_0) to (A_2, B_2) . Moreover, the misallocated resources would not take the form of too many of the type required for the production of A and too few of the type required for the

⁸ Here is the analogue to our sun-rain example: the government misallocates resources in terms of these consumer items. But then, accidentally, consumers' tastes change in precisely the direction in which, and to the extent of, the governmental misallocation. If this occurred, then there would be no misallocation at all. Or try this. It is as if someone attempted to murder an innocent man, but instead shot a murderer making his escape.

⁹ The latter three of these points abstracts from the random, minor, self-correcting errors made by entrepreneurs.

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production of B, but rather of too few of the type required for A and too many of the type required for B. That is, the relative additional resources devoted to the production of A would not have been misallocated, nor would the decrease in resources allocated to the production of B be a misallocation, as in the ABCT case; rather, the misallocation would be in the form of too few for A and too many for B—the exact opposite of the ABCT case.

Hummel also compares (1) a situation in which government taxes away money consumers would have spent on good A and spends it instead on good B, and in which entrepreneurs reallocate resources in line with the changed pattern of demand with (2) a situation in which consumers shift their expenditures away from A and in favor of B, and in which entrepreneurs reallocate resources in line with the changed pattern of demand. He then maintains:

Now, one can say that [in the first situation] the economy is discoordinated with the desires of consumers, that resources spent on the production of B are wasted, and that if the government stops its expropriation, the market will shift back again. One cannot, however, contend that the demand for B manifested by the government with its ill-gotten gains is illusory or that the effect it has on the economy is any different from the effect of [the second situation].¹⁰

Certainly, from an objective point of view Hummel is correct. However, what is important in economics is the subjective meaning human beings place on that objective reality. It is true that in both situations we would expect to see the same goods produced¹¹ in the “first round” and subsequent similar reallocations of resources by entrepreneurs from goods necessary to the production of A to those necessary to the production of B. But this ignores the fact that in the real world there are innumerable goods, some of which are neither A nor B, nor used in the production of either.

Moreover, the scenario of tax-induced reallocations is not necessarily self-reversing. As long as the government continued to tax funds that would have been spent on A and spends them instead on B, the misdirection of

¹⁰ Hummel, “Problems with Austrian Business Cycle Theory,” p. 42.

¹¹ We abstract from “second order” considerations, such as distribution effects. Even the objective course of production and distribution will necessarily be different. This can be seen by asking, “Who would receive the B purchased by government?” Those people will be wealthier than otherwise and the taxpayers poorer. In subsequent periods of time this will lead to different patterns of demand and production than would otherwise have happened in the case where preferences changed in favor of B without a redistribution by government from taxpayers to the “fortunate” recipients of governments’ largess in the form of B.

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resources will continue. However, that is not true if the misdirection is caused by an increase in money/credit. Then, the misdirection is self-reversing because either the government continues to increase money/credit, in which case the situation will inevitably, sooner or later, end in a monetary hyperinflation and subsequent collapse; or because at some point before such a catastrophic event occurred, the government will stop the money/credit expansion, in which case there will inevitably be a crisis followed by a bust.¹²

2. Asymmetry

Hummel puts forth his challenge to ABCT as follows:

During the boom when the structure of production is lengthened, the capital goods industries (or goods of the higher orders) expand while the consumers' goods industries (or goods of the lower orders) contract. Labor is bid from consumers' goods industries to capital goods industries. During the depression, when the structure of production is shortened, the reverse takes place. The *consumers'* goods industries expand, the capital goods industries contract, and labor is bid from the latter to the former. Why are these two processes not symmetrical in their effect? Why is the expansion of the capital goods industries and the contraction of the *consumers'* goods industries accompanied by *general* prosperity and full employment, while the expansion of the *consumers'* goods industries and the contraction of the capital goods industries accompanied by *general* depression and unemployment?¹³

¹² It is true that the government can forestall or ameliorate the bust through fiscal and/or regulatory wedges, but that is not relevant for this paper. A fiscal wedge is a tax or subsidy that causes a divergence between the prices that would have prevailed in a free market and the actual prices that obtain. A regulatory wedge achieves similar effects by means of, you guessed it, regulations. Such wedges mitigate against the reallocation of resources necessary to alleviate the misallocations that constituted the false boom. The effect is to moderate the intensity of the recession/depression while prolonging it, or in the best of worlds, "merely" to reduce the post-recession/depression growth of the economy. For more on wedges, see William Barnett II and Stuart Wood, "Business Cycles and Stagflation," *Proceedings of the Eighth Annual Austrian Scholars Conference* (2002), pp. 2, 4, 6, 9, and esp. 24-28, available online at http://www.mises.org/journals/qjae/pdf/qjae4_1_4.pdf.

¹³ Hummel, "Problems with Austrian Business Cycle Theory," pp. 42-43.

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Several responses are in order here. First, in the case of a shift in preferences, the contraction in the consumers' goods industries during the boom is only a *relative* one. In fact, both consumers' goods industries and capital goods industries expand; however, the latter increase more than the former. That is, there is not a zero-sum substitution of production of capital goods for production of consumers' goods.¹⁴ To the contrary, total production expands. This is made possible by both a more intensive and extensive use of labor and capital goods. Regarding the first, workers put in more hours on the job (overtime), factories put on extra shifts, and offices are used earlier and later than previously. Regarding the latter, potential workers who previously were "idle,"¹⁵ for example, college students, housewives, and others at leisure, become employed, and previously "idle"¹⁶ factories, mines, office buildings, etc. are brought into use. Therefore, in the sense of optimal use of resources, in the boom there is *excess* employment of resources in the market. That is, more resources are used by the market in an artificial boom than in a period of increased capital formation resulting from changed preferences.¹⁷ Similarly, fewer resources are used by the market in a bust than in a period of decreased capital formation resulting from changed preferences. Put another way, if preferences change, resources are shifted from production of the less preferred to the more preferred goods, regardless of type, but there is no reason to expect an increase or decrease in the level of resource use, unless the shift in preferences is to or from leisure. In the case of a monetary-policy-induced change in the allocation of resources, not only are resources initially shifted from the less preferred to the more preferred

¹⁴ The only consumers' good that necessarily decreases is leisure.

¹⁵ We note that such people are idle only in the sense of not being employed in the market; certainly according to his own values, each was putting his time to its best use, including in some cases non-market labor.

¹⁶ Again, that a resource is idle in the sense of not being physically used in the production process does not mean it was not being put to its most valuable use as determined by its owner(s).

¹⁷ What of the possible objection that this occurs in both scenarios? That is, that more resources are used by the market due to credit expansion, but also because of a decrease in time preferences. We answer as follows: In both cases there will be an increase in production of interest-rate-sensitive goods. However, if this takes place as the result of decreased time preference, it will be part and parcel of a shift from production of short-term consumers' goods and, perhaps, some reduction in leisure. However, if it is because of an artificial credit expansion, there will be no shift of production from short-term consumers' goods, though there will be a reduction in leisure.

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good, that is, from non-interest-rate-sensitive goods¹⁸ (NIRSG) to interest-rate-sensitive goods (IRSG), but additional resources are brought into production; when the inevitable crisis and bust occur, not only is the former shift reversed, with resources shifted back, from IRSG to NIRSG, but some resources are withdrawn from production.¹⁹

A second response is that the worry is depression, not unemployment; as long as there is complete and total wage flexibility, there need not be any joblessness at all. Hummel is quite correct when he asks: “Why is not frictional unemployment equally great in both directions?”²⁰ It *is* or can be expected to be equally great in both directions; thus, there would be no necessary difference in unemployment in the two scenarios.

However, matters are quite different in three other dimensions. First, while there is no reason to expect frictional unemployment to be different, that leaves cyclical unemployment, which is asymmetric. What Hummel fails to understand is that in the case of a shift to lower time preferences, resources are shifted from less interest-elastic to more interest-elastic industries, and vice versa for the case of a shift to higher time preferences. It is possible that there would be some change in terms of “idle” resources, but there is no reason to expect this to be systematic. However, in the case of an artificial credit expansion, resources are not shifted so much from less interest-elastic industries, but rather from idleness, both to more-interest elastic and to more interest-inelastic industries, and vice versa in the case of an artificial credit contraction. In terms of labor, this means that the labor force expands in the false boom and contracts in the subsequent bust, in a way it does not in the cases of changed time preferences. It is this difference in labor force participation that gives rise to the asymmetrical unemployment effects.=

Second, there is the issue of leisure. When interest rates fall below natural levels due to governmental monetary mismanagement, labor is increased at the expense of leisure, since wage rates in the higher orders of production are bid up. There is no symmetrical effect in the opposite

¹⁸ Interest-rate-sensitive goods are those the demand for which is financed in substantial part by credit.

¹⁹ It is imperative that we distinguish between two cases: (1) comparison of symmetry between policy (artificially) induced boom and market (naturally) induced shift in preferences from present to future; and (2) policy induced boom (initiated from “equilibrium” by credit expansion) and policy induced bust (initiated from “equilibrium” by credit contraction, and not initiated by inevitable crisis at climax of policy induced boom).

²⁰ Hummel, “Problems with Austrian Business Cycle Theory,” p. 43.

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direction when interest rates rise above natural levels due to this source of misallocation.

Third, a movement toward a lower discount rate creates a situation that has rightly been characterized as “9 bricks available, 10 planned for.”²¹ But this only applies in the first case when the government intervenes into the economy with artificial credit expansion, not the second case of exogenous changes of tastes on the part of market participants.

As to symmetry in ABCT, it is not to be found between the phases of the cycle, that is, the boom and the bust, but, rather, what symmetry exists is between cycles differentially initiated. Compare the standard Austrian account of the money/credit cycle initiated by new money lent into existence by government, with one that is initiated by existing money borrowed out of existence by the state. In the latter case, as the government sells securities, their prices decline and the yields thereon increase. Moreover, the central banking authorities retire the money so acquired. Then, the rise in interest rates will induce a shift in demand and subsequently production from IRSG goods to NIRSG. Also, the decrease in the stock of money will cause price deflation. In the interim during which people are adjusting to the reduced stock of money, that is, before prices fall very much, there will be a decrease in economic activity, along with the shift from IRSG to NIRSG. That is, in addition to the decrease in total economic activity, there will be a relative reduction in the IRSG relative to the NIRSG sector. However, such a decline in the money stock cannot continue indefinitely. If the central bank continues the monetary/price deflation, interest rates will collapse and people will begin to refrain from purchasing all but necessities in anticipation of ever-lower prices, resulting in a crack-up bust.²² The alternative available to government is to quit borrowing money out of existence before the process ends in the crack-up bust. If this is the path chosen, the bust ends with a crisis as interest rates decline. The catastrophe will give way to a boom/recovery when and as the decline in prices comes to a halt, and the structure of prices, and therefore that of expected prices and production, is realigned with peoples' preferences.

Compare the two cycles, the one that begins with money being lent into existence, the other with money being borrowed out of existence, both courtesy of governmental intervention. The former begins with an unsustainable, artificial boom that either (1) ends in a crack-up boom or (2) ends in a crisis that gives way to a bust and recovery. The latter begins with

²¹ This refers to Roger Garrison's "Ivan and the Brickyard," available online at <http://www.auburn.edu/~garriro/ivan.ppt>.

²² Instead of the hyperinflation (and subsequent barter) threatened by government monetary policy in the other direction, here the threat is of direct barter.

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an unsustainable, artificial bust that either (1) ends in a crack-up bust or (2) ends in a crisis that gives way to a boom and recovery.

The asymmetry, both with respect to employment and “the way individuals generally perceive their economic fortunes,” between phases of the ABC is caused by an absolute expansion in the boom and an absolute contraction in the bust. That is, not only is there a relative shift from the production of NIRSG to IRSG in the boom, but the total of resources, including, importantly, labor, and thus total production of goods increases. The malinvestment that constitutes forced saving includes not only the unwarranted production of some capital goods (those that are IRSG),²³ but also of those durable consumers’ goods that are IRSG, and in recent times, given the ubiquitous availability of credit, even some nondurable consumers’ goods and services that are IRSG.²⁴ Forced saving implies a misallocative reduction in consumption. The production of durable goods, consumers’ as well as capital, is a form of saving. To the extent that there is an unwarranted shift in resources from the production of nondurable goods of either type, to durable goods of either type, forced saving occurs. Moreover, as there is an improper uneconomic increase in the quantity of labor used in production, leisure, a form of consumption, decreases, and this unwarranted reduction in consumption is an additional source/form of forced saving.

Furthermore, not only is there a relative shift from the production of IRSG to NIRSG in the bust, but the totality of resources, including importantly, labor, falls. Thus the total production of goods decreases.

For Austrians, a necessary element of the business cycle is the “cluster of error.”²⁵ Without such a cluster, there can be no ABC. Yet, money creation on the part of the Federal Reserve certainly qualifies as a cause of such a cluster. Such machinations cause a cluster of errors because they send to entrepreneurs market signals that do not accurately reflect the underlying time preferences of society.

²³ Consider the case of paper napkins. When they appear on a table in a restaurant, they are of course a capital good; in the home, a consumer good. However, no matter where they make their presence, they are clearly not IRSGs.

²⁴ There can be no facile correlation, let alone equation, of durability and higher or lower orders of capital goods, on the one hand, and interest rate sensitivity, on the other. Their relationship is a complex one in that durability can appear at any stage. For example, a first-order capital good may be an IRSG if it is very durable, and not if not, and the same exact situation applies to higher-order capital goods. Paper clips or cotton balls, for instance, can take part in production at any stage of the structure, and are NIRSG wherever they appear. It is typically the very opposite with steel.

²⁵ Rothbard, *Economic Depressions*, p. 11.

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Can a back-and-forth alternation between high and low time preferences engender a similar cluster of error? There is no reason to believe that this is the case. After all, business can more or less accurately predict, and thus act in accordance with, other “fickle” consumer preferences: rising and falling hemlines in women’s dresses, different and continually changing styles in women’s shoes. Entrepreneurs, too, have dealt successfully with novelty items such as the pet rock and the hula hoop.²⁶ Music has come to us in many variations: 78 r.p.m., 45 r.p.m. records, tapes, cassettes, disks, etc. True, there is no back-and-forth movement in any of these examples (except for the length of skirt hemlines), but the essence of the issue is not endless repeatability. Rather, it is the question of whether accurate market signals can be generated or not. If they can, there is no cluster of error. If not, there is. Hummel has not offered any reasons to suppose that market prices cannot function in the face of change, while it is no less than an unchallenged staple of Austrian economics—even by Hummel—both that credit expansion falsifies market price communication and that the weeding-out process of the marketplace²⁷ tends to ensure that the challenges of change are not beyond the ability of entrepreneurs.

Finally, let it be noted that the asymmetry is a consequence of the natural imperfections of the real world. If, for every change in the “data,” whether individual preferences, technology, or stock of resources, every individual’s understanding of the economic significance of such events were correct, then they would act so as to adjust all prices. Therefore, all relative prices would fully and accurately reflect the new data. If it were costless to shift resources from one use to another on the basis of the revised structure of production, then there would be continuous correct resource allocations, and there would be symmetry between expansions and contractions. The asymmetry comes about because the world is imperfect and therefore there are such things as contracts, etc., that cause asymmetry in adjustments to changed data. For example, wage contracts are likely to be more flexible in an upward direction than in a downward one. At the extreme, zero is a floor beneath which wages cannot fall, but there is no such limitation in the opposite direction. Wages can conceivably rise without end, but not fall below zero.²⁸

²⁶ Those that have not are entrepreneurs no longer.

²⁷ Henry Hazlitt, *Economics in One Lesson* (New York: Arlington House Publishers, 1979).

²⁸ Strictly speaking, we must abstract from the possibility of negative wages in making this claim.

3. Definitions of the Money Stock

Hummel starts out this section in a reasonable enough manner:

What is needed is a defining criterion for what constitutes a money substitute, so that this wide spectrum of financial instruments can be clearly divided between those that are money substitutes and those that are credit instruments.

The reason a clear dividing line is necessary relates to the various means by which a genuine change in time preferences on the part of consumers can manifest itself.²⁹

Who, after all, can oppose clarity of definitions, *ceteris paribus*? But even here there are problems, specifically, those of continua. While it may be *desirable*, and not only from an aesthetic perspective, for the world to be divisible into watertight compartments, such is not always the case. For example, though the light spectrum can be broken up into red, orange, yellow, green, blue, indigo and violet, they all shade into one another. Just because they do, however, does not mean no useful differences can be drawn. So it is with money substitutes and credit instruments.

A more important criticism of Hummel's call for this distinction is that it is not necessary to ABCT. The key to ABCT is the distinction not between money substitutes and credit instruments but between the allocation of resources in the production and consumption processes. This may also be referred to as the structure of production and consumption as they would be in the presence versus absence of government intervention in the credit markets. Government intervention in credit markets causes, *ceteris paribus*, interest rates to differ from what they otherwise would be.³⁰ The usual case is intervention which causes them to be *lower* than otherwise. But in either case, the artificially distorted interest rates affect the demand for IRSG relative to NIRSG. It is the reallocation of resources necessitated by this intervention that constitutes the artificial boom or artificial bust. Resources are not used optimally. Moreover, because such "false" interest rates affect the production of both durable capital and consumers' goods, they affect the structure of

²⁹ Hummel, "Problems with Austrian Business Cycle Theory," p. 45.

³⁰ Examples include: governmental guarantees of repayment of principal which reduce a lender's risk and therefore the interest rate on a loan; differential treatment of interest paid (allowing or not allowing interest paid to be deducted from income for the purpose of calculating taxable income) which, *ceteris paribus*, results in higher (lower) interest rates, respectively; and, credit market expansions that affect expectations of inflation and, thus, interest rates.

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production and consumption into the future, such that even after the distortions of the initial phase of the cycle are eliminated they still alter the future course of the economy. This is because the liquidation of the distortions is not, in the vast majority of cases, physical in nature, but rather takes the form of temporary “idleness” followed by revaluation. The physical goods that constitute the distortions are integrated into the structure of production on the basis of their new “correct”³¹ valuations. The whole issue of time preference is thus something of a red herring. If interest rates change because of the voluntary actions of individuals, then the reallocations of resources, that is, the alterations in the structure of production, induced are thereby warranted. If, however, interest rates change because of government intervention, resources are misallocated as a consequence. Another red herring, of course, is Hummel’s emphasis on money substitutes vis-à-vis credit instruments; as we can see, they have played no role in our analysis of the ABC.

