

Ayn Rand on Punishment

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1. Introduction

David Boonin has given us a concise and lucid critique of Ayn Rand's views on punishment that is very much in the spirit of his provocative book *The Problem of Punishment*.¹ My aim here is both to respond to Boonin's critique and to offer a more general exposition of the Objectivist conception of punishment. I begin in Section 2 with some methodological remarks on the definition of "punishment" (further elaborated in Appendix A) and a sketch of a conception of punishment derived from Rand's theory of justice (further elaborated in Appendix B). I move in Section 3 to some interpretive issues concerning the right way to read the Rand-Hospers letter exchange (further elaborated in Appendix C). In Section 4, I respond to Boonin's four counter-examples to Rand's view. Section 5 ends with some thoughts about the further development of the Objectivist theory of justice.

2. What Punishment Is

In a very general sense, Rand and Boonin agree on questions of method. Both agree that an inquiry into topic X presupposes a definition of X, presupposes an explicit statement of the problem in question, and requires an explicit statement of adequacy conditions on its solution. Boonin's critique of punishment is admirably explicit on both counts, both in his critique and in his book. Yet despite this general agreement, Rand would, I think, disagree not just with the upshot of Boonin's critique, but with the way he sets it up. So let me begin with disagreements about the definition of punishment, and move from there to the problem of punishment itself.

a. Punishment as debt collection

Boonin opens his critique "with the question of what punishment is," and concludes that "[p]unishment thus involves, at the very least, intentionally harming a person because the person has been convicted of a crime."² Given

¹ David Boonin, "Ayn Rand and the Problem of Punishment," *Reason Papers* 35, no. 1 (July 2013), pp. 58-67; David Boonin, *The Problem of Punishment* (Cambridge, UK: Cambridge University Press, 2008).

² Boonin, "Ayn Rand and the Problem of Punishment," pp. 58 and 59.

this definition of punishment, the problem of punishment becomes why it's morally justifiable to harm criminal offenders, and Boonin concludes that Rand's view fails because it fails to solve the problem so conceived. While Rand would agree (perhaps trivially) that punishment is intentional, she is, as I see it, committed to rejecting Boonin's definition of punishment, and *a fortiori*, his characterization of the problem of punishment. The resulting difference in philosophical points of departure is not, I think, captured by Boonin's account of Rand's views.

To the best of my knowledge, Rand herself offers no definition of "punishment" in her published writings,³ and I find the semi-canonical definition in the Objectivist literature unsatisfactory.⁴ In what follows, I offer a definition of my own, one that I think follows from Rand's theory.

On Rand's view, in order to define a concept as abstract as "punishment," we have to locate it in a "hierarchy" of related concepts.⁵ Our definiendum, *ex hypothesi*, is "state punishment." State punishment is a species of *punishment*, and thus presupposes a definition of the latter term. Punishment and reward are in turn contraries, and are both instances of *moral desert* in contexts of human interaction. On Rand's view, moral desert is a matter of what she calls the principle of *trade*, which might equally be described as a principle of payments and debts. Leonard Peikoff puts the point as follows:

The trader principle states that, if a man seeks something from another, he must gain title to it, i.e., come to deserve it by offering the *appropriate payment*. The two men, accordingly, must be traders, exchanging value for value by mutual consent to mutual benefit. "A trader," writes Ayn Rand, "is a man who earns what he gets and does not give or take the undeserved."⁶

³ There is no entry for "punishment" in either the *Ayn Rand Lexicon* or in the *Glossary of Objectivist Definitions*. See *The Ayn Rand Lexicon: Objectivism from A to Z*, ed. Harry Binswanger (New York: New American Library, 1986), and Allison T. Kunze and Jean F. Moroney, *Glossary of Objectivist Definitions* (Irvine, CA: The Ayn Rand Bookstore, 1999).

⁴ For further discussion of the canonical definition, see Appendix A below.

⁵ For a discussion of epistemic hierarchy, see Leonard Peikoff, *Objectivism: The Philosophy of Ayn Rand* (New York: Meridian, 1993), pp. 129-41. Despite my disagreements with Peikoff (see Appendix A below), I rely heavily on his presentation here.

⁶ *Ibid.*, pp. 286-87. Emphasis mine.

The trader principle, in my view, is the foundation of Rand's theory of justice, and thus the basic concept in an inquiry into reward and punishment. The passage excerpted above nicely states the essence of the principle, but leaves a great deal inexplicit.

On Rand's view, each of us ought to act egoistically, in the sense of making ourselves the ultimate intended beneficiary of our own actions. Obviously, a great deal of this self-benefit is achieved through interaction with others. At a minimum, the trader principle specifies a condition to be met for interacting with others: If I interact with someone, I am obliged to *pay* her for what I seek from her. There are many possible ways of seeking something from someone, ranging from the completely explicit and fully articulated, to the inexplicit and unarticulated but still determinately goal-directed. There are likewise many ways of paying for something—many forms of “currency,” we might say—corresponding to differences in the objects we seek from others. The trader principle covers this entire range, generalizing across persons, objects of pursuit, types of seeking, and types of payment. We should not be misled, then, by Rand's insistence on using the term “trade,” usually restricted in common parlance to commercial transactions, to name a principle that applies to human interactions as such. Rand clearly takes commercial trade to be a paradigm of justice, but doesn't restrict trade to commerce; even the commercial trade she regards as paradigmatic is trade of a very circumscribed variety.

According to the trader principle, then, if I interact with someone, I'm obliged to pay her for the value she brings to the interaction, including the virtuousness of character that she brings to it. Why “obliged”? Rand takes moral obligation to be an application of the principle of conditional necessity, that is, of bringing about the causal requirements of a goal that one has volitionally set.⁷ The ultimate goal is egoistic flourishing. As an egoist, in any interaction, I want the best of whatever the other person can give me. Since wanting by itself won't make it so, I need to take steps to induce the other person to direct the positive consequences of her actions my way. But I don't want passively to wait or hope for these consequences to come about. I want insofar as possible to contribute to the causal process that brings them about. Now, I cannot literally *cause* another agent to act in my preferred way (since she controls her own agency and actions),⁸ but I can give her incentives for doing so. Incentivizing another person's action is the closest I can come to causing it. “Incentivizing” is of course another word for offering payment, and the right payment to offer is the amount I can afford to pay that will get me

⁷ See Ayn Rand, “Causality Versus Duty,” in Ayn Rand, *Philosophy: Who Needs It*, Centennial Edition (New York: Signet, 1982), esp. pp. 133-36.

⁸ See Ayn Rand, “The Metaphysical Versus the Man-Made,” in Rand, *Philosophy: Who Needs It*, pp. 42-43.

the best that the other person can give—which is what the trader principle prescribes.

Our account of the trader principle will be incomplete, however, unless we grasp the role that virtue plays in living by it. According to Rand, an individual is at her best when she is fully virtuous. Given this, Rand thinks that we get the best out of people when *they* are fully virtuous. So a rational and virtuous agent seeks, insofar as she can, to express rationality and virtue by seeking it out in others, incentivizing it, paying for it, enjoying the consequences, and repeating the process. Put another way, one tries, to the extent possible, to seek out those who are as virtuous as possible, and having done so, to “exploit” their virtue by giving them inducements appropriate to its exercise.

Notice that when I give you an inducement to exercise (say) your productiveness, the payment I make to you is not a loss to me (not even a short-term loss) but a *gain*. On Rand’s view payment cannot be decoupled from receipts and cannot be considered a loss in abstraction from its being a constituent of the whole trader relation. It is participation in the *whole relation* that benefits me. Of course, since I enter relationships on the assumption that the other party shares my commitment to trade (or to the extent that she does), my payment to her is not just a payment made without consideration; it gets me something in return. But it is a mistake to think that my egoistic interest consists in free-riding on others’ efforts without paying them, that is, on getting the unearned. In fact, my interest consists in trading, which is to say that it consists in enacting the causes that bring out the best in others (and oneself), of which payment is an irreducible part. So the payment I make *to* a deserving trade-partner is as much in my interest as the payment I get *from* her.