In Hummel’s view:

The dividing line between money substitutes and credit instruments is the margin between cash balances and investment. If this margin is not well defined, then it becomes theoretically impossible to distinguish between changes in the stock of money and changes in time preferences brought about by non-neutral shifts in the demand for money relative to investment spending.³²

Certainly, the dividing line between money substitutes and credit instruments is clear. “A medium of exchange which is commonly used as such is called money.”³³ A money substitute is a claim to a specific amount of money that can instantly be exchanged for money without expense.³⁴ What Mises omits is that when a money substitute, and *a fortiori*, money itself, serves as a medium of exchange, that is, when it is given by a buyer and accepted by a

³¹ It cannot be denied that these new valuations will only be “correct” in equilibrium, and that the economy never reaches this nirvana-like state. But at least these new evaluations are not systematically altered by governmental monetary mismanagement, and, except for random mistakes, are closer, if not much closer, to market clearing valuations.

³² Hummel, “Problems with Austrian Business Cycle Theory,” pp. 45-46.

³³ Mises, *Human Action*, p. 398.

³⁴ *Ibid.*, pp. 432-33: “Claims to a definite amount of money, payable and redeemable on demand, against a debtor about whose solvency and willingness to pay there does not prevail the slightest doubt, render to the individual all the services money can render.”

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seller in exchange for some good, the transaction is complete—the buyer is under no further obligation with respect to that transaction. For example, when an exchange is effectuated by means of a check drawn on a demand or “checkable” deposit account, once the check clears, the buyer is under no further obligation to the seller. However, had a credit instrument been used instead, the buyer would be under an obligation to redeem, at some time in the future, the credit instrument by payment of money or money substitutes. The margin between money substitutes and credit instruments is, then, well defined.

Moreover, certainly in the modern world, the “dividing line between money substitutes and credit instruments is” *not* “the margin between cash balances and investment,” as the amount of consumers’ credit is immense.

Hummel then enters into even more treacherous waters. He states:

An individual with a money income continuously faces three possible ways of allocating that income. He can spend it on consumers’ goods, he can spend it on investment goods, or he can increase (or decrease) his cash balances.... But non-neutral changes in the demand for money can also affect the structure of production. A neutral change in the demand for money would be, say a fall in cash balances that increased equally both consumption and investment spending, thus maintaining the same aggregate consumption-investment ratio.³⁵ If ... cash balances fall primarily by adding to investment spending, this is, in effect, a fall in time preferences. Similarly, if cash balances fall primarily by adding to consumption spending, this represents a rise in time preferences.³⁶

There is a fundamental confusion in the foregoing quotation. First, Hummel’s trichotomy is false. There are more choices than he lists, unless he is lumping all expenditures that are not made for the purchase of *currently* produced consumers’ goods³⁷ into the category of expenditures on investment goods.³⁸

³⁵ Obviously, in this context “equally” should be taken to mean that the ratio of additional expenditures on consumers’ goods to those on investment goods should be equal to the ratio that existed prior to the new expenditures. (This footnote added to the excerpt by us.)

³⁶ Hummel, “Problems with Austrian Business Cycle Theory,” pp. 45-46.

³⁷ We assume that Hummel is not including “used” consumers’ goods in his category “consumers’ goods,” but rather that it refers to “currently” produced consumers’ goods. However, even if he does include such expenditures in his category, our point

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In addition to the purchases of such goods, an individual can spend his money on used consumers' goods, used capital goods, and more important, on non-money financial assets, including foreign monies that do not function as money in his domestic economy.

Moreover, there is a stock-flow confusion involved here. At the aggregate level cash balances do not fall when purchases, whether of consumers' or capital goods, are made by A from B; rather, A's cash balance falls and B's rises by the exact amount of the decline in A's balance. Cash balances can rise or fall for any one individual, but not for all of those who comprise an economy, since the money must be owned by someone at all times.³⁹

Furthermore, to say that an increase in expenditures on investment goods or consumers' goods represents a decrease or increase, respectively, in time preference is to enter the realm of thymology,⁴⁰ not praxeology. In praxeology there is only preferring A to B. There are no *rates* of preference, time or other. So just as there is no praxeological meaning to "I prefer the red shirt twice as much as the blue one," there is no meaning to "My rate of time preference is X," whatever X may be, for example, 10% or even 10% per annum.⁴¹

requires only a slight modification, to wit, the deletion as alternatives of those categories he has lumped together.

³⁸ We assume that his category "investment goods" refers to newly produced capital goods and does not include financial assets.

³⁹ Suppose Mr. Monte Burns uses a \$100 bill to light his cigar. Then, strictly speaking, the statement in the text is incorrect, so we implicitly extract from such money destruction. However, in this case, there would be a tendency for the value of all the money to rise, and this would to some degree compensate for that loss.

⁴⁰ Following Mises, *Human Action*, "thymology" herein means the knowledge of human valuations and volitions.

⁴¹ But if people increase the ratio of expenditure on investment goods vis-à-vis consumers' goods, e.g., the triangle gets flatter, is that not equivalent to a lowering of time preference, even putting aside by how much it gets lowered? Yes, it is equivalent from the perspective of thymology; however, from a *praxeological* point of view, all we observe at any point in time is the choice of A over B (as seen by the actor—all a third party sees, if he sees anything, is the choice of A). The ascription of the choice presumes a motive, and yes we do so through *verstehen*, but though indeed useful, it is not praxeological. That is, today you choose the combination of consumption and saving/investment (C_0, I_0) and tomorrow you choose (C_1, I_1); who, other than the actor may say that the *value* of $C_0 <$ the *value* of C_1 and the *value* of $I_1 >$ the *value* of I_0 (or vice versa)?

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Time preference is a categorical requisite of human action. No mode of action can be thought of in which satisfaction within a nearer period of the future is not—other things being equal—preferred to that in a later period. The very act of gratifying a desire implies that gratification at the present instant is preferred to that at a later instant. He who consumes a nonperishable good instead of postponing consumption for an indefinite later moment thereby reveals a higher valuation of present satisfaction as compared with later satisfaction. If he were not to prefer satisfaction in a nearer period of the future to that in a remoter period, he would never consume and so satisfy wants. He would always accumulate, he would never consume and enjoy. He would not consume today, but he would not consume tomorrow either, as the morrow would confront him with the same alternative.⁴²

What is the relevance of this statement? The point is this: Mises does not even so much as refer to the “*rate* of time preference” in contradistinction to plain old ordinary “time preference,” as mentioned above. In fact, that term never appears in any of his writings, to the best of our knowledge.⁴³

Time preference is just that, a preference, as Mises, says, for a “satisfaction within a nearer period of the future” rather, *ceteris paribus*, than in a later period. But there is no way to generate a *rate* of time preference from this.⁴⁴ Certainly, in this sense, a rate is a ratio, for example, 10% or 10% per annum. However, there is no way to take a ratio of satisfactions, unless perhaps we have an objective theory of value and measure satisfactions in, say, utils.⁴⁵

⁴² Mises, *Human Action*, p. 484.

⁴³ A perusal of the electronic version of Mises, *Human Action*, fails to reveal this phrase in the entire book. Naturally, we can only make this claim with somewhat less confidence regarding all of his other publications. However, in Ludwig von Mises, *Theory and History* (New Haven, CT: Yale University Press, 1957), pp. 141-42, he does employ the phrase “amount of time preference,” which tends to vitiate our previous claim in his behalf.

⁴⁴ We acknowledge that Hummel is far closer to the Austrian mainstream (if we can be permitted to use such an expression) on this matter than are the present authors.

⁴⁵ It is interesting to note that Mises, himself, falls into this trap when he states: “Originary interest is the ratio of value assigned to want satisfaction in the immediate future and the value assigned to want satisfaction in remote periods of the future”; see

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Another difficulty arises with Hummel's tripartite division of goods⁴⁶ into consumption, investment, and money. In contrast, regarding goods we hold a binary perspective. In our view, there are only two, not three, types of goods: consumption and investment. For us, money is an investment good, and does not belong in any third category, apart from these two. This is neither the time nor the place for a full rehearsal of the arguments in favor of a binary, and opposed to a tertiary, distinction.⁴⁷ Suffice it to say at this point that human action is a binary phenomenon: it admits of two choices, not three: consumption (including leisure) or production. But as every act of production is either an act of consumption or saving/investment, all one can do is either consume or save/invest, buy or sell, prefer or set aside. In the present case, either money gives intrinsic satisfaction, or it is an intermediary, a means toward an end. Since it is the latter that commonly motivates people with regard to money, it is a capital good, not an item of consumption.⁴⁸ That being the case, the difficulty raised by Hummel becomes obviated.

That said, Hummel's statement about the "theoretical impossibil[ity] [of] distinguish[ing] between changes in the stock of money and changes in time preferences brought about by non-neutral shifts in the demand for money relative to investment spending"⁴⁹ is confusing. What is brought about by

Mises, *Human Action*, p. 526. Elsewhere, however, he contradicts this erroneous position. Of course, for him value is subjective: "There is no standard of greater or lesser satisfaction other than individual judgments of value, different for various people and for the same people at various times. What makes a man feel uneasy and less uneasy is established by him from the standard of his own will and judgment, from his personal and subjective valuation"; see *ibid.*, p. 14. And, "There are in the sphere of values and valuations no arithmetical operations; there is no such thing as a calculation of values"; see *ibid.*, p. 122.

⁴⁶ We assume he is here ignoring financial assets.

⁴⁷ We have done this elsewhere; see William Barnett II, Walter Block, and Joseph Salerno, "Relationship between Wealth or Income and Time Preference Is Empirical, Not Apodictic," *Review of Austrian Economics* (forthcoming).

⁴⁸ The best counterexample known to the authors is the case of Scrooge McDuck, of comic book fame. He would enjoy taking baths in money: throwing it up over his head, and letting it cascade down upon him. Thus, for McDuck and all others of his ilk, money is a consumer good. But people of this sort also use money in the normal way, and when they do so, money becomes a capital good. There is nothing intrinsic *within* money that makes it a capital or consumer good; it all depends upon the purposes of the economic actor. But the same can be said for seed corn, or water, etc. There are perverts out there who, presumably, can use these items, too, in weird and exotic ways.

⁴⁹ Hummel, "Problems with Austrian Business Cycle Theory," pp. 45-46.

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non-neutral shifts in the demand for money relative to investment spending is not changes in time; therefore, it must be changes in the stock of money that are brought about by such non-neutral shifts. But given stability in the monetary base on the part of the authorities, the stock of money is determined by the public's desired ratio of currency to demand deposits, not by non-neutral shifts in the demand for money. Unless the central bank/government changes the monetary base and/or the public changes its desired currency to deposit ratio, the money stock will not change regardless of any change in the demand for money, neutral or not. It is changes in preferences that alter these shifts in the demand for money, not the other way around.

Hummel's hypothetical about an economy in which the banks issue time deposits only, and that has no central bank, is also problematical.⁵⁰ He then assumes that "... the quantity of time deposits increases over a period until a banking panic wipes them all out. Such a sequence of events, especially in the absence of a central bank, may not be very likely, but it is at least theoretically conceivable."⁵¹ He has, of course, implicitly assumed that the banks are operating on a fractional or perhaps zero reserve basis vis-à-vis their time deposits. Let us be clear that time deposits are not money. If, by explicitly positing that banks issue only time deposits, he has implicitly assumed that such deposits are money, then we have to call into question his concept of money, else he really is dealing with an imaginary economy the relevance of which to ABCT is nil. Given, then, that time deposits are not money, one wonders how the quantity of time deposits increased. It is one thing for someone with money to put it in a time deposit; it is quite another for someone to borrow funds to place in a time deposit, unless the banks are paying their depositors a higher rate of interest than that which they are charging their borrowers. But if people are not borrowing for the purpose of acquiring time deposits, it is difficult to see how "the quantity of time deposits increases," in contrast to a system in which there are demand deposits, and in which people borrow for the purpose of acquiring such deposits, which serve as media of exchange.

Although Hummel maintains that his scenario "is at least theoretically conceivable," let us see what is necessary for such a conception.

⁵⁰ Obviously, there must be money in this economy, else what is it that the banks are receiving in return for issuing time deposits? And, as there are no banknotes or demand deposits, this must be one of the following: (1) commodity money, (2) commodity money with 100% backed government paper, (3) commodity money with government paper that is not 100% backed, or (4) government paper that has no backing.

⁵¹ Hummel, "Problems with Austrian Business Cycle Theory," p. 46.

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First, because the deposits are time deposits, only those that mature today can be the object of a panic.⁵² Now unless all such deposits mature “today,” they cannot all be wiped out in a panic at present. Moreover, to the extent that the banks have some actual reserves, only the excess of maturing deposits over the amount of reserves would be “wiped out,” and in such a case they would not really be wiped out, as the depositors would still be in the pool with others whose time deposits had not matured that day. Furthermore, the bank would necessarily have some assets, besides its investments, that it could liquidate to pay off depositors as their deposits matured. Additionally, they might be able to raise cash by selling bonds, if their investments were viewed as sound. Deposits would be wiped out only to the extent that maturing deposits exceeded banks’ reserves plus cash flow from maturing investments plus cash that could be raised from sales of bonds or other longer term financial assets plus cash that could be raised by sale of the banks’ other assets.

Only if there are not enough reserves plus maturing sound loans to cover today’s maturing deposits will some depositors be left holding the bag. In general, for his scenario to occur, banks would have had to mismatch their maturity dates, that is, they had to have borrowed short and lent long. Moreover, a sufficient number of banks would have had to have done this for there to be a simultaneous run on banks in general, not merely on the relatively few mismanaged banks. Of course, in a free market system, such banks would tend to be eliminated via differential clearings almost as quickly as they had come into existence, and, therefore, there would be few if any around at any given time, and almost certainly not enough for a panic. Thus, Hummel has implicitly assumed that banks, as a rule, are mismanaged, in spite of the competitive pressures of the market that eliminate the inefficient.

4. Net Investment

Hummel sets out his challenge with regard to net investment as follows:

Lengthening the structure of production entails positive net investment. Maintaining the structure of production intact at its current length entails zero net investment. Shortening the structure of production entails disinvestments. During depressions, therefore, net investment should be negative. But in U.S. history, the only depression in which measured net investment was actually negative

⁵² Any deposits not redeemed when they mature must be deposited for a set period of time, else they become demand deposits, of which Hummel assumes there are none. Moreover, if he assumes the minimum maturity period of time deposits to be very short, he has time deposits *de jure*, but demand deposits *de facto*. But one important characteristic of Austrian theory is that it attempts to deal with substance, not form.

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was the Great Depression. In all the others for which data are available, net investment fell but still remained positive. Does this mean that Austrian theory is irrelevant to all but one major depression in U.S. history?⁵³

There are several responses that can be made to this challenge. First, net investment may shorten the structure of production.⁵⁴ Consider a situation in which there is no net investment, say, an Evenly Rotating Economy (ERE). The purpose of net investment would be to alter the situation in such fashion that after it is incorporated into the economy and there is once again no net investment, either (1) the *time* structure, that is, the period, of production is unchanged and yet there is greater output per unit of inputs than previously, so that from producing and waiting for the same amount of time we obtain more output; or (2) the time structure of production is lengthened and yet there is sufficiently greater output per unit of inputs than previously, so that from producing and waiting for a longer period of time, we get sufficiently more output to make the additional production and waiting time worthwhile; or (3) the time structure of production is *shortened* and yet there is (a) at least as much output per unit of inputs than previously, so that from producing and waiting for the shorter period of time we get at least as much output as previously or (b) less output than before, but the loss in satisfaction resulting from the reduction in output is less than the gain in satisfaction from the shortened period of production/waiting. Indeed, what would seem to be most desirable would be a net investment that once integrated into the economy and returned to a no net investment situation would *shorten* the period of production to virtually zero. Instantaneous production, after all, is our goal. Producers in such a situation could provide desired goods to consumers virtually the instant they desired them.

⁵³ Hummel, "Problems with Austrian Business Cycle Theory," pp. 46-47.

⁵⁴ One can perform a thought experiment that is not farfetched, involving Robinson Crusoe in which positive net investment results in a shortened structure of production once net investment has returned to zero, and yet output per period is greater than before. Certainly, if it is possible for Crusoe to shorten his period of production, that is, increase his leisure, and yet be able to produce more consumers' goods per period, societies should be able to do so also. Moreover, one can use the same thought experiment to conclude that negative net investment can result in a lengthened structure of production. The biggest problem is defining what one means by the period, or length of the structure, of production. For this radical critique of the usual Austrian assumptions about the triangle, see Barnett, Block, and Salerno, "Relationship between Wealth or Income and Time Preference Is Empirical, not Apodictic."

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Second, if ABCT is relevant only to one depression in U.S. history, as Hummel wonders, or, even to none at all, so be it. Praxeological reasoning cannot be shown to be erroneous just because it is not widely applicable, and truth, not applicability, is surely the criterion on the basis of which ABCT should be judged.

Third, even if we revise Hummel to eliminate his erroneous assertions regarding the relationships among changes in the time structure of production, stages of the cycle, and net investment, to say only that there should be positive net investment during the boom and negative net investment during the bust, his argument is still problematical. It is quite possible that during the boom, measured net investment is positive while real net investment is negative. This is because investments are measured for the purpose of the National Income and Product Accounts (NIPA)⁵⁵ at current market value, whereas the very idea of malinvestment carries with it the idea that, at the time of their production, the market value of the capital goods whose production constitutes malinvestment is necessarily overstated. Were it not, the capital goods would not be malinvestment. Of course, not all investment during the boom is malinvestment. In fact, there is no way to know at the time, else, again, there would be no malinvestment. It is possible, then, that if measured investment were reduced by the amount of malinvestment in the boom, the resulting number might be negative, that is, there might be actual *disinvestment* during the boom. Similarly, and for similar reasons, it is possible that in the bust, measured net investment is negative, while real net investment is positive.

Furthermore, it is only possible to measure correctly “net investment,” or, indeed, any other kind of investment, not to mention any other macroeconomic variable, at equilibrium. For it is only at equilibrium that prices reflect economic phenomena accurately. (And even then, one must assume that the expectations upon which the market clearing actions are based are themselves correct.) However, we never in the real world attain the ERE, without which proper assessment cannot be made of net investment. Thus, Hummel’s evidential claims cannot support his position. Moreover, the use of government data on net investment may not be relied upon to make his point, as such data are at best bureaucratic estimates.=

Fourth, government statistics on investment seem to be a weak reed on which to label praxeology incorrect. If it can be shown that there were other depressions, and even recessions, which were accompanied by a fall in net investment, this would show the wider applicability of ABCT. But suppose it cannot be shown that depressions and recessions other than that of

⁵⁵ Available online at <http://www.bea.doc.gov/bea/an/nipaguid.pdf>.

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1933 were accompanied by disinvestment. If this were true, then we would have to concede that ABCT is of virtually no consequence, save as a theoretical curiosity, because it has no other relevance for the real world, that is, its applicability would be so severely limited as to make it practically trivial, if theoretically valid. Even under these heroic assumptions, by no means demonstrated by Hummel, there is nothing wrong with practically trivial, but theoretically valid economic analysis. It is, first, valuable for its own sake. Second, while impractical at present, it might become rendered less so, or not at all, in the future.

Hummel ends this section on the following note: “A depression could be forestalled if the increased real saving that otherwise would have further lengthened the structure of production is sufficient to maintain the malinvestments induced by the credit expansion.”⁵⁶ There is little doubt that, after a depression is created by governmental credit expansion which extends the structure of production further than that amount justified by changing time preferences, *if* time preferences are then subsequently lowered, then the worse effects of the depression can be avoided. But there will still be some resource misallocation compared to the scenario where the time preferences were lowered (or entrepreneurs predicted that they would be, and acted accordingly), and this led to entrepreneurial lengthening of the structure of production. The differences stem from timing. In Hummel’s scenario, there is discoordination, until (and unless!) time preferences propitiously change in the proper direction and to the precise extent called for in order to justify the rash acts of the central bank. Improper investment initially takes place, which is only later vindicated by later events, that is, what was a mistaken allocation of resources *ex ante* becomes a correct allocation *ex post* because sometime after the misallocation began, peoples’ preferences changed to favor that allocation—a fortuitous happenstance, indeed. In contrast, in the case where there is no government intervention, and consumers lower their time preference rates, followed by (or better yet, anticipated by) proper entrepreneurial behavior, there is no such discoordination.⁵⁷

5. Deflation

In this section Hummel announces he will discuss “all the additional events other than credit expansion that will, according to a consistent

⁵⁶ Hummel, “Problems with Austrian Business Cycle Theory,” p. 48.

⁵⁷ An analogy may shed light on this distinction. Hummel’s scenario would be akin to A shooting B to death, attempting to murder him, and its later turning out that B was in the act of attempting a murder of his own against an innocent person, C, and thus A’s act was really justified, in that it prevented this other murder. Or, it turns out that B was already dead, shot by someone else, D, right before A did this, and thus A was not guilty of murder, but merely of shooting a dead body.

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application of Austrian theory, cause a depression. All of them can cause depressions with no previous boom; a few seem to facilitate a trailing boom.”⁵⁸ In contrast, it is our contention that the *only* possible cause of the ABC is governmental central bank (e.g., Federal Reserve) mismanagement: credit expansion.

a. Capital consumption

States Hummel: “As time preferences rise, the structure of production will shorten, and a depression will continue until time preferences stabilize. Capital consumption will always involve depression.”⁵⁹ But this is perilously close to equating depression and disequilibrium. One might as well claim that every time a person goes on a diet, reducing his consumption of chocolate and increasing his purchase of carrots, there will be a depression in the chocolate industry, and a boom in carrots. In fact, if there is no government intervention, an increase in time preferences will lead to capital consumption; however, that is not synonymous with depression. Instead, resources would be shifted from the production and maintenance of capital goods to the production of consumers’ goods. There would, of course, be transition phenomena similar to those that occur any time there is any sort of change in preferences, or technology for that matter. But this does not equate to a depression. Capital consumption no more inevitably leads to a depression than capital formation always leads to a false boom. As warranted capital formation results in a structure of production more in keeping with individuals’ preferences, so also does warranted capital consumption also result in a more harmonious structure of production. And as unwarranted capital formation impairs the structure of production, so also does unwarranted consumption. In the former case, a false boom ends with a crisis that turns into a depression during which prices adjust and resources are reallocated in accord with people’s preferences. In the latter case, a depression is followed by an expansion in which prices adjust and resources are reallocated in accord with people’s preferences.

b. Deflation

Hummel erroneously equates deflation and credit contraction when he refers to “Deflation or, more precisely, credit contraction ... ,”⁶⁰ but the two are very different. We have had price deflation, without any government intervention whatsoever, in goods such as television sets, cars, air travel, and computers. When these products were first introduced to the market, they were playthings for the rich, luxury items, or were restricted only to large

⁵⁸ Hummel, “Problems with Austrian Business Cycle Theory,” p. 48.

⁵⁹ Ibid.

⁶⁰ Ibid.

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commercial use. But with innovation, large-scale production, assembly-line technologies, and a relatively hands-off policy by the state, prices fell and the goods became accessible to the masses. This all occurred, Hummel to the contrary notwithstanding, without any discernible depression.

As to credit contraction, Hummel states that

it will drive the loan rate of interest above the natural rate. If credit contraction occurs as a secondary feature of a depression already caused by previous credit expansion, it will bring about more shortening of the structure of production than is necessary and aggravate the depression.⁶¹

That one consequence of the depression phase of an ABC may well be a secondary deflation comes as no surprise, having been noted as far back as 1939 by Hayek.⁶² That once the excesses of the boom have been appropriately incorporated into the structure of production through relevant price adjustments and restructuring, the economy returns to its natural growth path is also standard Austrian fare.

Hummel continues: “If credit contraction occurs with no immediately preceding credit expansion, it will cause a depression with no prior boom.”⁶³ However, the consequences of a credit contraction that begins without a prior credit expansion depend on the nature of the monetary system and the cause of the credit contraction.

In a modern monetary economy, interest rates are set in credit markets.⁶⁴ Mainstream Austrian theory posits time preference as the sole

⁶¹ Ibid., p. 48.

⁶² Hayek, “The Present State and Immediate Prospects of the Study of Industrial Fluctuations,” p. 176.

⁶³ Hummel, “Problems with Austrian Business Cycle Theory,” p. 48.

⁶⁴ This is not standard Austrian fare in which “the *interest rate is equal to the rate of price spread in the various stages*”; see Rothbard, *Man, Economy, and State*, p. 317. However, in a world of scarcity, instantaneous production, heterogeneous time preferences, and money, where there would be no stages and therefore no price spreads between stages, there would still be interest and interest rates. Let us now invert matters: suppose a situation where there are indeed stages of production but no credit market. Would there be an interest rate? Our answer is that there would not be. But what of the price differentials between otherwise homogeneous goods at different stages? These, to be sure, would still exist, but they would be “merely” price differentials, not interest rates. Yes, in an ERE world of both credit markets and production stages, there must be an equilibration between the two. But this does not

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reason for the existence of interest, though it must admit that other factors affect the rate of interest. If the credit contraction occurs in a system with 100% reserve backing for banknotes and demand deposits and is strictly the result of voluntary action, then it will *not* “drive the loan rate of interest above the natural rate,” nor, for that matter, will it drive the loan rate below the natural rate.⁶⁵ Whether the natural rate will increase or decrease depends on the factors that caused the credit contraction in the first place. In fact, a credit contraction can increase or decrease the natural rate of interest, with concomitant increase or decrease, respectively, in the loan or market rate, which will adjust to the natural rate with a lag, the length of which will depend on a variety of factors. If the credit contraction occurs because of a decline in the demand for credit not offset by an equal or greater increase in its supply, market rates will *decline* in keeping with the *lower* natural rate. Alternatively, if the contraction occurs because of a decrease in the supply of credit that is not offset by an equal or greater increase in demand, then market rates will rise in keeping with the higher natural rate. However, in both of these cases, the volume of credit would contract.

In either case, the structure of production will be shortened, but this will be in accord with changed time preferences. Resources will be shifted from the production of higher-order goods to lower-order ones, including especially, consumers’ goods. There will be no depression. Of course, the reduction in production of capital goods will shift the economy to a lower growth path, but that is a downward change in the trend, not a depression.

However, if the credit contraction is the result of governmental monetary policy, that is a different matter entirely. Then, the contraction would drive the market rate above the natural rate. Hummel is correct in maintaining that a depression would ensue, though incorrect when he contends that when consumers’ preferences are reasserted, a “trailing boom” would follow; actually, it would not be a “boom,” but rather an expansion that would return the economy to its natural growth path, as modified by the “injection” and distribution effects of the governmental monetary policy and its effects on the structure of production.

c. Consumption spending

Hummel makes several mistakes in this section. First, he states: “If new money, rather than entering the loan market, is spent exclusively on consumption”⁶⁶ But this is a false dichotomy. He conflates two issues:

logically imply that the two are indistinguishable. They are; one is an interest rate, the other is not.

⁶⁵ Hummel, “Problems with Austrian Business Cycle Theory,” p. 48. This is true whether it is a system of commodity or fiat money.

⁶⁶ Ibid.

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the way new money comes into existence, and what the new money is used to purchase. New money is either lent or spent into existence. ABCT is typically concerned with the former case, in which the supply of credit is increased, depressing interest rates and causing a misallocation of resources in the direction of the higher orders that results in a distorted structure of production. It does not at all address the consequences of new money being spent into existence, that is, a “pure” inflation, which is one of the bases of Hummel’s attack in this section. Moreover, regardless of the way new money comes into existence, it may be spent on consumers’ goods or on capital goods, or, for that matter, on financial assets on foreign currencies, in turn used to purchase whatever. There is no necessary connection between a pure inflation and purchases of consumers’ goods, as Hummel implies.

Second, he takes the position that “war time monetary expansions have been neutral with respect to the structure of production” since they “have not been accompanied by depressions”⁶⁷ and they would have been so accompanied, had these expansions not been neutral in this regard.

The problem, here, is in thinking that government can invest, for example, that government expenditures can elongate the structure of production. But, as Murray Rothbard has shown, this is an impossibility.⁶⁸ The state may, indeed, spend money on things (airplane factories, steel, rubber) such that if private individuals did so we would have no compunction about labeling them as investment; nevertheless, when *government* does so, it *cannot* be considered investment and *must* be considered consumption. So, contrary to Hummel, the government must of necessity be non-neutral, at least in his terminology. It must *always* create a depression, if we credit Hummel’s economic analysis, and combine it with the Rothbardian insight.

Perhaps more important is that wartime governmental policies include fiscal and regulatory, as well as monetary, policies and, it is virtually impossible in such historical contexts to separate the effects of these different policies, especially since some may reinforce others, while they interfere with yet others. As Austrians, unlike Friedmanites, are wont to say, an economic theory is either correct or it is not, but in neither case can it not be tested empirically.⁶⁹

⁶⁷ Ibid.

⁶⁸ Murray N. Rothbard, *Power and Market, Government and the Economy* (Menlo Park, CA: Institute for Humane Studies, 1970), p. 173.

⁶⁹ Hans-Hermann Hoppe, *Praxeology and Economic Science* (Auburn, AL: Von Mises Institute, 1988); Hans-Hermann Hoppe, “On Praxeology and the Praxeological Foundation of Epistemology and Ethics,” in *The Meaning of Ludwig von Mises*, ed. J. Herbener (Boston: Dordrecht, 1992); Mises, *Theory and History*.

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The third difficulty is that Hummel maintains: “If one assumes an underlying progressing economy, then some of the depression effects will be offset by falling time preferences.”⁷⁰ The implication here seems to be that there is a negative correlation between wealth and time preference rates: the greater (lesser) is the former, the lower (higher) will be the latter. Nor is this, merely, an empirical observation on Hummel’s part. His statement is much too definitive to be interpreted in any such manner. Rather, he sees some necessary connection between the two.

This is precisely the error committed by Hoppe, and refuted by Barnett, Block, and Salerno.⁷¹ The gist of the latter argument is that there is no praxeological requirement that the income effect of a gain in income or wealth be associated with a fall in time preference rates. Although this may be correct enough as an empirical generalization, there is no logical contradiction implied by supposing that a man gains wealth, and, yet, chooses a higher, not a lower, time preference rate.

6. Constant Rate of Credit Expansion

There are three separate claims in this section that must be dealt with. We do so in order of presentation.

(1) According to Hummel:

[N]owhere is the outcome of a credit expansion at a steady rate clearly specified. Presumably, since such a policy cannot generate a continuous boom, it must either result in (a) a continuous alternation of booms and depressions or (b) a boom followed by a continuous depression. Much Austrian writing is ambiguous between these two alternatives.⁷²

There is good and sufficient reason for this lacuna. It is unlikely in the extreme, and Austrians have had their hands more than full addressing actual events, or, at least likely ones, and so much so that they have not devoted precious time resources to all but impossible ones.

If we are strictly and accurately to interpret this statement, “a credit expansion at a steady rate” means just that, through good times and bad times,

⁷⁰ Hummel, “Problems with Austrian Business Cycle Theory,” p. 48.

⁷¹ See Hans-Hermann Hoppe, *Democracy—The God that Failed* (NJ: Transaction Publishers, 2001); and Barnett, Block, and Salerno, “Relationship between Wealth or Income and Time Preference Is Empirical, not Apodictic.”

⁷² Hummel, “Problems with Austrian Business Cycle Theory,” p. 49.

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through thick and thin, an undeviating sticking to one's guns no matter what the result. In other words, the government announces a credit expansion, of, say, 5% per annum, at a daily rate, and does not deviate from this policy by even one iota, ever. Eventually, this will become fully anticipated, and incorporated into expectations. It does not matter whether this program features a public announcement or not. That will only reduce the time it takes for people to take this situation into account in their planning.⁷³

According to what Hummel might classify as "classical ABCT," such a policy would, in the first instance, elongate the structure of production, enticing capitalist entrepreneurs to devote more resources to investment in higher-order capital goods, and less to lower-order investments and consumers' goods, than would otherwise have been the case. After all, the credit expansion lowers the market rate of interest below the natural rate, fooling, enticing, or inducing businessmen into thinking that profits will be increased by such reallocations of resources.

Richard Wagner criticizes ABCT on the ground that all entrepreneurs would eventually become expert in these insights.⁷⁴ That being the case, they would refuse to act so as to elongate the structure of production in response to a credit increase on the ground that it would not be sustainable. But this is erroneous, for several reasons. First, academic economists, let alone entrepreneurs, have at least so far proven impervious to the niceties of ABCT. It will be only in the *very* long run before any such thing is likely to come to pass, on the assumption that knowledge of this perspective definitely and strongly raises profit levels.

However, there is no necessary causal relationship between an understanding of correct (e.g., Austrian) economics, and entrepreneurial success. The two are epistemologically separate. It is akin to expecting a theoretical physicist or mathematician to garner great success in the computer or engineering businesses. Surely, the former cannot be an impediment as far as the latter is concerned, but the one is certainly no guarantee of the other.

Another difficulty is that Wagner does not properly distinguish between a stock and a flow.⁷⁵ Just because the investment in the higher order of production cannot be sustainable in the long run (given that the underlying time preference rates have not been lowered by the credit expansion, which would have made them viable), this does not preclude the possibility of getting in and then out, while the getting is good, before the bottom drops out

⁷³ Or, perhaps, increase it depending upon people's experiences with the veracity, or lack thereof, of governmental pronouncements.

⁷⁴ Wagner, "Austrian Cycle Theory."

⁷⁵ Ibid.

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of the higher orders of production.⁷⁶ Moreover, there is no necessary reason that investments in higher-order goods need go uncompleted, or be abandoned if already completed, when the crisis hits. Certainly those that would not have been made but for the artificially lower market rates of interest, deserve the appellation “malinvestments” and must be liquidated. However, abandonment and mothballing are not the only ways to liquidate such investments. Financial liquidation may do the trick. If the capital value of such investments can be, and is, written down sufficiently, these higher-order goods can be integrated into a/the new sustainable structure of production.

Furthermore, there is a relevant difference between Wagner and Hummel. The former incorporates the real-world assumption of a Federal Reserve free to change policy at whim. The latter imposes upon this institution the requirement, as we have seen, that credit policy remains entirely unchanged throughout. To compare the two, Wagner has in mind a moving target, Hummel a stationary one. The problem with Hummel’s choice between (a) a continuous alternation of booms and depressions or (b) a boom followed by a continuous depression, is that it leaves out a third option: (c) an undetermined, or better yet, indeterminable, state of economic affairs.

For, on the one hand, given full information as to the stable goal, no rational profit maximizer would be misled into malinvestments. On the other hand, he is being subsidized into doing so, but only on the assumption that he can get out before the time of the crash, leaving someone else to hold the bag. If we assume that full and complete information has been incorporated into *all* decision-making, that is, that it is *false* that “a sucker is born every minute,” then it cannot be denied that no one would bite. However, people miss not only moving targets, but stationary ones as well. So which is true? One cannot say, given the assumptions provided. It is undetermined. It is akin to dividing a number by zero. The result is not “infinity,” but rather, “undefined.” Something similar is operating in the present context. Thus the answer to Hummel’s question: “a or b,” is “neither of those, but rather c,” that is, not only is it uncertain, but it is indeterminable.

(2) In Hummel’s view, “a constant rate of increase in credit has the same impact on the structure of production as a once-and-for-all fall in time preferences that moves the consumption-investment ratio to a new stable level.”⁷⁷

We are doubtful of this contention. In our view, “a once-and-for-all fall in time preferences that moves the consumption-investment ratio to a new stable level” can indeed lengthen the structure of production, and do so on a

⁷⁶ For a rejoinder to Wagner, see Block, “Yes, We Have No Chaff.”

⁷⁷ Hummel, “Problems with Austrian Business Cycle Theory,” p. 49.

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stable basis, *ceteris paribus*. However, “a constant rate of increase in credit” either is not sustainable due to a runaway inflation or, if we can somehow ignore that possibility, is unstable since it does not accord with the underlying time preference rates of the populace, which, we are assuming, have not changed.

(3) Hummel’s third claim in this section is “Obviously, there must exist *some* rate at which credit expansion will maintain the lengthened structure of production.”⁷⁸

It is not readily apparent to us as to why this must be the case. Indeed, based on our foregoing comments, it would appear to be the case that there is no such rate that would accomplish this task. And this is completely apart from *finding* such a rate, assuming that it exists, which would be more of a central-planning problem than anything else.⁷⁹ No, our claim is more radical: that it does not exist, indeed, that it *cannot* exist.