On Rand’s view, then, adherence to the trader principle (all of it) is beneficial to the agent, while violations of it are harmful. The point is not that violation may involve short-term gain that is offset by long-term harm. It is that the “gain” involved in violation of the principle is an *illusion*, and the desire for it, a pathology.⁹

One last point is worth making about the trader principle. As the Peikoff excerpt suggests, trade presupposes mutual consent. If so, it follows that political freedom is a background condition for the operation of the trader principle.¹⁰ The initiation of force violates that condition, and thereby violates the principle.

⁹ This contrasts sharply with the account of the Objectivist Ethics that Boonin gives in his critique. It also contrasts sharply with the so-called “benefit-detriment” theory in contract law according to which contracts require consideration, where that consideration involves X’s giving Y what is “of benefit” to Y but “of detriment” to X.

¹⁰ A further implication is that the trader principle cannot apply in any simple way to minors or other persons who are either incapable of consent or incapable of full consent.

The issue of violations brings us more directly to the topic of punishment. There will, of course, be cases in which one person interacts with another but fails to offer or give that person the appropriate payment for the interaction, whether culpably or not. The initiator of the interaction thereby incurs an unpaid debt. In the broadest sense, “punishment” denotes the morally appropriate response to *culpable* instances of such debts. Now, trade of necessity involves the incurring of some debts, so the sheer fact of having incurred a debt cannot by itself be culpable, or make someone a candidate for punishment. What makes a debt culpable is its *delinquency*—the volitional refusal or unwillingness to pay one’s debt on time and in its full amount, or else the volitional taking of the unearned without intention to pay. A person who has failed to pay what she owes still owes it. The person to whom she owes it is still entitled to it. In the ideal case, the morally appropriate response would be to resolve the debt by getting it paid in full. Where that’s not feasible, the next-best response would be to get the debt paid in part. Where even that’s not feasible, the next-best response would be to prevent the unjust person from using or having access to her ill-gotten gains.¹¹

As a provisional definition, then, *punishment* is the exaction or collection of a delinquent debt because of its delinquency, where the aim is to resolve the debt in the lexically ordered sense just described. *State punishment* is the government’s exaction or collection by force of law of those culpably delinquent debtors to which the state is justified in responding. Two remarks about these definitions are worth making.

First, since the conception of payment involved here is very broad, so too are the conceptions of indebtedness and by implication punishment. Thus the kinds of delinquencies at issue will vary greatly according to context, as will the criteria for culpability, the criteria for delinquent indebtedness, and the criteria for appropriate punishment. On this view, every interaction is to be paid for by currency appropriate to the interaction, and every culpably delinquent debt is a failure to pay some deserving party in the currency appropriate to her merits. What an offender owes and how she’s to discharge the debt turns on the sort of payment on which she is delinquent and how she has incurred the debt in question. It also turns on the extent to which rectification is possible, and if not, what approximations can feasibly be made to it.

Second, we need to distinguish those culpably delinquent debts that involve initiated force from those that don’t.¹² Both are unjust, but to initiate

¹¹ The closest cousins of Rand’s view in the contemporary literature that I know of are debt-based retributivisms which take wrongdoing to generate both monetary and moral debts that punishment serves to exact. See, e.g., Daniel McDermott’s “The Permissibility of Punishment,” *Law and Philosophy* 20 (2001), pp. 403-22. I take the view defended in the text to avoid the criticisms that Boonin makes of McDermott’s view in *The Problem of Punishment*, pp. 149-52.