As a final point on this issue, it must be noted that this entire argument of Hummel’s is built on a faulty foundation. Consider his statements: “The reason for this conclusion is that, *ceteris paribus*, a constant rate of increase in credit has the same impact on the structure of production as a once-and-for-all fall in time preferences that moves the consumption-investment ratio to a new stable level”; and “In sum if time preferences and the demand for money remain the same, then a constant rate of credit expansion will maintain an artificially lengthened structure of production. Only if anticipations change time preferences or the demand for money [sic] will the rate of credit expansion have to accelerate.”⁸⁰ He seems to recognize that a constant rate of credit expansion leads to inflation. Does he not understand that the experience of inflation causes people to adjust their expectations thereof? And, does he not realize that expectations of inflation lead to decreases in the demand for money, that is, the famous “flight into reals”? It seems Hummel has assumed his way to his conclusions, with most unrealistic assumptions. As soon as his assumptions are relaxed in favor of more realistic ones, his argument fails. He assumes a constant rate of credit expansion with no increase in demand for money, that is, he says “Only if anticipations change time preferences or the demand for money [sic] will the rate of credit expansion have to accelerate.” But that “only if” gives the game away. It is like saying “only if massive increases in the supply of money cause prices to increase” That is, Hummel’s assertion is correct only in a

⁷⁸ Ibid.

⁷⁹ Friedrich Hayek, “New Confusion about ‘Planning’,” *Morgan Guaranty Survey* (January 1978), pp. 4-13.

⁸⁰ Hummel, “Problems with Austrian Business Cycle Theory,” pp. 49 and 50.

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world in which credit expansion at a steady rate does *not* cause, via anticipations, changes in time preferences or in the demand for money. To put this more colloquially, Hummel is assuming a 600 pound gorilla that cannot scratch itself, and then deducing the presence of such an incapacitated animal.

7. International Aspects of ABCT

Hummel in this section calls for further Austrian research in an international environment: “of competing national central banks”; of a “central bank in one nation and a decentralized fractional-reserve banking system in another”; and of “a central bank in one nation and a commodity, 100 percent reserve standard in another.”⁸¹ We join him in wishing that an Austrian analysis of these situations take place.

8. Conclusion

Hummel offers five challenges to praxeological analysis, and one (set of) requests for further research. We cannot see our way clear to agreeing with him that the former call in question any basic tenets of Austrianism, but we do join with him in wishing for the latter.

⁸¹ Ibid., pp. 50-51.

Review Essay: Tara Smith's *Ayn Rand's Normative Ethics: The Virtuous Egoist*

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There has been in academic philosophy a resurgence of naturalistic virtue ethics that renders it a viable competitor with deontology and utilitarianism, making the timing opportune for the appearance of Tara Smith's *Ayn Rand's Normative Ethics: The Virtuous Egoist*.¹ Indeed, Smith in part situates her book within this trend, but also contrasts her explication of how Rand's rational ethical egoism intersects with virtue theories that have at best "danced around the edges of egoism" (p. 1). Thus far, Smith's book has been generally well received in the few reviews it has gotten,² especially by scholars and advocates of Rand's Objectivism. However, some attention from mainstream philosophers, even by those who are sympathetic readers,³ reveals that contemporary moral philosophers struggle to understand the nuanced value theory underlying Objectivism and are slow to embrace full-fledged egoism. This is hardly surprising, given that many (if not most) ethics

¹ Tara Smith, *Ayn Rand's Normative Ethics: The Virtuous Egoist* (New York: Cambridge University Press, 2006).

² See Stephen Hicks, "Review of Tara Smith's *Ayn Rand's Normative Ethics: The Virtuous Egoist*," *Philosophy in Review* 27, no. 5 (October 2007), pp. 377-79; Helen Cullyer, "Review of Tara Smith's *Ayn Rand's Normative Ethics: The Virtuous Egoist*," *Notre Dame Philosophical Reviews* (November 12, 2006), accessed online at: <http://ndpr.nd.edu/review.cfm?id=8123>; Robert Mayhew, "Review of Tara Smith's *Ayn Rand's Normative Ethics: The Virtuous Egoist*," *Philosophical Books* 49, no. 1 (January 2008), pp. 56-57; Diana Hsieh, "Egoism Explained: A Review of Tara Smith's *Ayn Rand's Normative Ethics: The Virtuous Egoist*," *The Objective Standard* 2, no. 1 (Spring 2007), pp. 109-19; and Shawn Klein, "Falling Short of Perfection: Review of Tara Smith's *Ayn Rand's Normative Ethics: The Virtuous Egoist*," website of The Atlas Society (October 18, 2007), accessed online at: http://www.objectivistcenter.org/cth--1986-norm_ethics.aspx.

³ Such as at an author-meets-critics symposium on Smith's book sponsored by the Ayn Rand Society and held at the Eastern Division meeting of the American Philosophical Association, December 29, 2006.

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textbooks by prominent moral philosophers demonize egoism and define ethical thinking in terms of either impartiality or altruism.⁴ A careful reading of *Ayn Rand's Normative Ethics* will show that egoism—and not just virtue ethics—should be taken seriously as a robust and attractive moral theory.

Ayn Rand's Normative Ethics is Smith's most recent effort in a series of works explaining and defending the foundations and exploring the applications of Rand's Objectivist theory of value.⁵ Recapitulating and building on *Viable Values*, Smith now fleshes out the "how" of a flourishing life, that is, what it is like to manifest virtuous conduct over the course of a lifetime.⁶ This involves understanding the role that virtues play in attaining one's values, figuring out which lifelong principles/types of action are virtues, and judging how any particular virtue should be exercised in a context-sensitive fashion.

Smith starts out in chapter 2 with a compressed summary of *Viable Values*, which provides a necessary foundation for readers unfamiliar with her

⁴ See, e.g., Robert Solomon, *Morality and the Good Life*, 2nd ed. (New York: McGraw-Hill, 1992), p. 15: "egoism is obviously antithetical to morality," since it "means looking out for your own interests"; James Sterba, *Morality in Practice*, 5th ed. (Belmont, CA: Wadsworth Publishing Company, 1997), p. 2: "Nonmoral approaches to practical problems include the . . . *self-interest approach*"; and James Rachels, *The Elements of Moral Philosophy*, 3rd ed. (Boston, MA: McGraw-Hill College, 1999), pp. 91 and 95, where he claims that ethical egoism should be rejected because it "cannot provide solutions for conflicts of interest" and it is "an arbitrary doctrine, in the same way that racism is arbitrary" by privileging one's own interests over those of others.

⁵ See especially Tara Smith's *Viable Values: A Study of Life as the Root and Reward of Morality* (Lanham, MD: Rowman & Littlefield, 2000) and *Moral Rights and Political Freedom* (Lanham, MD: Rowman & Littlefield, 1995). See also, e.g., Tara Smith's "Egoistic Friendship," *American Philosophical Quarterly* 42, no. 4 (October 2005), pp. 263-77; "Morality Without the Wink: A Defense of Moral Perfection," *Journal of Philosophical Research* 29 (2004), pp. 315-31; "The Metaphysical Case for Honesty," *Journal of Value Inquiry* 37 (2003), pp. 517-31; "Justice as a Personal Virtue," *Social Theory and Practice* 25, no. 3 (Fall 1999), pp. 361-84; and "Tolerance and Forgiveness: Virtues or Vices?" *Journal of Applied Philosophy* 14, no. 1 (1997), pp. 31-41.

⁶ Smith spends just a few paragraphs in *Viable Values* illustrating "the basic relationship between normative ethics and the goal of life," noting that a proper discussion of the virtues "would require much more in-depth treatment" (p. 96). In *Ayn Rand's Normative Ethics*, she makes good on an implicit promissory note that "[a] natural sequel to [*Viable Values*] would be another, consisting entirely of an elaboration of the normative prescriptions that derive from this account of morality's foundations" (p. 120 n. 25).

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previous work.⁷ Chapter 3 includes both a careful prefatory explication of the nature of virtue as such as well as a discussion of the “master virtue” of rationality. Chapters 4 through 9 discuss the remaining major virtues of honesty, independence, justice, integrity, productiveness, and pride. Each of these seven virtues is explored methodically by considering the nature of the particular virtue, why it is a virtue (i.e., why it is compatible with rational self-interest), and what it requires of us in practice. Chapter 10 considers the implications of Objectivism for four traits conventionally considered virtues: charity, generosity, kindness, and temperance. Finally, an intriguing Appendix addresses the subtler aspects of Objectivist value theory in a discussion of egoistic friendship.

Before discussing some of the specific substantive highlights of Smith’s book, I would like to remark on two noteworthy general features of her project. First, *Ayn Rand’s Normative Ethics* provides a much-needed translation of egoism into practice. While it’s true that Rand’s novels—particularly *The Fountainhead* and *Atlas Shrugged*⁸—illustrate at length what it is like to live either according to or against rational ethical egoism, the nature of the literary medium is both under-theorized⁹ and in some sense “distracting.” Readers of a good novel get swept up in the action of the character and plot developments, wondering about things like: Why is Dominique so destructive? Will Roark ever get to design another building? Can Dagny save her railroad? Who is John Galt? Seeking answers to these questions can lead one to focus on sub-themes or to dwell on the narrative of a particular character in which one is interested, which easily distracts one from the underlying philosophical ideas that explain the larger context of conflict, choice, and character. One needs the familiarity of a first reading in order to achieve a deeper knowledge that comes from re-reading, reflecting on, and discussing a novel. Rand herself described John Galt’s lengthy speech in *Atlas Shrugged* as the “briefest summary” of her Objectivist system with “its fundamentals . . . indicated only in the widest terms,” and stated that her first collection, *For the New Intellectual*, could “serve as an outline or a program or a manifesto” until she “complete[s] the presentation of [her] philosophy in

⁷ For an extensive critical review essay of *Viable Values*, see Irfan Khawaja, “Tara Smith’s *Viable Values: A Study of Life as the Root and Reward of Morality: A Discussion*,” *Reason Papers* 26 (Summer 2003), pp. 63-88.

⁸ Ayn Rand, *The Fountainhead* (New York: New American Library, 1971 [1943]), and Ayn Rand, *Atlas Shrugged* (New York: New American Library, 1985 [1957]).

⁹ Hsieh makes a similar point; see her “Egoism Explained: A Review of Tara Smith’s *Ayn Rand’s Normative Ethics: The Virtuous Egoist*,” p. 111.

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a fully detailed form.”¹⁰ Smith thus carries on some of the “unpacking” work that Rand began in the later part of her life, and does so in *Ayn Rand’s Normative Ethics* in a way that serves as a bridge between the more abstract theorizing of “The Objectivist Ethics”¹¹ and the more concrete depictions in Rand’s novels.

Second, Smith identifies and addresses some of the contemporary philosophical literature on ethics and virtue theory (primarily in Chapters 1, 9, and 10, and to some extent in Chapter 6). While not as extensive as it might have been, this effort enters into a somewhat Millian spirit of discussion. John Stuart Mill famously argued for engagement with beliefs one takes to be false on the ground that grappling with them allows for “the clearer and livelier impression of truth produced by its collision with error.”¹² The virtues of this approach are that the Objectivist ethics is presented more sharply and fully than it might otherwise have been, and readers can see for themselves how Smith’s account of Rand’s theory contrasts with competitor views. For moral philosophers encountering Rand’s views for the first time, such an entry point is orienting and invaluable.

One of the strong points of Smith’s explanation of Objectivism is how lucidly she rejects the morality/rationality dichotomy ubiquitous in the contemporary literature on “reasons for action.”¹³ She states that “the fact that rationality is a practical tool for advancing the values that fuel a person’s

¹⁰ Ayn Rand, “Preface,” in her *For the New Intellectual* (New York: New American Library, 1961), pp. vii-viii. This collection contains Rand’s essay “For the New Intellectual” as well as essential excerpts from her four novels (*Anthem*, *We the Living*, *The Fountainhead*, and *Atlas Shrugged*).

¹¹ Ayn Rand, “The Objectivist Ethics,” in her *The Virtue of Selfishness* (New York: New American Library, 1964), pp. 13-35.

¹² John Stuart Mill, *On Liberty* (New York: Penguin Classics, 1985 [1859]), p. 76.

¹³ A paradigm example is the highly influential book by David Gauthier, *Morals by Agreement* (Oxford: Clarendon Press, 1986), in which he announces that “[m]orals by agreement begin from an initial presumption against morality, as a constraint on each person’s pursuit of his own interest. . . . He considers what he can do, but initially draws no distinction between what he may and may not do,” pp. 8-9. This trend of dichotomizing rationality and morality has not abated, as can be seen in the advertisement for a forthcoming collection of essays on this topic: “What are our reasons for acting? Morality purports to give us these reasons, and so do norms of prudence and the laws of society. The theory of practical reason assesses the authority of these potentially competing claims”; see the book description for *Reasons for Action*, ed. David Sobel and Steven Wall (New York: Cambridge University Press, 2009).

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life is exactly what makes it moral. A naturalistic account of morality denies a sharp distinction between the moral and the prudential. Morality is prudent. The pivotal observation, again, is that reason is man's means of survival" (pp. 60-61). The fragmented self offered up by Hobbesian-influenced subjective preference theory has permeated economics and modern moral philosophy and caused much unnecessary hand-wringing over which reason(s) should motivate and/or justify action—and it is this that Smith directly challenges. Smith understands people's reluctance to embrace egoism when the images largely projected have been of "selfish egoists" who are "materialistic, hedonistic, emotion-driven, or predatory" (p. 284). Her steady insistence on a proper understanding of self-interest—with a whole and wholehearted self guided by the ultimate principle of human life, of "man's survival *qua* man"¹⁴—is crucial to rejecting caricatures that conflate psychological with ethical egoism. She makes clear that survival is "not simply breathing" or the "attainment of the barest essentials of subsistence," but rather "a condition of flourishing—which means: living in such a manner that one is fit to continue to live, long term" as the *type of being* that one is born as (p. 28). Her explanation builds on Rand's central point that a human needs to live by "the terms, methods, conditions and goals required for the survival of a rational being through the whole of his lifespan—in all those aspects of existence which are open to his choice."¹⁵ We can thus see how crucial is the claim that the "master virtue" of rationality *is* moral, since the proper exercise of one's rational faculty is required in order to live well.

Another important contribution Smith makes is systematically to explain Rand's moral case for capitalism in her chapter on the virtue of productiveness. "Productive work," while not the only valuable activity that one engages in, "should be the central purpose of a person's life," Smith explains (p. 198). One has to make a living in order to survive, and this requires each person to use his creative mind in relation to the world (i.e., exercise rationality) and bring forth "material values, whether goods or services."¹⁶ Material values are the valued goods that are brought "outside of the agent's mind" and made concrete, be it in the form of a car, the act of waiting on a table in a restaurant, a painting, or a musical composition (p. 199). Productive work is not "a necessary evil," but rather "it is entirely a good, insofar as it makes our lives and happiness possible" (p. 206). The split

¹⁴ Rand, "The Objectivist Ethics," p. 24.

¹⁵ Ibid.

¹⁶ Leonard Peikoff, *Objectivism: The Philosophy of Ayn Rand* (New York: Dutton, 1991), p. 292. See generally, Ayn Rand, "What Is Capitalism?" in Ayn Rand, *Capitalism: The Unknown Ideal* (New York: New American Library, 1967), pp. 11-34.

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between work and happiness is yet another false dichotomy in moral thought that Smith helps dispense with. Perhaps someone might “rather be fishin’” than at work (p. 198), but this would be on account of his not being in a line of work fully satisfying to him rather than because work is a “necessary evil.”

Ideally, each person would be able to sustain himself by a vocation that pressed upon the limits of his potential and with which he passionately identified. However, the exploratory nature of human interests makes it likely that one will have to try several things before finding out what one really likes to do, and life in a market economy entails that one might not get employed in the line of work one really likes to do. Given both of the preceding facts, one’s ideal vocational outcome might not occur. Smith here begins to develop Rand’s distinction between “philosophically objective value” and “socially objective value” (i.e., “market value”) in order to deal with the familiar claim that work is drudgery and requires people to give up what they value in order to survive. Smith explains that when the sort of material value that a person might be good at creating (say, writing philosophy books) is not valued in the marketplace and so cannot yet be traded freely in a self-sustaining way, then that person can pursue the production of that “more challenging, more rewarding” material value “on his own time” and “find a job that allowed him adequate time and energy for that” as well as supported him financially (p. 208). She admits that this discussion could be developed a good deal more, but notes that for her purposes the relevant point has been made, namely, that since “life requires, at root, the creation of philosophically objective material values rather than of socially material values, *the virtue of productiveness is not contingent upon a person’s ability to create the latter*” (p. 209, emphasis mine). A person who waitresses by day and writes novels or paints in the evenings is not compromising any moral value; rather, she is both being productive and self-sustaining in the manner suited to a good—that is, rational—being.

In keeping with the general theme of depicting a proper understanding of egoism, this account of productiveness also flatly rejects there being any place for “greed” (understood as *pleonexia*¹⁷) in the good life. This might seem daunting, given that Smith claims “that there is no limit, in principle, to how materially rich a person should strive to make his life” (p. 217). However, she deftly handles two of the biggest misconceptions that

¹⁷ According to Liddell and Scott’s *Greek-English Lexicon*, *pleonexia* is a characteristic possessed by individuals who are “grasping” for “undue gains,” “greedy,” or “overreaching” to “excess.” Alasdair MacIntyre, though, articulates more fundamentally and precisely that “the character trait itself, *pleonexia*, is no more or no less than simple acquisitiveness, acting so as to have more as such”; see Alasdair MacIntyre, *Whose Justice? Which Rationality?* (Notre Dame, IN: University of Notre Dame Press, 1988), p. 111.

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critics have about the pursuit of material goods: that egoists will do anything to get more goods (i.e., they're unprincipled) and that egoists place infinite and thus insatiable value on the acquisition of material goods (i.e., they're materialistic and superficial). Smith refuses to condemn the desire for material values *per se*, since "[t]hat desire, in fact, is unassailable. For it is necessary for human life" (p. 218). Instead, she disentangles the sloppy assignment of the word 'greedy' to someone who simply desires material values from cases where someone violates rights to get some particular goods as well as from cases where someone mistakenly sees inherent value in the acquisition of particular goods rather than understanding the role that such goods can play in a rational life. (This is an especially timely reminder of the nature of rational ethical egoism, given standard accusations about the pursuit of "self-interest" as having caused the 2006-2008 U.S. credit and sub-prime mortgage "financial crisis.")

If Smith had stopped at discussing material values when explaining productiveness, she might have left herself vulnerable to Diana Hsieh's objection that "productiveness does not seem to satisfy [the] criterion" of a "genuine virtue," namely, to "make full-time demands of a person, guiding all his choices and action."¹⁸ Hsieh bases this objection on the claim that "[a] rational egoist ought to rest, relax, and enjoy the fruits of his labor. In so doing, he will always be purposeful but not always productive."¹⁹ However, Stephen Hicks rightly notes (but does not discuss) that one of the "gems of insight" in Smith's book is "the connection between productiveness and (non-religious) spiritual values."²⁰ The pursuit and attainment of material values provide far more than the means of long-range self-sufficiency; they also require, are productive of, and largely constitute the rich array of spiritual values to be gotten from such activity. Productiveness requires a person to "make himself into the kind of person who is able to provide all the material values that his life requires"; as Leonard Peikoff states, "The ability to create material values . . . must itself be created" (p. 202).²¹ Thus, how one spends one's leisure time is crucial for cultivating the mental capital needed to be productive, and "[m]uch of the spiritual value of productiveness rests in the qualities of character called upon for a person to exercise this virtue" (p. 203).

¹⁸ Hsieh, "Egoism Explained: A Review of Tara Smith's *Ayn Rand's Normative Ethics: The Virtuous Egoist*," p. 116.

¹⁹ Ibid.

²⁰ Hicks, "Review of Tara Smith's *Ayn Rand's Normative Ethics: The Virtuous Egoist*," p. 378.

²¹ Smith is quoting Peikoff, *Objectivism: The Philosophy of Ayn Rand*, p. 295.

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In short, productiveness: (1) “fosters valuable character traits,” such as independence, rationality, honesty, integrity, commitment, patience, creativity, etc.; (2) “furnishes the foundation for rational coherence in a person’s activities” by allowing a person to select and order other activities and relationships during one’s leisure time in relation to one’s central purpose; (3) “strengthens a person’s identity” by seeing the values he identifies with made manifest by him in the world around him; and (4) “nourishes his self-esteem” by validating his sense of efficacy when he succeeds in producing value (p. 205). The tandem effect of material and spiritual value-production is a full-time, life-long activity, and so productiveness does meet the demanding criterion of a genuine virtue. One can hear echoes of Aristotle’s discussion of the proper use of leisure time, which (perhaps counterintuitively to some) is an instance of productiveness in the broad sense that Rand and Smith give it.

Smith is especially to be commended for her nuanced exploration of Rand’s value theory in the Appendix “Egoistic Friendship.” Discussion of this rich topic warrants a cottage industry all its own. It will suffice here to remark on how Smith advances the discussion of the *constitutive* and *individualized* nature that value can have, especially in the context of special human relationships such as friendship. Moral philosophers typically characterize value as either intrinsic/inherent or instrumental. Intrinsic/inherent value obtains when something is valuable for its own sake. Instrumental value obtains when something is useful for the sake of some other end. This dichotomy is often used to defend the need for altruism in human relationships, as in the following argument: Either you place intrinsic value on your ends and others are instrumentally useful to them, or you eschew your own ends and sacrifice yourself in order to contribute to others’ intrinsically valuable ends. Since instrumental use of others is immoral, altruism is required. Hence, it follows that “[e]goists cannot be authentic friends or lovers, . . . since, qua egoists, they can value others only instrumentally” (p. 287).

Smith, however, argues for a way past this instrumentalization of self or other by pointing out once again the existence of a false dichotomy.²² The

²² And she does so in a way that is reminiscent of, but different from, Immanuel Kant’s “Humanity Principle,” which maintains: “Act in such a way that you treat humanity, whether in your own person or in the person of another, always at the same time as an end and never simply as a means.” See Immanuel Kant, *Grounding for the Metaphysics of Morals*, trans. James Ellington (Indianapolis, IN: Hackett Publishing Company, 1981), p. 36. This is no place to explain the vast differences between Rand’s and Kant’s moral theories, but two key differences important to note here that make a difference in how they each justify the not merely instrumental treatment of others are that Kant suppresses man’s physical nature in his conception of moral agency and he rejects egoism in favor of impartialism.

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reasoning begins with the claims that a healthy person has a particular identity (i.e., a set of life-enhancing values that he stands for), he comes to love someone for himself as a friend on account of the shared values that he manifests through various character traits and activities, and the “well-being of his friend becomes folded into his own . . . because the flourishing of someone who is of value to [him] strengthens [his] own capacity to flourish” (pp. 290-91). Smith rightly points out that this view “has affinities with Aristotle’s contention that a friend is another self” (p. 290 n. 5). Lest someone think that this valuation of a friend is still too instrumental, Smith adds two clarifications. First, she notes that things can be valuable to a person in many ways that are not equivalent to a directly causal “means-end manner,” such as the way a hammer can be used to drive in a nail and then either discarded or replaced with another hammer without any loss. Additional ways of valuing something or someone apart from oneself include as “enhancements,” “preconditions,” or “components of multi-faceted values” (p. 302). One’s life can be deeply enriched by the objective, agent-relative, and irreplaceable values created by a good marriage or character friendship. Second, she explains that the false dichotomy in value theory “rests on a serious confusion about the way in which values function in a person’s life” (p. 302). It is not that there is some separate end called happiness that one chases, causing everything else to be a mere instrument to the attainment of that end. Rather, “values are the content of life. It is these that a person seeks when he seeks his happiness” (p. 303). In other words, pursuing and enjoying a “value-stocked life” that promotes one’s flourishing *constitutes* happiness. Among the constitutively valuable goods that comprise an inherently valuable life is egoistic friendship.

It could be alleged that Smith gets Rand out of one problem only to land her in another. This, at least, is what Helen Cullyer seems to suggest in her review of *Ayn Rand’s Normative Ethics*. It is precisely the constitutive dimension of egoistic friendship that Cullyer points to as causing a shift from individualistic egoism to a deeply social self. She thinks that Smith’s view leads to a subtle (and to Cullyer welcome, though not individualistic) shift in how to understand a person’s flourishing from “rational trading of benefits between contractual individuals” to “activity of the individual who is fully immersed in shared activities and purposes.” In the latter case, “the ‘I’ tends to become a ‘we’, and the other and self united in a relationship that promotes *our* happiness.”²³ This would certainly saddle Smith and Rand with a view

²³ Helen Cullyer, “Review of Tara Smith’s *Ayn Rand’s Normative Ethics: The Virtuous Egoist*,” *Notre Dame Philosophical Reviews* (November 12, 2006), accessed online at: <http://ndpr.nd.edu/review.cfm?id=8123>.

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that they would not recognize as egoistic, since there would be no distinctive self apart from others whose good is achieved.

But Smith has the resources to answer this objection in a fully egoistic way. There is on her view a metaphysically distinct self, who has an epistemically distinct understanding of what is good for that self, and that is brought to any particular relationship. As the relationship develops and deepens, there are certainly goods that emerge from sharing the activities and there are underlying values that can only be experienced in response to and in some sense with the other person, but the underlying locus of such experience are the two selves who undergo, enjoy, and reflect on the experience. Smith quotes Rand: “One falls in love with the embodiment of the values that formed a person’s character, which are reflected in his widest goals or smallest gestures, which create the *style* of his soul—the individual style of a unique, unrepeatable, irreplaceable consciousness” (p. 298).²⁴ Such “embodiment” creates on many levels an irreducibly individualized experience of the constitutive good of egoistic friendship. In addition, the ultimate beneficiary is each self, each with its own conceptualization and concretization of the general human good that can only be realized in each person’s lived experience. I take it that this is what Smith has in mind when she claims that “love must be selfish both in its source and in its aim. It must emanate from a self and it must be for the self” (p. 293). One can identify very closely with the values of another without becoming identical to the other either metaphysically or morally.

For all of *Ayn Rand’s Normative Ethics’s* excellent qualities, however, Smith’s discussion of the ethics of emergencies is incomplete and unclear. The issue is raised by Hicks:

How do moral principles apply in cases of life-or-death emergencies? Here the question in the Objectivist literature is whether Rand intended for the scope of moral principles to be universal (with special application to such non-standard cases), or limited to the standard cases (implying that one steps outside the realm of morality when dealing with liars, thugs, or emergency situations).²⁵

Hicks thinks that there is textual evidence in Rand’s work that can support either interpretation, and that Smith has an “informed” but “not decisive”

²⁴ Smith cites Ayn Rand, “Philosophy and Sense of Life,” in Ayn Rand, *The Romantic Manifesto* (New York: Penguin, 1975), p. 32.

²⁵ Hicks, “Review of Tara Smith’s *Ayn Rand’s Normative Ethics: The Virtuous Egoist*,” p. 379.

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defense of “the latter, ‘Morality is inapplicable,’ position” on some issues.²⁶ Hicks is right to suggest that the complex issues involved in this debate need more attention than Smith gives them, but he is wrong to think that Smith fully endorses the “morality is inapplicable” position. The difficulty is that it is not in the end clear what Smith is endorsing.

It is true that Smith says things such as “[i]n such an emergency . . . [m]orality is inapplicable” (p. 97) and she quotes Rand’s response to a questioner in a public forum who asked a question about moral conduct under a dictatorship: “In such a case, morality cannot say what to do. Under a dictatorship—under force—there is no such thing as morality. Morality ends where a gun begins” (p. 95).²⁷ However, Smith distinguishes between types of emergencies—metaphysical and natural—and argues, drawing evidence from Rand’s “The Ethics of Emergencies,” that morality is not “silenced all together” or “totally inapplicable” in natural emergencies (p. 98).²⁸ Smith states that metaphysical emergencies occur “when external conditions paralyze a person’s means of survival” and “all a person can do is try to escape the crisis and return to metaphysically normal conditions” (p. 97). She includes in this category floods, fire, earthquake, and gun-wielding thugs, and it is in these contexts that Smith claims that “[m]orality is inapplicable” and it is “impossible for a person to abide by morality and survive” (p. 97). In contrast, natural emergencies are intermittent events, such as having to rush a suddenly ill spouse to the hospital, that “place a great value at risk” and that occur from time to time throughout a person’s life because “it is in the nature of human beings to die, eventually, and injury and illness are naturally occurring causes of death” (p. 98). In this sort of case, a spouse could violate moral principles by breaking into a neighbor’s house in order to use the phone to call for an ambulance, but should compensate the neighbor for breaking into the house. Smith explains: “The compensation is due out of recognition of the fact that it was a crisis to one’s own values, not to human life as such, that warranted the transgression of basic moral principles and out of respect for the enduring propriety of those principles” (p. 98). By claiming that not all emergencies are the same, Smith avoids endorsing fully one interpretation over the other, at least as Hicks depicts the options.

Smith’s distinction between metaphysical and natural emergencies is problematic as stated. The way in which she draws the contrast is both

²⁶ Ibid.

²⁷ Quotation from *Ayn Rand Answers*, ed. Robert Mayhew (New York: Penguin, 2005), p. 114.

²⁸ See Ayn Rand, “The Ethics of Emergencies,” in Rand, *The Virtue of Selfishness*, pp. 43-49.

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strained and difficult to apply to concrete examples, including the paradigmatic case of an emergency in “The Ethics of Emergencies,” namely, a case where a man risks his life in order to save his drowning wife, whom he deeply loves and without whom he thinks life would be unbearable.²⁹ This case possesses elements of both categories of emergency, natural and metaphysical, so it is unclear how to categorize it on Smith’s taxonomy. On the one hand, the case involves a life-threatening context where all that the drowning wife “can do is try to escape the crisis and return to metaphysically normal conditions,” thus making it sound like a case of metaphysical emergency. Yet, on the other hand, Rand discusses the man’s need to maintain his virtue of integrity by not irrationally panicking and backing out of the rescue, which requires moral action, and so sounds like a case of natural emergency. The preceding difficulty is compounded by the fact that *all* of the examples in both categories (flood, fire, earthquake, muggers, injury, illness) are “naturally occurring causes of death,” and might be relatively common depending on where someone lives (e.g., a coastline, rough neighborhood, or a fault line). What, then, distinguishes metaphysical from natural emergencies?

To complicate matters, Smith adds thugs and dictatorships to the category of metaphysical emergency, which Rand did not originally include in her listing of such emergencies in “The Ethics of Emergencies.” Smith then problematically draws on a response to a question about the possibility of morality under a dictatorship from the question-and-answer period of a lecture Rand once gave. But this answer does not resolve Smith’s problem, because dictatorships do not fall under Rand’s definition of emergency (i.e., “an unchosen, unexpected event, limited in time, that creates conditions under which human survival is impossible”³⁰). While life under a dictatorship may in many cases be unchosen or even unexpected, it is not plausibly described as a *single event* limited in time. Indeed, it might unfortunately last someone’s lifetime, or at least a substantial length of time that makes it unlike a case of being mugged at gunpoint. What, then, defines emergencies as such?

Since the distinction between metaphysical and natural emergencies raises issues concerning theoretical coherence, one needs to step back and re-examine the larger context and purpose of the topic. Rand discusses the relationship between ethics and emergencies in order to expose the fact that many theorists argue for altruism by taking “lifeboat” scenarios as the starting point for generating moral principles.³¹ They mistakenly extend supposedly

²⁹ Ibid., pp. 45-46.

³⁰ Ibid., p. 47.

³¹ Smith, though, discusses the relationship between ethics and emergencies in her chapter on the virtue of honesty. The discussion arises in a subsection where she

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self-sacrificial conduct performed in emergency cases into everyday life and hold up altruism and suffering as the standard and norm. Rand argues that both the interpretation of the conduct and the direction of analysis are wrong: “The fact is that men do not live in lifeboats—and that a lifeboat is not the place on which to base one’s metaphysics. The moral purpose of a man’s life is the achievement of his own happiness. . . . [D]isasters are marginal and incidental in the course of human existence—and . . . *values*, not disasters, are the goal, the first concern and the motive power of his life.”³² Moral principles must be generated from normal human life as the standard, and then that standard of rational ethical egoism applies consistently across contexts. Self-sacrifice is never called for, not even in emergency situations.³³ When the husband risks his life to save his drowning wife, it is “for the selfish reason that life without the loved person could be unbearable,” and when a man helps out strangers during a hurricane, it is because of the “generalized respect and good will which one should grant to a human being in the name of the potential value he represents—until and unless he forfeits it.”³⁴ Rand rejects the ethics-of-emergencies approach that altruism relies on, and she begins to illuminate how moral theory can properly be applied to emergencies.

This larger context of “The Ethics of Emergencies” makes it puzzling how the “morality is inapplicable” view enters the scene, since it sounds like one *can* apply rational ethical egoism even in emergency situations. The puzzlement is deepened if one wonders about fictional scenes like the one in *Atlas Shrugged* where John Galt has an extended conversation about morality, choice, and action with Mr. Thompson, who is holding Galt captive at gunpoint.³⁵ This confusion is unfortunate, since I think that Smith has the resources to develop and clarify the issue, but does not do so here, and the distinction between metaphysical and natural emergencies merely muddies the waters. Essential to resolving this difficulty is keeping in mind that Rand

addresses the Kantian-inspired challenge to the “contextually absolute” nature of moral principles.

³² Rand, “The Ethics of Emergencies,” p. 49.

³³ Contrary to Roderick Long’s claim that “curiously enough, what Rand seems to be saying in ‘The Ethics of Emergencies’ is that it is the ban on altruism that is lifted,” p. 47; see Roderick Long, *Reason and Value: Aristotle versus Rand*, Objectivist Studies, no. 3 (Poughkeepsie, NY: The Objectivist Center, 2000), pp. 5-64. Long seems, mistakenly, to equate any assistance to others with altruism; see *ibid.*, pp. 47-48.

³⁴ Rand, “The Ethics of Emergencies,” p. 46.

³⁵ Rand, *Atlas Shrugged*, pp. 1018-26.

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defines morality as “a code of values to guide man’s choices and actions,”³⁶ and that this code involves values and virtues. Values are what one aims to attain and virtues are types of action that allow one to attain those values. We base our life-saving actions in constrained life-threatening circumstances where at least some action is possible on the ultimate *moral value of life*, since a “rational man does not forget that *life* is the source of all values.”³⁷ We could imagine ahead of time what we should do if faced with unwelcome circumstances (and perhaps even develop our imagination in fiction). Virtues cannot be applied as usual in these contexts, since doing so would not be in one’s rational self-interest, but we do not cease being virtuous when we have to figure out how to adapt our conduct to an unusual circumstance. For example, one has no out-of-context duty to be truthful to a mugger who holds a gun to one’s head; if lying to a mugger is in one’s self-interest, then it is right to do so, and one’s virtue of honesty is not undermined in this particular act of lying. Perhaps Smith is giving a nod to this line of thought in a footnote, when she claims, “Only free action can be rational. Thus, a victim’s response can be described as ‘rational’ only in a circumscribed, artificial sense” (p. 96 n. 40). If Smith means to concede some sense of rationality to a victim in an emergency, then morality is *fully* applicable, and not just in “a circumscribed, artificial sense.” However, her “concession” is qualified and grudging, and her (and Rand’s) unwillingness to see morality as applicable when at least some action is possible is unwarranted.

And there still remains the puzzling claim about morality’s not being applicable under a dictatorship. What if one lives under a dictatorship for a lifetime? Is this a case of non-emergency or a chronic series of emergencies? Does this mean that one would have to develop a different set of “virtues” on alternative understandings of value and virtue for living through what is the “norm” for humans in this society? Would one have to opt for suicide, if the possibility of overthrowing such a regime and having a life worth living was extremely low? Or would one need to struggle against such a regime in the light of the moral values and virtues proper to free men? These questions, as well as the preceding ones, can only be answered after the nature of an emergency, types of emergencies, and their relationship to rational ethical egoism are developed more adequately.

In any case, Smith has done us the valuable service of elucidating the virtuous activities that comprise the life of the rational ethical egoist, and doing so fully, clearly, and in conscientious keeping with the corpus of Rand’s thought. She has also—in applying Objectivism to not-yet-explored or under-

³⁶ Rand, “The Objectivist Ethics,” p. 13.

³⁷ Rand, “The Ethics of Emergencies,” p. 46.

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discussed issues—helped to unpack the meaning and account of the theory in ways that develop it. The demands of the reality-oriented virtue of independence require each person to figure out with his own mind what is true. The path is thus open to scrutinize, challenge, develop, and further justify the insights Objectivism offers—both Smith’s example and Rand’s theory, on its own terms, invite us to set foot proudly in this direction.³⁸

³⁸ I am grateful to Irfan Khawaja for valuable feedback on an earlier draft of this essay.

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Wilson, Emily. *The Death of Socrates*. Cambridge: Harvard University Press, 2007.