¹² For further discussion of this point, see Appendix B.

force is typically to take the unearned in a drastic and egregious way. If you refrain from initiating force in your interactions with me, you are respecting one of the conditions of justice—mutual consent—even if you violate the others. If I initiate force against you anyway, I am aggressing against your respect for justice, however flawed it may be. On Rand’s view, if I interact with you, your forbearance from force deserves a payment in kind, namely, my forbearance from it against you. So I can’t justly collect a debt from you by force simply because it is culpably delinquent and owed to me. To be a candidate for being collected by force, a debt must not just be culpably delinquent, but involve initiated force.¹³

An implication of the preceding point is that if we act by mutual consent, we each assume the risks of the other’s not living up to our expectations, including expectations about the other’s adherence to the trader principle. In that case, if you violate the trader principle in your (mutually consenting) interactions with me, there is a (weak) sense in which *I* deserve it, since in consenting to deal with you, I assumed the risk of precisely that violation. In that case, your violation is in a (weak) sense a consequence of my action, though of course, it’s much more a consequence of yours than mine.

b. Punishment, crime, and harm

This sketch of Rand’s conception of trade and punishment tells us why Rand would reject Boonin’s definition of state punishment and, with it, Boonin’s formulation of the problem of punishment. A first relatively minor issue concerns punishment as a response to crime. A second and more fundamental issue concerns punishment as the intentional infliction of harm.

On the Objectivist view (by contrast with Boonin’s), state punishment is not necessarily a response to crime. Every culpably delinquent debt deserves punishment of some kind. Some culpably delinquent debts are rights-violations, and all rights-violations involve initiated force. Such violations are (for reasons having to do with the nature of force) best dealt with by law, as regulated by government.¹⁴ However, not all rights-violations are crimes; torts and contract violations are not. In the case of (culpable) tort or contract violations, one party incurs a culpably delinquent debt to another, and does so by initiated force. The breached party suffers a grievance that requires legal rectification, and legal action on Rand’s view is either undertaken by government or at least supervised by it.¹⁵ On the Objectivist view, *all* rectifications of culpable rights-violations count as punishments, and

¹³ My account of this issue diverges from the one Tara Smith offers of “the relationship between justice and individual rights” in Tara Smith, *Ayn Rand’s Normative Ethics: The Virtuous Egoist* (New York: Cambridge University Press, 2006), pp. 170-75.

¹⁴ See Ayn Rand, “The Nature of Government,” in Ayn Rand, *The Virtue of Selfishness: A New Concept of Egoism* (New York: Signet, 1964), pp. 125-34.

¹⁵ *Ibid.*, pp. 127-32.

since the government is involved,¹⁶ they count as state punishments. What distinguishes the law's response to crimes and (culpable) torts and contract violations is not that crimes are remedied by punishment while the others are not, but that each offense involves a different sort of culpably delinquent indebtedness, with debts to be discharged in different ways. Hence, life imprisonment for murder is as much a case of punishment as being under court order to pay restitution damages in a replevin action (where culpability is involved) or as a judgment for expectation damages in a (culpable) contract dispute.¹⁷

This brings us to a (yet) more contentious issue. Contrary to Boonin, on Rand's view, neither punishment generally nor state punishment aims to *harm* the punished person. Punishment aims to exact payment for a delinquent debt, and state punishment does this by legalized force. We would need a further argument to show that *exaction of delinquent debts was harmful to the delinquent debtor* before we could infer that punishment involved or aimed at the production of "intentional harm." In his critique, Boonin offers an argument intended to show that punishment aims at harming the punished person,¹⁸ but I don't think that his argument secures that conclusion. What he discusses are cases where someone has or enjoys something which he is then

¹⁶ This perhaps slightly overstates the point, since we can imagine Lockean states of nature where no government exists, where rights-violations occur, and where punishment of some sort is justified. On Rand's view, though, Lockean states of nature are suboptimal relative to societies under government; the case I describe in the text is the paradigm case relevant to an initial sketch of the theory. I stress "all" in the text to indicate that state punishment is for Rand not merely a justified response to crime but to all other categories of culpable rights-violations.

It's worth remembering, incidentally, that the Objectivist theory of rights allows for the possibility of *non-culpable* rights-violations (e.g., purely accidental boundary-crossings). On the view I'm defending, non-culpable rights-violations will be candidates for some form of rectification but not full-fledged punishment. Cf. Tara Smith's account of rights-violations in her *Moral Rights and Political Freedom* (Lanham, MD: Rowman and Littlefield, 1995), pp. 146-47; note that Smith's definition of "rights-violation" is compatible with non-culpability by the violator.