Socrates would be an important figure in the history of philosophy even if all we knew about him was what Aristotle tells us: “[H]e occupied himself with ethics even though he said nothing about the universe, but in the course of his activities he searched for the general (*to katholou*) and was the first to understand about the concept of boundaries (*horismōn*)” (*Metaphysics* 987b.1-4). Poets and thinkers before him had thought about ethics. But what made Socrates different is that he was able to devise a process for discovering it that caused him to move away from particulars to general definitions. Without that significant step forward in thought, Plato could never have devised his theory of forms, and Aristotle could not have written his treatises on ethics.

But it is not because of his thinking that Socrates has been remembered, as Emily Wilson demonstrates in her lively and entertaining book. Rather, Socrates has remained an inspiration to politicians, thinkers, and artists for more than two millennia because of his death. If he had not died as he did, we would be talking about pre-Platonic rather than pre-Socratic philosophers. But as Plato describes him in the *Apology* and the *Crito*, Socrates did nothing to stop himself from being executed. He did not try to flatter and appease the jury. When given an opportunity to propose an alternative punishment, he offered only the trivial sum of one mina. His friend Crito devised a plan that would have allowed him to escape from prison and live the rest of his life in exile, but Socrates again refused to cooperate. In Plato’s *Apology* (28c), Socrates says that he chose to emulate Achilles. Achilles was told by his goddess mother Thetis that he would soon die if he chose to remain in Troy and avenge the death of his friend Patroclus, but would live a long life, though without renown, if he went back home to Thessaly. Plato has Socrates explain that Achilles chose death because that was the more ethical course.

Socrates would have known that a heroic death would bring him immortality: no Greek could forget the names or deeds of Patroclus, Hector, and Achilles. Biographers of poets and philosophers also drew on the narrative patterns of traditional myth, and found passages in their works that could be used to suggest that they died in extraordinary ways. The tragic poet Aeschylus supposedly was killed when an eagle dropped a tortoise onto his bald head. The philosopher-poet Empedocles was thought to have jumped into the crater of Mount Etna. Writers who were considered impious died particularly demeaning deaths. The philosopher Heraclitus was said to have

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succumbed to louse disease. A particularly dramatic story was told about the tragic poet Euripides, who had been accused by the comic poets of inventing new gods: he was supposedly torn apart by hunting dogs, much as in his drama the *Bacchae* the notoriously impious Pentheus was destroyed by women who had been driven insane by the god Dionysus. Someone would almost certainly have ascribed a similarly bizarre and violent death to Socrates, who (according to his accusers) “did not believe in the gods in whom the city believed, but other new-fangled divinities” (*Apol.* 24c). It was only by allowing himself to be executed that Socrates was able to remain in control of his own biography.

Such conscious control over the desires that most people find unmanageable is the key to Socrates’ character. He could drink his friends under the table, but without getting drunk himself. He was indifferent to physical comfort. He seemed to have little need for the support of his family, and at least as Plato depicts him in the *Symposium* was able to restrain his physical passion, even when sleeping in the arms of the attractive and brilliant Alcibiades. He was also able to overcome the fear of death, and drinks the poison calmly while his friends burst into tears. As Wilson observes in her introduction (p. 11):

For most of us, death is something that comes upon us. We cannot predict the day or the hour when we will die. Socrates, by contrast, died in complete control, and his death fitted perfectly with his life. If Socrates had been crucified, then the whole history of western philosophy and religion might have been different.

By choosing hemlock (rather than execution by suffocation) Socrates was able to die painlessly. Enid Bloch has established that the variety of hemlock used was so-called poison hemlock, not water hemlock, which causes convulsions and cramps, like most other poisons.¹ Poison hemlock affects the peripheral nervous system, so that the victim gradually loses sensation in his limbs, but retains mental lucidity until the poison causes his lungs and heart to fail. If water hemlock had been used, Plato’s description of Socrates’ death would need to be considered as another example of Platonic fiction, like the myth of Er in the *Republic* or the story of Atlantis in the *Timaeus*, as Christopher Gill

¹ Enid Bloch, “Hemlock Poisoning and the Death of Socrates,” in *The Trial and Execution of Socrates: Sources and Controversies*, ed. Thomas Brickhouse and Nicholas Smith (Oxford: Oxford University Press, 2002), pp. 255-78.

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has argued.² Instead, in this case at least Plato has provided a narrative that seems accurate in every detail.

In the first chapter of the book Wilson discusses Socrates' role as the founder of philosophy, in the fullest sense of the term, which considers ethics, language, the workings of the mind, and the meaning of life. She considers his use of irony (*eironeia*), though without reaching any definite conclusion about its function: Does he pretend he knows nothing because he wants his students to think for themselves? Does he really believe he knows nothing, when clearly he does know more about ethical values than his interlocutors, or does he mean that his knowledge is (as he says) worth little or nothing in comparison with that of the god? She takes on the difficult issue of how Socrates can claim that no harm can happen to a good man (e.g., *Apol.* 30d), suggesting that he must mean that it does not matter what happens to the body, as long as no damage is done to the soul. She suggests that we should understand Socrates' extraordinary claim that no one willingly would do wrong (e.g., *Apol.* 37a) as a question about knowledge. But since Socrates admits that even his human knowledge is fallible, how can he know he is right? Wilson might have observed that he had help: In the *Apology* he claims that he has been guided by a divine sign (*daimonion*) (31d).

This book is not intended for specialists, but I believe even general readers would have benefited from some discussion of Socrates' distinctive methodology of asking questions, eliciting answers, and then asking more questions. The primary purpose of these questions is to show that his interlocutor does not understand what he is saying, or has only a partial grasp of the general concept that he believes he fully understands. Nowhere does Socrates employ this method to more devastating effect than in his questioning of his accuser Meletus in the *Apology*. As Plato has Alcibiades say in the *Symposium*, he talks about pack-asses, bronze-smiths, shoemakers, and tanners (221e). In his examination of Meletus he uses the analogy of mules to show that Meletus' charges against him are logically inconsistent. The dialogue provides an illustration to the jury of Socrates' *modus operandi*: using comparisons so deceptively simple that his interlocutor fails to see where the discussion is leading him. People are so stunned by Socrates' performance (in the *Meno* 80a he is compared to a sting-ray) that they never seem able to point out that the analogies Socrates employs may not always be applicable or appropriate.

Wilson's second chapter provides an informative overview of the political world in which Socrates carried on his conversations. Socrates was accused of impiety and of corrupting young men. Virtually every known

² Christopher Gill, "The Death of Socrates," in *The Trial and Execution of Socrates*, pp. 251-55.

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charge of impiety was made at least in part for political reasons. He also had been closely associated with some highly controversial figures, among them Critias, who had been executed for crimes committed when he was one of the thirty tyrants, and Alcibiades, who was thought to have been involved in a set of sacrilegious acts just before the Athenians sent their ill-fated expedition off to Sicily. In retrospect these acts were widely believed to have contributed to its failure. Wilson suggests that if Socrates had not been associated with Alcibiades, he might not have been executed. Another problem was that he seemed like a sophist, one of the many foreign rhetoricians who taught young men the art of persuasion, often, or so it was alleged, without much attention to ethics or traditional values. But one should never underestimate the number of enemies that (as Plato has him say) he managed to make out of all sorts of people who might ordinarily never have thought about him, just by questioning them in his characteristic way, and showing them (along with anyone else who was watching) that they did not know what they were talking about (*Apol.* 23a).

Socrates was determined to do what he thought right, even if that meant disagreeing with the majority of people, or indeed obeying orders given to him by the regime of the Thirty Tyrants. But he was not a conscientious objector in the modern fashion; he was willing to fight in defense of his city and served as a hoplite in the first phase of the Peloponnesian War. In 415 B.C.E. he was clearly too old to be sent off to Sicily, but presumably he would have gone if he had been eligible, for the same reason that he remained in prison in Athens to await execution even though his friend Crito had arranged for him to escape and live in exile in Thessaly. Wilson believes that it is impossible to reconcile the difference between Socrates' civil disobedience in the *Apology* with his avowed conformity to the city's personified laws in the *Crito*. But here it is important to remember that Socrates describes the imaginary epiphany of the Laws not for his own edification but for that of his friend Crito, to whom Socrates tells a story, because Crito could not follow the argument Socrates made earlier in the dialogue that committing counter-injustice (i.e., by going into exile) is nonetheless injustice (49c-d). We do not need to suppose that Socrates himself literally believed in the story that he devised for the benefit of his friend.

In her third chapter Wilson offers a brief account of the Socratic question: How much of Socrates is in fact Plato? Xenophon in his various accounts portrays Socrates as a wise advisor on many different topics, without the intellectual bite and dialectical trickery that he displays in the dialogues of Plato, where he questions his interlocutors' assumptions and makes his audience think. To what extent is the Socrates of Plato's dialogues a projection of Plato himself? Wilson makes a point of emphasizing that this Socrates insists on an environment from which women are almost completely excluded. She finds it distressing that he is willing to spend only a short time

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with his wife Xanthippe and his children, preferring to die in the company of his male friends. But there is a religious reason why Socrates is determined not to be surrounded by uncontrollable weeping: “I have heard that one should die in an atmosphere of ritual silence” (*euphēmia*) (*Phaedo* 117e). Such concern with traditional religious values is notable in one who is being executed on a charge of impiety. Even more striking are Socrates’ last words: “Crito, we owe [the sacrifice of] a cock to Asclepius. Pay the debt and don’t forget” (118). Asclepius is the god of healing, but what has Socrates been cured of, and why does he speak these last words just when the numbness reaches the area around his lower abdomen (*ētron*)? One possible answer is that he offers thanks to the god because he has been cured of the disease of life, or more specifically (given the location affected by the poison) of the disease of sexual desire.

The *Phaedo* is remembered not for its long discussion of the immortality of the soul, but for its description of Socrates’ last moments. For all Plato’s efforts to represent the workings of Socrates’ mind, in later times (as Wilson shows) people have consistently preferred to concentrate on his death. Even though technically he did not commit suicide, but rather refused to accept any alternative to execution, Socrates provided a model for self-induced martyrdoms, especially for Stoic philosophers. The younger Cato asked for a sword and a copy of the *Phaedo* when he executed himself. When he was ordered to commit suicide by Nero, the philosopher Seneca attempted to die calmly, like Socrates. He slit his veins; when that didn’t work he took hemlock; then when he still couldn’t die took a hot bath and suffocated in the steam.

Christians compared Socrates with Jesus. Despite the obvious differences in the modes of their execution, there was enough similarity in their resolution and willingness to die to make the association, which may have helped some pagans better to understand the full significance of the Crucifixion. But Christian theologians observed that Socrates suffered far less than most of the Christian martyrs and had little sympathy for Socrates’ final expressions of piety, which (as we have seen) can be still too easily disregarded by modern readers who cannot imagine how religion pervaded the lives of all ancient people, including Socrates and Plato, who did not want to eliminate religion but rather to reform it.

Wilson makes some acute observations about representations of Socrates in art. David’s famous 1787 portrait shows him being vigorously independent in his last hours, an individual challenging the mistaken will of the masses. Guérin’s 1797 painting of the suicide of the younger Cato also emphasizes resistance and individual protest. The viewer’s eyes are drawn to Cato tearing out his intestines with his sword; his scroll of the *Phaedo* lies on the ground. Socrates had become a model for nonviolent civil protest.

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The death of Socrates continues to acquire new meaning. Recent interpretations give Xanthippe a more positive role, as observer or commentator rather than as shrew. Wilson herself comes up with an ingenious example of a new interpretation that allows Socrates himself to act like a woman. When he utters his last words, Wilson suggests that Socrates is grateful to the god because he is now giving birth to a new life (albeit for himself). To me that idea, although ingenious, seems more appropriate for a work of fiction than an academic book. There is no justification for such a reading in the relentlessly masculine atmosphere of the *Phaedo*. As Sheila Murnaghan has shown,³ women have no place in Plato's world unless they can act like men, as in the ideal state described in the *Republic*.

Today's undergraduates sometimes resent Socrates because he is so unwilling to compromise and determined to make his interlocutors feel uncomfortable. This highly readable and accessible book will help them understand why past ages have admired him, and that they too have something to learn from his courage and resolution in the face of death. I only wish that it could have told them more about his investigative methodology.

Mary R. Lefkowitz
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³ Sheila Murnaghan, "How a Woman Can Be More Like a Man: The Dialogue between Ischomachus and His Wife in Xenophon's *Oeconomicus*," *Helios* 15 (1988), pp. 9-22.

Hudson, William E. *The Libertarian Illusion*. Washington: CQ Press, 2008.

A possible project that might have been intended under the title of this book would be to show that the libertarian idea makes no sense, is an “illusion” in that there isn't really a theory here at all, contrary to what its proponents seem to think. Libertarian theorists certainly need to strive to refute that charge, and I am ready to look carefully at arguments to that effect. That is not what this book is about, however. This is a hands-on book about public policy, identifying various trends and policy options as libertarian, on the basis of a not very profound analysis of what the theory is, and, to a very large extent, an identification of various options from writers assumed or claimed to be libertarian. One is tempted to say that what the author is discussing is current American pop-libertarianism—not a carefully worked out theory together with attempts to show just what policy implications might follow, but a collection of seat-of-the-pants reactions by assorted writers with varying credentials as theorists. That is, what we have here is contemporary American political discussion. That this makes quite a difference will, I hope, be illustrated in the ensuing discussion.

One happiness in the opening chapter is the use of the chart (p. 6), familiar to libertarians today, locating libertarianism in relation to familiar distinctions of “right” and “left” by mapping out a distinction of “individual autonomy” and “community/government control” against a distinction between economic and social issues. Libertarianism is then defined as individualistic in relation to both sorts of issues, by contrast with contemporary “conservatives” who are (supposedly) individualist in economics but communitarian on social issues and contemporary “liberals” who are (supposedly) communitarian on economic matters but individualist on social issues. For those of us who view all political movements of the present day as incoherent mixtures of popular prejudices about everything, the chart is bound to be very rough and of limited use, but it is certainly a marked improvement over identifications of libertarianism with contemporary Republicanism or “conservatism.” But the devil, as so often, will be in the details. (And indeed, the author is guilty enough on such counts.) But still, this is an interesting enough book to make one think.

The substantial policy discussions are found in chapters 2-6, which concern taxing and spending, deregulation, social security, health care, and issues about “birth and death”—namely, abortion and voluntary euthanasia. Each discussion is of considerable interest in what it shows about the impression contemporary students of public affairs have of the libertarian agenda and analysis. Chapter 2, a lengthy discussion of fiscal policy, reflects the incomprehensible identification of libertarianism with a passion for

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reducing taxes irrespective of what it does to spending. Taxation, of course, looks objectionable to us because it is objectionable—that is, subject to the accusation of being something like official theft, and maybe even, à la Nozick's famous discussion, slavery. But government deficits, after all, amount to the same thing. To object to taxing but not to spending is obviously antilibertarian on any serious understanding of the view—apart from being (to put it somewhat bluntly)—just plain stupid. Those who combine those two tendencies do nothing to help the public image of libertarianism, whatever else they do.

That said, one also can point to Hudson's outdated perceptions about Keynesian economics, use of the Laffer curve, and other technicalia, none of which can be gone into in a review of this length but which may serve to put readers on their guard. And then there is the familiar idea that we just couldn't have a market economy at all without lots of government mucking around. And finally, he has the view that after all, the welfare state and its accompaniments are important public goods that we can't do without, so who can be against lots of "public" (by which, of course, is meant *government*) expenditures on those worthy objects? No doubt a lot of readers will nod their heads at such assertions, but nobody ready to take libertarianism seriously will do so.

We should, though, enter a query about the supposedly fundamental distinction invoked between "community" and "the individual." As various people have taken pains to point out, the community consists of individuals, so the idea that the latter can flourish while the former languish doesn't actually make any sense. So if there is to be a contrast here, it needs clarifying. And I suspect that when so clarified, what we will find is a contrast between *involuntary* impositions, by bureaucrats who don't have to ask, on a lot of people who didn't have any choice in the matter, for the supposed benefits of others. And meanwhile, it was those latter people—the taxpayers—whose *voluntary* exertions and expenditures were what made possible the wealth extracted for the purpose.

Voluntary dealings generally may be presumed to benefit all parties to them (which is why they engage in them). That presumption is a lot shakier when some of the parties pay without being able to say no, and some of the others benefit without having had to ask those who provided them. But why do we get to identify the involuntary sector with "community" (hooray!) while the voluntary sector is passed off (sneer!) as irresponsibly individualistic?

Another point along the same general line is that what Hudson means by "community good" seems to be *American* good. The community to which he thinks we are supposed to subordinate ourselves is not, as one might imagine, the "community" of mankind in general, nor is it any of innumerable lesser groups whose boundaries do not coincide with those of any particular political community. This is coordinate with my previous point, of course.

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The involuntary sector in general is the political sector, with few exceptions. Some agency with political power is to use it in order to promote the supposed good of the particular set of people that agency's power extends to—no more. So regarding health care, Hudson is all for hefty taxes in order to shore up the situations of “the” very old—so long as they are fellow Americans. I expect he'd be less comfortable with the proposal to impose far heavier taxes on all of us in order to help out the aged in the rest of the world. But why? Why, in others words, is “the” community this one particular country, the U.S.A.? That is the question libertarian critics always want to put to proponents of “social justice”: How is it that “social justice” stops at the borders of the state over which a certain government happens to wield enormous power? And, suppose that a particular unusually wealthy American state came up with a health plan enormously benefiting the very sick and elderly in *that* state (at suitably high imposed costs on the rest of the people of that state), though doing nothing for the state next door? What would Hudson say about that case? Perhaps that the federal government should step in and make sure that everybody else gets one, too? If so, that raises the same question: Why is the selected community that one in particular rather than some other among the indefinite multitude of communities in the world?

Hudson is also not interested in the possibility that some people do not actually deserve the hefty expenditures on their part that will be entailed by compulsory social programs. One does not, evidently, need to do anything to merit the expensive attention of one's fellows (so long, of course, as they are fellow X-ians, where X is the nation-state occupied by both). This large theoretical issue is not discussed by Hudson, who simply takes it for granted that “we” should do whatever promotes the health and welfare of our fellow citizens, no matter what they have or have not done to get into the condition they are in, or to produce the wealth expended on that promotion. Libertarian readers may be inclined to stop right there, true. But a lot of libertarians think that liberty will produce the kind of good results Hudson takes to be obviously worthy objects of promotion, and it's of interest to consider whether he is right in claiming that libertarian policies do something more like the reverse.

Hudson's second chapter, “Taxing and Spending: Community Needs versus Private Wants,” is largely concerned with American federal monetary and fiscal policy: “Under the spell of the libertarian illusion, budgetary policy, in particular tax policy, has undermined the common good.” Namely, this has “led to tax policies that deprive the government of what it needs to provide public goods” (pp. 31-32). In the background to his discussion of the contemporary situation, Hudson shows that he is under the thrall of the “standard view” of the Great Depression, instead of appreciating the by-now fairly familiar analysis that the catastrophe was due to American government mismanagement of the economy, and especially of its monetary system. He also endorses Keynesianism more or less whole hog, though that melancholy

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era in economic theory has, one hoped, been interred some time ago. But the substance of his chapter consists in attributing to libertarians the absurd view that we should cut taxes without correspondingly cutting government expenditures. Since an inflation-inducing deficit is as much a tax as a tax in the usual sense of the term, this whole chapter would seem to be based on a misunderstanding.

Hudson's next chapter, on deregulation, is more interesting. His main case is California energy, where a program of what was billed as deregulation was put through. Of course, the background was of public operation in the usual way, with controlled prices and levels of profit. California's legislature voted in new legislation, "promising a future of cheaper and more abundant electrical power for all courtesy of market competition" (p. 77). Mind you, it also pegged the maximum price of electricity at 6.5¢/kwh, a price at which it might well have been uneconomic to sell power under many conditions, and under which it certainly would have been uneconomic to build any new generators. Hudson tells us that in the absence of regulation there was an enormous amount of collusion with suppliers, etc., defeating both aims: electricity was much more expensive and there were frequent blackouts. According to Wikipedia, though, "Due to price controls, utility companies were paying more for electricity than they were allowed to charge customers, forcing the bankruptcy of Pacific Gas and Electric and the public bail out of Southern California Edison. This led to a shortage in energy and therefore, blackouts."¹ Hudson seems to think the continued regulation was minor and benign. Well, not in the libertarian's view.

The shortcomings of regulatory regimes are pretty well understood, though Hudson paints them in glowing terms. But the waves of "deregulation" to which the public has been periodically exposed in the U.K. and the U.S. have the disadvantage that they are partial, and imposed against a background of thoroughgoing regulation that makes a subsequent deregulated environment similar to Russia after the fall of the Soviet regime.

Hudson's discussion of airline deregulation is especially interesting. Air fares nowadays are indeed something of a crazy quilt. Competition is fierce, and "airlines charge different fares to different customers depending on estimated demand for the flight at a given time" (p. 103). This he immediately calls "discriminatory pricing," though it has nothing whatever to do with what that term would usually imply, and is a matter of charging what the market will bear. Hudson cites "experts" who believe that consolidation into just a few major carriers will produce a "national oligopoly that is unlikely to deliver any of the benefits the 1978 deregulators intended" (p. 103). Meanwhile, there are dozens of small airlines opening all the time, service to all sorts of places that never had it before is expanding, and more people than

¹ Available online at http://en.wikipedia.org/wiki/California_electricity_crisis.

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ever are flying to more places than ever. Hudson is also ready to assail deregulation for the notorious discomforts of airline travel—apparently the massive intrusions due to 9/11 and forced on all by governments don't count here. Nor the fact that except for the latter, you can avoid a lot of them by being willing to pay more—as much, perhaps, as you'd have paid back in the era of regulation. One is tempted to say that Hudson was born at the wrong time. He'd have been one of those stalwart members of the Communist Party who pointed to all the rosy aspects of communist life. The blessings of regulation are easy to hail if you're a member of the right establishment. As to the rest of us, well, getting what we pay for just has to be good enough for us, I guess.

Next Hudson turns to health care, where once again he blames “the market” for a catalogue of ills stemming from, as he interestingly puts it, the “trilemma” of somehow combining quality, access, and low costs. Libertarians think that medical service is a service, and as such something that its recipients would likely be willing to pay for. Demand for such services is immense, and so too could be supply, were it not for many artificial restrictions on it, largely due to government regulation. Meanwhile, governments also impose a welter of regulations that remove supply farther and farther from demand. But not, in Hudson's view, far enough: “[M]ore effective drugs, technology, and procedures along with an aging population, are likely to lead to increasing health costs in the future, so we should be prepared to direct more societal resources to paying for them” (p. 183). Note the “so” and the slippery term “societal.” All resources are societal, of course, and given the nature of the commodity being discussed here, obviously more “societal resources” *will* be devoted to them in future. But should those resources be processed through politics, so that, increasingly, medical services cease to be regarded merely as services, and therefore things one should be expected to be willing to pay for, but instead as *entitlements*? To Hudson, apparently, it is self-evident that the answer is in the affirmative. He doesn't seem very aware of the situation in Canada with its intensely socialized system (though at last it is beginning to turn to partial privatization inside the country, after decades of partial privatization by unhappy patients fleeing to the U.S. where they can get treated quickly). Hudson is sure that “we want a system that does not deny needed medical treatment to those without money in their pockets” (p. 186). Now, for the latter, of course, the only alternative is a system that supplies medical treatment out of other people's pockets. The question is only, whose pockets? Hudson thinks that the idea of a free market here is a “failed notion.” One is tempted to reply that he's not in much of a position to know, since the medical system in the U.S. is unrecognizable as a free market. In any case, leaving such cases to those ready to make charitable contributions is evidently not an option.

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In the final chapter Hudson addresses “issues of life and death,” in particular, abortion and euthanasia/assisted suicide. He attributes to libertarians the view that “society can resolve moral controversy simply by leaving such issues [as, whether “a pre-viable unborn child is no less a subject of justice than a post viable unborn child or a born child”] to individual choice” (p. 201). This curious idea would be like attributing to libertarians the view that whether libertarianism is *true* is decided by individuals. To do that is to trade in the notion of truth for something altogether else—something assorted theorists have no doubt done, but why does he think that this theoretical diversion is to be pinned on libertarians in particular? Libertarians think that humans should have a very wide range of choices, as a matter of right, and thus that governments should defend individuals in making those choices. They do not think, for instance, that if a given individual is a fascist, that makes fascism true “for that individual”—nor, of course, do they think that abortion is okay for every individual who thinks it’s okay but not for anyone else.

Hudson holds that the Supreme Court, in *Roe v. Wade* (1973), was not being neutral in holding that women have the right to choose whether they will have abortions. That is clearly true. On the contrary, it was being libertarian: *If* the Court holds that fetuses, as such, do not have the same rights as grownups, or for that matter children, on the ground that fetuses are not yet capable of the kinds of choice and deliberation that characterize individuals, then it is plausible, given a general proclivity in favor of liberty, that parents, and more especially women, have the right to abort unwanted fetuses. But Hudson seems unaware that there is in fact extensive disagreement among libertarians on that very point, however—namely, whether fetuses do qualify as human individuals in the sense required to attribute basic rights to them. Many of them hold that humans have the basic libertarian rights from conception onward. How to sort that one out is an interesting and important question, but among libertarians generally it is not as yet sorted out. Until it is, the ascription to libertarians, as such, of a “liberal” position on abortion is not yet in order.

Abortion is an issue on which the North American public is quite divided. Does it follow that we should leave the making of laws about abortion to the states in the U.S.—as Hudson appears to think? Why? If the legislature of state X rules that life begins at conception while that of state Y rules that it begins, say, at six months, are we supposed to conclude that in state X, personal life *does* begin at conception while in Y, it does not? Does Hudson think that that is what libertarians do or should think? If so, he is seriously mistaken about the fundamental nature of the view. Meanwhile, to take the view of the Supreme Court, that up to some rather late stage of fetal development the decision about abortion should be up to individuals, seems hardly inapt, and a good deal more coherent.

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Taking up the controversial issue of whether physicians may assist persons wishing to terminate their lives, Hudson, with much better reason, takes libertarians to be in favor of allowing them to do so, when the individual in question clearly wants that. He cites the famous brief filed by six noted American philosophers, including Robert Nozick, John Rawls, and Ronald Dworkin, who support their liberal view on the matter on the ground, first, of an individual's "general right to make 'intimate and personal choices' for himself," and second, of the principle that government is to be neutral "toward morality" (pp. 216-217). The first is obviously libertarian. But the second, as stated, embraces a confusion, one unhappily typical of recent moral philosophy. Libertarianism is itself clearly a *moral view*: it proclaims that individuals have rights to act as they please provided only that in doing so they not damage, attack, or invade, the similar liberty of others. So, obviously, it is not "neutral toward morality" in the sense of that term in which views such as libertarianism, socialism, and others are alternative moral views. But that isn't the sense of "morality" in which those philosophers hold that government ought to be neutral about it. Obviously, what they are referring to is, as Hudson actually quotes them as saying, "different convictions about which way of dying confirms and which contradicts the value of their lives" (ibid.). The "value of my life" is not moral in the sense in which my having a *right* to live in *whatever* way I see to be most valuable is so. Hudson is far from alone in this confusion, and indeed the language in which Rawls and his distinguished colleagues express themselves in that passage does indeed appear to involve it. Still, it is a confusion, and there is little excuse for Hudson sticking libertarians (like Rawls) with what amounts to sheer moral relativism. They are not relativists, but *liberals*; far from thinking that every view on the relevant matters is as good as every other, they think that conservatives are in the wrong. Meanwhile, it seems clear that Hudson is himself a moral conservative; he evidently thinks that the State has a right to decide whether individuals may or may not act in light of their own personal values, or which ones they may so act on.

This returns us to the basic distinction of libertarianism and communitarianism invoked from the start. Hudson is all ready to attribute to libertarians all those things that Michael Sandel is famous for sticking them with—the "lone, unencumbered individual of the libertarian world view," etc. (cited on p. 216). By this time, surely, Sandel's view has been dismissed for the confusion it is, though Hudson seems not to be aware of that. But with or without confusion, it can certainly be held that the individual does not have the rights we claim he does, but instead ought to be subordinate to his "community" or his State or whatever.

At the least, however, one should not hold this kind of near-fascist view merely in order to enable us to deal with genuine public goods problems, of which there are certainly many. We can think, as for example Nozick does,

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that pollution is indeed objectionable, not because it “harms the community” or some such thing, but because it harms *individual people* who have the right not to be harmed in those ways. That, however, won’t get us compulsory social insurance or the right of the state to tell us whether we can enlist medical aid in terminating our lives if we so choose. There may be good ways of dealing with these issues that respect the freedom of the individual rather than trampling it under in the name of “community.”

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Schlesinger, Jr., Arthur M. *War and the American Presidency*.
New York: W.W. Norton Co., 2004.

This book collects and focuses recent writings of Arthur Schlesinger on the themes of its title. In its short Foreword and seven concise essays, the book aims to explore, in some contrast with the genre of “instant history,” the relationship between President George W. Bush’s Iraq adventure and the national past. This aim and the present work are deserving of wide attention, both because of the contemporary need to deal with the extended war in Iraq and because Americans, in particular, need to attend to their own history, if we are to avoid past mistakes and make the best use of our ongoing political traditions and institutions. In order to know better where we might go in the future, we need an adequate picture of where we have been in the past. Schlesinger invites us to debate the war, the Presidency, and their relation to the American past.

In light of his earlier writings, the theme of the “imperial presidency” is especially salient, and attention naturally falls on the third essay, “The Imperial Presidency Redux.” When America is at war, or stands under significant external threat, the powers assumed by the President tend to expand, given the constitutional role of federal chief executive, commander in chief of the armed forces, and the inaugural pledge to defend the nation and the Constitution against “all enemies foreign and domestic.” Only the President, among the three coordinate and competing branches of the federal government can be expected to act quickly and decisively in response to the exigencies of a world of dangerous and quickly changing events.

The American constitution contains a functional variability in the architecture of its division of powers which should normally result in a reassertion of the Congress and of the federal judiciary once an existing emergency has been met by the executive. In Schlesinger’s analysis, when the President retains and insists on extraordinary powers and on a predominance over the other branches of the government though the immediate threat has passed, then we are dealing with the phenomenon of the “imperial Presidency.” This must eventually be checked by the Congress and the courts, and by other constitutionally envisaged actors, to preserve the overall historical and constitutional order. The strong President provided for in the Constitution must be subject to an equally “strong accountability.” On Schlesinger’s view, only a “needless war” preserves a present imbalance, though some general tendency to imbalance was clearly established as a pattern by the long ordeal of the Cold War.

It belongs to the burden of argumentation of this book to establish that the present war in Iraq is indeed a needless war. Supposing on the

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contrary that the war and various associated domestic measures are essential to national defense, then the argument against the contemporary imperial Presidency collapses. To evaluate fully this book, the reader must consider not only the constitutional and historical issues involved in the characterization of an imperial Presidency, but also the facts and conditions which brought on and have functioned to maintain the war and the presence of American forces in Iraq: Was the invasion needed to meet a clear and present danger to national security which could be met in no other way? Would alternative, multilateral uses of American resources, diplomatic and military, have promised a more adequate defense? Is the continued American military effort in Iraq required by the pressing needs of national security? In this book, these and related questions are approached within the context of the historical development of American government and democracy and with a sharp eye for historical and constitutional precedent.

In sympathy with Schlesinger, I would argue that the prospect of a contemporary American empire, as this has recently been conceived and advocated, is fundamentally wrong-headed, even self-destructive. The warning draws, in part, on John Quincy Adams, who according to Schlesinger was “perhaps our greatest Secretary of State” (p. 42). We dare not “go abroad in search of monsters to destroy,” said Adams, thereby undertaking wars of interest and intrigue, for if we do, then our “policy would insensibly change from liberty to force,” and if we attempt to dictate to the world, then America “would no longer be the ruler of her own spirit” (p. 42).

What would it profit the nation, one may ask, to gain the whole world by military conquests, strategic bases, naval fleets, missiles, intrusive intelligence, and alliances, if, in the process, it loses its soul? Schlesinger points us to the right questions. The absence of scrupulous concern for human rights and civil liberties, in the present administration, represents a threat to that tolerance and openness of spirit in our domestic relations on which the nation is founded—and, given its internal diversity, needs continually to be re-founded. Americans need to consider, for example, that they do not want to live in the kind of country where their library borrowings are snooped on by federal agents or the local police as deputies. “Perhaps it is a universal truth,” as the book quotes James Madison, “that the loss of liberty at home is to be charged to provisions against danger, real or pretended, from abroad” (p. 47). Americans are and should be deeply indignant about the condition of prisoners at Guantánamo Bay, about tortured prisoners at Abu Ghraib in Iraq, concerning the prospect of indefinite detention without a court hearing, and by various doubtful proposals for domestic surveillance coming from the Bush Pentagon and Justice Department.

Schlesinger gives a clear sense, in his Foreword and in the opening essays, to the charge of unilateralism raised against the administration of President George W. Bush, a unilateralism more pernicious than that rooted in

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the isolation from entangling foreign alliance advocated by Washington and Jefferson in the early republic, since this new version also threatens, by an aggressive policy of preventive war, to forsake even any deeper concern for the good opinion of mankind at large.

There is basically no contradiction between national independence in foreign policy decisions and our international alliances and commitments; and no one wants to turn U.S. security and national interests over to the sole care of multilateral institutions. Arguably, though, the decision to go to war in Iraq was a mistake. There was no direct and immediate threat to the U.S. from that country. The invasion of Iraq diverted our focus from the task of hunting down the terrorists responsible for 9/11 in Afghanistan, and we gave up the prior policy of deterrence and containment of the Iraqi dictatorship—in the face of the opposition of some of our chief European allies—thus overstepping the historic constraints, and ignoring the advantages, of the multilateral approach in international affairs. The prior policy of deterrence and containment, based on international agreements and on the results of the first Gulf War, was multilateral, but the target of criticism is not merely the departure from the prior policy and the precedent of the first Gulf War.

We must reject preventive war as a policy. There are some marvelous historical quotations on the notion of “preventive war.” From Lincoln: The Philadelphia convention, Lincoln wrote, had “resolved to so frame the Constitution that *no one man* should hold the power of bringing this oppression upon us” (p. 43). From President Truman: “There is nothing more foolish than to think that war can be stopped by war. You don’t ‘prevent’ anything by war except peace” (p. 22). President Eisenhower: “...I don’t believe there is such a thing, and frankly I wouldn’t even listen to anyone seriously that came in and talked about such a thing” (p. 22). The notion of preventive war is clearly disreputable, and Schlesinger argues convincingly that we need to emphasize the distinction between “preventive war” and “preemptive war.” “Preventive war refers to potential, future, therefore speculative threats,” Schlesinger points out, while according to the Department of Defense manual, “preemptive war” implies “an attack initiated on the basis of incontrovertible evidence that an enemy attack is imminent” (p. 23). The choice of words becomes crucial.

This book facilitates public discussion and reconsideration of American commitments in Iraq and of the related policies of the current administration. It is a very appealing and well crafted little book, whether one is inclined to agree with Schlesinger or not. The hotly debated contemporary issues are removed, in significant degree, from steamy clouds of polemics and embedded in a concise survey of the relevant history. In spite of its conciseness, the book ranges widely. Anyone with a lively interest for American history will be delighted with the compilation of quotations and historical precedents. Schlesinger clearly sees the foreign policy of Franklin

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Roosevelt as paradigmatic for American internationalism. Philosopher William James is quoted approvingly to the effect that the nation was being asked to “puke up its ancient soul,” by re-electing President McKinley and continuing the long war against the Philippine insurgency in 1900 (p. 79), but little is said directly in judgment of the Spanish-American War. The emphasis falls instead on the historical fact and honorable tradition of patriotic dissent from America’s wars. The book may thus provide some room to disagree, particularly on matters of emphasis or regarding evaluation of the details of American history, and the attentive reader will also gain a better sense of the overall configuration of contemporary policy debates and alternatives. Some room to disagree is to be expected and welcomed.

Though the book will help in debates on contemporary policy, it ranges widely. It is not merely a matter of the invocation of historical incidents and precedents. Schlesinger directly addresses, by similar methods, not only the policy issues connected with war and peace, but also the historical precedents for public dissent in time of war. He leaves no doubt that patriotic duty may incline some to public dissent from war. “True patriotism,” he writes, “consists of living up to a nation’s highest ideals” (pp. 81-82).