¹⁷ To anticipate two obvious questions: (1) Is proximate self-defense punitive? That depends on the ultimate intentions of the person engaged in it. Insofar as an act of self-defense constitutes the first step toward exacting a debt, I would say that if you act in self-defense, you've initiated punishment. If the act in question is performed by a government official (for purposes of exacting a debt), the act is a case of *state* punishment. On the other hand, if a victim merely uses self-defense to ward off an attacker with no further intention of collecting a debt, no punishment is involved. (2) Are you are punished, then, when you are held in jail after arrest and before trial? Yes. If you're innocent, you're *unjustly* punished, and ought to get compensation, unless you've assumed the risk of pre-trial imprisonment in the act of consenting to be governed.

¹⁸ Boonin, "Ayn Rand and the Problem of Punishment," p. 59.

obliged to relinquish either as payment for some service or as punishment for some wrong he commits. Boonin infers in each case that the fact of relinquishing something you have and want is a harm simply because you once had it, now want it, but must part with it.

As I see it, Boonin's argument is an *ignoratio elenchi*: It presupposes that the unwanted relinquishing of any wanted thing is a harm (or a "loss" in the sense of being a net loss), and presupposes that to show that someone has suffered a harm, all you have to do is show that he has lost what he wants. As Tara Smith points out in her book *Viable Values*, however, Rand rejected this thesis. As Smith puts the point, something harms someone if it undermines his interest, but

[s]omething is in a person's interest only if it offers a net benefit to the person's life. Since a person's life is not reducible to any isolated element of his condition, we cannot fasten on such elements to draw valid conclusions about what truly serves a person's interest.¹⁹

Neither the sheer wanting of x at t_1 nor the intensity of the agent's desire for x at t_1 , entails that loss of x from t_2 to t_n is a *net* loss for the agent. It is, as Smith puts it, a mistake to conceive of *net* benefit (or loss) by treating "discrete elements [of the person's life] as if they were the whole of it."²⁰ I think that Boonin's argument makes just that mistake.

As remarked above, on Rand's view, participation in the whole trader relation is in one's interest. Thus someone who violates the trader principle *loses out* by the violation. The "goods" acquired as a result of such violations are not just unearned and ill-gotten, but harmful to the getter. If violations of the trader principle create debts, and punishment aims to collect those debts, then punishment will bring an offender closer into alignment with the trader principle than she is by violation of it (and potentially benefit her).²¹ Granted, the primary *aim* of punishment is to collect or exact what's owed to the victim as the result of some culpably delinquent debt, not to benefit the offender. However, punishment so conceived *can* be beneficial to the kind of offender disposed to benefit from it. Consider two cases.

Suppose that I violate someone's rights, deserve punishment, and accept the legitimacy of my punishment in full. *Ex hypothesi*, accepting my

¹⁹ Tara Smith, *Viable Values: A Study of Life as the Root and Reward of Value* (Lanham, MD: Rowman and Littlefield, 2000), p. 168. Smith's discussion of this crucial point seems to me to have gone underappreciated both among Objectivists and among analytic philosophers.

²⁰ *Ibid.*, p. 173.

²¹ Rand's view thus bears some resemblance to Robert Nozick's claim that punishment connects the offender with correct values. Cf. Nozick's *Philosophical Explanations* (Cambridge, MA: Harvard, 1981), pp. 374-80.

punishment—sincerely resolving to pay my debt and then doing so—will bring me closer into alignment with the beneficial trader relation that my act violated. In this case, the “force” involved in state punishment becomes epiphenomenal. If I choose to pay the debt that I owe—or when that’s not feasible, choose to relinquish the enjoyment of ill-gotten goods to which I’m not entitled—no exertion of force is required for the operation of punishment. The “forcible” aspect of my punishment merely serves to ensure my compliance if I lapse. *Per impossibile*, if my compliance could absolutely be assured, force would never (and ought never) to kick in.²² I would just pay my debt until I had discharged it. Since compliance with punishment cannot typically be assured in this way, punishment in the real world inevitably makes use of officers and institutions with enforcement power at their disposal. But if I acknowledge my debt and resolve to pay it, the need for enforced compliance will never arise, in which case I benefit from punishment.