Considering the American presidency apart from war, Schlesinger includes an interesting discussion of the electoral college, and the continuing prospect of our selecting a President against the expressed choice of a majority of the popular vote. He proposes reforms of the electoral system as consistent with its federalist character. The idea is to make the results of the electoral vote better approximate the national popular vote. First of all, do away with the Presidential electors—persons who may decide not to vote for the candidate to which they were pledged. So far so good. There is no prospect of the Electoral College as a significant deliberative body.

Secondly, the total electoral vote is to be augmented by “a national pool of 102 new electoral votes” (p. 102) awarded to the winner of the national popular vote. This would make it extremely difficult, if not technically impossible, for the winner of the national popular vote to lose the election by the presidential electoral vote. Part of the argument is that this plan would avoid the prospect of a proliferation of splinter parties implied by direct popular election. One may fear, however, that this solution will satisfy no one: not the democratic sentiment that insists on the popular vote, and not the contrasting, anti-nationalist, federalist concern to maintain the power, status, and constitutional role of the states. According to the Constitution, and American law, the states are political societies which are allowed some weight, over and above that of the citizens counted individually, in the selection of the President. That is the reason why each state presently has two presidential electoral votes in excess of those apportioned in accord with the relative size of the state’s population. Every bill ever passed into law by the U.S. Congress had to pass through the U.S. Senate, and the authority of

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Congress, and of federal law thus rests on this same recognition of the states as political societies which are to have their significance in national affairs.

The recognition of the states as political societies is also the reason, for instance, that a state legislature may decide on the allocation of the state's Presidential electoral vote, if the popular vote in the state cannot be conclusively tallied. Arguably, the addition of a national pool of electoral votes, while making the national presidential election more democratic, would also further diminish the status and influence of the states, moving further in the direction, away from federalism, and toward a more centralized, nationalist configuration of the country. That the proposal is likely to satisfy no one, points to a basic tension and paradox of the Constitution: a significant decentralized federalist structure combined with a strong national President. We want both, and always have, so we are chiefly content to moan, and do nothing, about the Electoral College. But in an era of imperial Presidencies, we should certainly think twice before preferentially elevating the democratic electoral mandate of the President above that of the Congress.

The final essay of the book, "The Inscrutability of History," takes the reader on an even more extensive leave of absence from the contemporary political polemics of the war in Iraq. But the author makes his plea of relevancy at the start: "As individuals deprived of memory become disoriented and lost, not knowing where they have been or where they are going, so a nation denied a conception of its past is disabled in dealing with its future" (p. 121). Part of the lesson here consists in a rejection of history as capable of making infallible predictions, and this is tied directly to the related point that any doctrine of preventive war makes too many demands on the prediction of details. More generally, Schlesinger's all-too-fallible stance on the guidance provided by history is consistent with a Popper-like critique of the poverty of historicism. There is to be no "comprehensive theory of historical change" (p. 123). At best we trace historical tendencies.

We "cannot reduce the function of history in public policy to that of mere rationalization," since the danger in that direction is that "historical models acquire a life of their own," and we may become "bewitched by analogy" (p. 123). Though policy decisions need history to know where we have been, and because it shows us the values embodied in the polity, our values also sometimes justly change. Though "history repeats itself enough to make possible a range of historical generalization," and generalizations multiplied "can generate insight into the shape of things to come," there is always a danger of being misled by historical analogies, and the imperfections of historical generalizations, and beyond that, when a prediction is better founded, it is always possible that we will take steps to avert feared consequences.

It has always been an unstated subtext of historicisms, whether conservative or radical, that history becomes, in degree, a matter of

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(organizing) self-fulfilling prophecies, if only there is sufficient normative and political control and discipline, guided by the glories of the past or alternatively by a dominant vision of the future. It is in this context that the vagaries and polemics and drama of competing historicisms can perhaps best be appreciated. If we overestimate the import of historical precedent, say, the formative force of Jeffersonian (or Jacksonian) democracy, transplanted into foreign terrain, then implicitly we are making the demand that others conform to the precedent, whether it reasonably fits other values, conditions, and precedents or not. Rewards and punishments come into view connected with compliance and its absence. What is not convincing in itself comes to depend on external incentives and disincentives. Destruction and constraint are relatively easy, as contrasted with establishment of common, constructive purposes.

As Schlesinger convincingly argues, Marxist confidence in the outcome of history presupposed overall constancy in the aims and means of capitalism and of the capitalistic state, which was thought inevitably and blindly to favor the holders of great wealth. Liberal reform upset the applecart of Marxist prediction—robbed it of its prospective factual basis in recurrent crisis and poverty—so that the revolutionary and utopian outcome expected came to depend on the normative control and discipline of the party exercised directly over the intellectuals and revolutionaries or through the state. A vision of a golden future became a rationalization for severe discipline by party and state. Where the attempt to convince and persuade has failed, then rewards and punishments come prominently into view tailored to supportive compliance and its absence.

The end of the Soviet Union strongly suggested that even the most highly developed state apparatus is not sufficient to maintain the prestige of a failing ideal. How much less will we suppose then that “political correctness” can be maintained via academic or social rewards and punishments, be there any false ideals maintained or arising in related quarters. The externality of rewards and punishments and the prevalence of polemics become signs of troubles to come. This much projection of social and intellectual trends does presuppose a background prevalence of rationalization among conflicting trend-makers—as contrasted with the trend-spotters. Liberal reforms may yet constrain the excesses of political correctness. As Schlesinger puts a similar point, we sometimes need to reverse Santayana’s aphorism: “too often it is those who can remember the past who are condemned to repeat it” (p. 133). Still, the prospect of projecting historical trends remains beyond reasonable doubt.

In the present context, Schlesinger is right to emphasize that America may do better to relent in the war in Iraq and avoid similar adventures. We need to avoid being captured by an image of inevitable Middle Eastern dominos falling or alternatively of an inevitable series of democracies arising.

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Some comparison to the Mexican-American War is in order, and Schlesinger quotes Ralph Waldo Emerson to illustrate the unpopularity of that war and the bite of public opposition: “The United States will conquer Mexico,” said Emerson, in a comment on President Polk’s war, “but it will be as the man swallows arsenic, which brings him down in turn. Mexico will poison us” (p. 77). As it turned out, the acquisition of the southwest in the Mexican War (whatever the benefit to its present governance) helped sustain the sectional competition for new slave-states and new free-states, leading down the path of growing sectional contention, and see-through compromises, toward the Civil War. Similarly, there is little guarantee of great successes in the present war and some significant threat of kindling further animosity, and further international conflict, plus unacceptable domestic restrictions on civil liberties and national disarray and embarrassment on human rights.

“Democracy is impossible,” Schlesinger argues, “without private ownership because private property—resources beyond the arbitrary reach of the state—provides the only secure basis for political opposition and intellectual freedom” (p. 111). Agreed. Still Schlesinger is keenly aware that there must be limits to capitalism and expanding marketization. “The unfettered market conservatives worship undermines the values—stability, morality, family, community, work, discipline, delayed gratification—conservatives avow. The glitter of the fast buck, the greed, the short-termism, the exploitation of prurient appetites, the ease of fraud, the devil-take-the-hindmost ethos—all are at war with purported conservative ideals.” (p. 112). Agreed again. Growing, even though relative, inequalities, are eventually a threat to democracy itself simply because the relative disparity of means puts the aims of the nonadvantaged at ever greater risk. The privileges of great wealth and position become a snowball progressively collecting ever greater privilege. In some circumstance, capitalism is an appropriate means to the displacement of an oppressive elite, but it may also throw up its own oppressive elites. Surely, then, in somewhat the spirit of Presidents Andrew Jackson and Franklin Roosevelt, the American government must be big enough and powerful enough to control the potential domination of any private economic or financial interests, and to control the threat of growing inequalities.

There is need of a broader emphasis on something like the distinction between “preventive war” and “preemptive war.” While the Left has often wanted to make preventive political measures against private economic concentration in the extreme by extinguishing the very possibility and predicting inevitable abuse of private economic power, American liberals should be content with countering economic power if and when it represents a clear and present danger. As with war, and the power of the President, if the immediate threat is great, then the government may need to expand its powers. Yet this point is consistent, though in live tension, with the

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contrasting conviction of the Founding Fathers that centralization and growing power of central government, large standing armies, etc., ultimately represent a threat to liberty. If the federal government can never shrink or relinquish powers, in the politics of liberal thought, then federalism and the broader constitutional division of powers are continually under threat, and something can and will grow up, a governing class, which threatens political equality by its self-aggrandizement through state-supported agency. The American Constitution is a perpetual balancing act which presupposes great depth and tenacity plus considerable wisdom and vitality in the public and in the institutions of civil society. The continual growth and centralization of government puts these roots of American democracy at risk.

This book helps us to see that no elitism is an adequate substitute for the needed balance. The general theme of the “preventive” versus the “preemptive” surely has broad political applications—as Schlesinger seems to recognize when he compares the task of intelligence collection under a policy of preventive war to that of the “precogs” work in crime prevention in Steven Spielberg’s film *Minority Report*.

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Kirkpatrick, Jerry. *Montessori, Dewey, and Capitalism: Educational Theory for a Free Market in Education*. Claremont: TLJ Books, 2008.

Jerry Kirkpatrick is an economist, specializing in international business and marketing, but his interests extend much farther. His earlier book, *In Defense of Advertising*, was not confined to economics but presented a penetrating philosophical analysis of his chosen subject as well. In *Montessori, Dewey, and Capitalism*, Kirkpatrick continues his philosophical explorations. He does so in order to answer a question that has rarely been asked.

The topic he considers arises this way: Many people defend laissez-faire capitalism and accordingly think that the government should play no role in education. Few have gone on to ask: What would education be like in a free society? This is precisely Kirkpatrick's question. In answering it, he is guided by the condition that in a free society, education should mirror the basic principle of the society and be noncoercive. Additionally, he thinks that since the free market tends to supply goods efficiently, certainly more efficiently than the state does, the answer to his question can be found by endeavoring to determine what type of education enables students to learn best. It is this that one can expect the free market to supply.

One might object that the educational philosophy of a future free market society could not be known in advance; one would just have to wait and see what happened. With this I do not think Kirkpatrick would disagree. He does not claim to have proved that a free society must be characterized by the educational philosophy that he favors. Rather, he intends his remarks as suggestions worth exploration.

I have said that Kirkpatrick is engaged on a philosophical inquiry, and it is a specific sort of philosophy that guides him. He is an Objectivist, although he does not always agree with Ayn Rand. He thinks, for example, that she has not fully freed herself from "intrinsicism," and he regards her very negative view of John Dewey on education as based on misunderstanding. On Rand's essay "The Comprachicos," he writes: "This excellent essay on how the worst of progressive education deforms the minds of children misses the point that traditional, authoritarian education does the same, as does, and probably in a worse way, traditional and insensitive parenting. It also takes a quotation from John Dewey . . . out of context" (p. 123, n. 14). Furthermore, he has been influenced by two of Rand's close associates, economist George Reisman and Reisman's wife, psychologist Edith Packer.

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Kirkpatrick begins with an account of the history of education. In antiquity and the Middle Ages, the dominant emphasis was on a fixed body of knowledge that students had to learn by rote. Getting them to do this often involved physical discipline: children were viewed as evil by nature and had to be beaten into submission.

Kirkpatrick discusses a number of reformers, beginning with Plato, who dissented from this dire doctrine. These reformers included the Jesuits, but the new movement really “took off” with the Enlightenment, with John Locke, Czech reformer John Amos Comenius, and Jean-Jacques Rousseau chief among them. Later reformers include Pestalozzi, Herbart, Froebel, Montessori, and Dewey.

These theorists maintain, to a greater or lesser degree, that the key to education is to develop in the child the ability for concentrated attention. To do this requires that the child become interested in something for its own sake. If children are forced to learn on pain of punishment, or even if they learn in order to receive a reward, they will fail to develop this essential skill. They will be motivated by their fear of punishment or desire for reward, and they will lack an incentive to be interested in the subject of the lesson when these external factors are not present.

This at once raises a further question. What is the best way to present material to students, especially those of very young age, so that they are likely to become interested in it? Here the educational reformers mentioned earlier come to the fore. They maintain that children need to work with concrete materials rather than be confronted at first with abstractions. By encountering the concrete in activities that interest them, children will be able to grasp abstractions for themselves.

Thus, in the Montessori method, much in favor among Objectivists, children are presented with carefully guided activities, for example, fitting variously shaped cylinders into holes, from which they can glean abstract concepts. By proceeding in this way rather than demanding rote knowledge of the abstractions first, concentrated attention will be developed. Sometimes writers contrast Montessori with John Dewey, and, as Kirkpatrick does not fail to note, William Heard Kilpatrick, a leading supporter of Dewey, condemned Montessori for an overly mechanical approach to education. Nevertheless, Kirkpatrick argues that Montessori and Dewey were broadly similar in approach. Dewey too believes in the importance of concentrated attention and learning through doing. “For Dewey, undivided interest in which the self is identified with the object or end being pursued is stimulated by Dewey’s five steps of a complete act of thought” (p. 60). Contrary to much popular mythology, Dewey did not neglect subject matter but was rather concerned with the best way in which knowledge could be presented to young students. “Dewey, it must be emphasized once again, did not abandon subject matter nor did he devalue learning from textbooks” (p. 62). Neither did he

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favor letting children run hither and thither without guidance. His political views were of course antithetical to those of defenders of capitalism, hence his bad reputation in such circles, but Kirkpatrick finds much merit in his educational theories.

Kirkpatrick's reasoning here has two steps: the development of concentrated attention is the essential task of early education and arousing the child's interest though making enjoyable activities available is the best way to develop such attention. Neither of these is self-evidently true. No doubt children, indeed everyone for that matter, will do better in studying if they concentrate to the fullest on what they are doing than if they give their subject half-hearted attention. It does not follow from this, though, that the development of such attention should assume first place on the agenda. Maybe students can learn most efficiently if a greater quantity of subject matter is presented to them and one is satisfied with a less-than-full arousal of their attention span. I do not say that this is so; quite the contrary, Kirkpatrick's intuition is not unreasonable. But it is just that—an intuition.

Surely it is an empirical question how much learning depends on the development of concentrated attention. Do children who do have this ability, from whatever source derived, learn better than children who possess this ability only to a limited extent?

Furthermore, is it true that the best way to develop the ability of concentrated attention is to present children with pleasant activities? Again, this seems an empirical question. It would certainly be unfortunate if the Duchess's advice in *Alice's Adventures in Wonderland*, "Speak roughly to your little boy, And beat him when he sneezes," turned out to be the best way to develop concentrated attention, but what in principle rules this out?

In his account of the history of education, which one might call the transition from wrath to grace, Kirkpatrick makes an important historical claim. He argues that the medieval view that children were evil beings, who had to be beaten into submission, stems from the Christian doctrine of original sin. Locke and the later reformers rejected original sin and had a much sunnier view of the child's nature. For Locke, children are not innately evil. Kirkpatrick is I think right about Locke, and here he has the weighty authority of John Passmore on his side. "According to one writer [Passmore], the significance of Locke's ideas lies 'not so much in [his] rejection of innate ideas as in [his] rejection of original sin'" (p. 48). But Kirkpatrick's account of original sin lacks nuance. The doctrine of original sin itself should be separated from views about the effects of original sin. Original sin in itself means that as a result of Adam's fall, man is denied divine grace, unless redeemed by Christ; but the effects of that fall are much in dispute among Christian theologians. Someone could consistently hold that we are fallen in the way just explained without also holding that children are born totally depraved, though some theologians have indeed held this as well.

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Kirkpatrick displays a commendable concern to relate his views on education to philosophical fundamentals. For him a prime philosophical sin, though not of course an original sin, is intrinsicism. According to this doctrine, things in nature have fixed essences. “The doctrine is called ‘intrinsicism’ because essences and values are believed to inhere intrinsically or inherently in (or beyond) nature; they are fixed and eternal, and they cannot be altered by the human mind” (p. 71). If so, then the mind must learn about these essences by passively contemplating the world. Accordingly, education stresses the need for students to absorb their lessons without critical thought. The doctrine goes hand-in-hand with the medieval use of compulsion that Kirkpatrick regards as one of his principal aims to combat.

I do not think that Kirkpatrick has given us adequate reason to reject intrinsicism. What exactly is the argument that objects in nature do not have fixed natures? If it is the case, as Kirkpatrick suggests, that our concepts are purely mental categories that, through “measurement omission” pick out aspects of interest to us out of the real concretes that form the world, is this not to say that the world does have one real nature, that is, to be composed of these very concretes? Oddly, in view of the inveterate Objectivist antipathy toward Kant, the view that Kirkpatrick and other followers of Rand defend bears a distinctly Kantian provenance—our concepts fail fully to grasp the world as it is in itself. Kirkpatrick sharply criticizes the Kantian view that we cannot perceive reality—I incline to think that this was not Kant’s position, but that is not relevant here—but fails to see that his own claim that our concepts imperfectly represent the concretes of nature is but a variant of the view he condemns.

Furthermore, if intrinsicism is true, it does not follow that the way to grasp the real natures of things is through passive contemplation. It seems entirely consistent for someone to hold that the mind must be actively employed to grasp these real natures—perhaps they reveal themselves only through arduous experiment.

Kirkpatrick extends his view that the child should be encouraged to be motivated by his activities, rather than through external praise and blame, in a radical way. He opposes the use of praise and blame, and indeed all external sanctions for behavior, in child rearing. “What the techniques [that communicate distrust] have in common is not seeing the child or student as a person with self-initiated thought processes and real values, emotions, and conflicts, but as an object to be manipulated. They communicate dislike and are patently unkind” (p. 127).

He does not confine his attention to elementary education. He suggests that, in a free society, colleges and higher institutions of learning would display much more varied structures than they do at present. As at the elementary level, though, grading as we know it today would be sharply de-emphasized if not eliminated altogether. In the lecture/tutorial system that he

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favors “from secondary school on, possibly from upper elementary school (grades 9 and 10) through university ... [t]here would be no entrance requirements or evaluations to determine who would be allowed to attend the lectures....Grades would not be assigned to students because examinations would not be given” (p. 173).

Agree with it or not, Kirkpatrick’s book is immensely valuable and stimulating in opening up new possibilities. In its stress on freedom and opposition to rigid rules, it in some ways resembles the neglected but outstanding work of Bruce Goldberg, *Why Schools Fail: The Denial of Individuality and the Decline of Learning*.¹ Kirkpatrick has written a book that is must reading for those interested in the philosophy of education and for anyone who cares about a free society.

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¹ Bruce Goldberg, *Why Schools Fail: The Denial of Individuality and the Decline of Learning* (Washington, DC: Cato Institute, 1996).