If I *defy* the punishment, of course, the government must compel my compliance. This may well be harmful to me, but in this case, the agent of harm is not punishment or the state, but myself. I have it within my power to benefit from punishment, and have no justified reason for defiance. The harms that arise do so by my own choice.

In neither case is it accurate to say that the *aim* of punishment is intentional harm of the offender. On the contrary, apart from the harm suffered by the victim of the original offense, harm need not enter the equation at all. When it does, the causal explanation for any harm that does arise is the offender’s character and choice, not the nature of punishment. The offender causes the harm suffered by the victim, and the offender causes any harm she suffers herself (both because vice is harmful to its practitioner and because of any extra harms she suffers by defying punishment).

Rand’s theory of justice and her conception of punishment are thus at odds not only with Boonin’s definition of punishment, but with his formulation of the problem of punishment. I therefore think that Rand’s conception responds to the spirit of the challenge that Boonin poses: On her view, punishment is justified not as an intentional infliction of harm, but as a means of collecting or exacting a culpably delinquent debt.

3. Reading the Rand-Hospers Letter Exchange

One might at this point wonder whether I’ve simply changed the subject from the ones Boonin discusses in his critique. What about the

²² This may seem implausible, but for a suggestive example, see Erica Goode, “Miss Manners Would Approve; a Judge Didn’t: ‘Polite Robber’ Is Given a 60-Month Sentence in Gas Station Holdup,” *The New York Times*, April 2, 2011, p. A11. I find the example suggestive rather than conclusive because I doubt the offender’s sincerity, but if he *were* sincere, he would perfectly exemplify the attitude I describe in the text.

Randian texts that Boonin discusses there? Am I dismissing them as irrelevant to the claims I've discussed in the preceding section?

I'm not dismissing them and they're not irrelevant, but I can't accept Boonin's way of reading them, for reasons that may perhaps be clear from what I've said in the preceding section. The text on which Boonin relies for his interpretation of Rand's views on punishment consists of a single page or so (hereafter, "the Letter") from the sixty pages of a letter exchange between Rand and John Hospers, representing Rand's side of the exchange (mostly) minus Hospers's. Indeed, Boonin limits his discussion to a few clauses of two sentences of this single page, but I don't think that this procedure really captures Rand's view. For one thing, it ignores too many of the background assumptions required to make sense of what Rand is saying in the exchange. Second, on purely textual grounds, I think Boonin misreads the Letter.²³

Boonin opens his discussion of the Letter as follows:

Strictly speaking, the letter addresses the question of how much punishment the state is justified in imposing on a particular person, rather than the question of what justifies the state in imposing such punishment in the first place.²⁴

I think this gets things backwards. The discussion opens with a very broad agreement about the relationship between justice and mercy. Rand then reports *Hospers's* interest in the question of what is "deserved, in specific cases,"²⁵ but Rand herself doesn't take Hospers's interest at face value. She explicitly begs off from a discussion of the topic Hospers broaches on the grounds that what needs discussion as prologue to that topic is a more general discussion of the principles that justify and govern punishment as such. She then dismisses Hospers's question as "a technical, legal issue, which has to be answered by the philosophy of law" and which she herself does not answer (or try to answer) anywhere in the exchange, except to insist that "[i]t is an enormously complex issue."²⁶ I should emphasize that the preceding point applies *equally* to Rand's discussion of what Boonin calls "the principle of causality" and what he calls "the principle of retribution." Neither principle is intended directly to address the question of how much punishment the state is justified in imposing in a given case.²⁷

²³ For further discussion, see Appendix C below.

²⁴ Boonin, "Ayn Rand and the Problem of Punishment," p. 61.

²⁵ *Letters of Ayn Rand*, ed. Michael S. Berliner (New York: Plume, 1997), p. 558.

²⁶ *Ibid.*, p. 559.

²⁷ Boonin claims that "the principle of retribution is explicitly presented as a principle for determining the magnitude of deserved punishment only" (Boonin, p. 62). Once again, I think this gets things backwards. Rand prefaces her discussion by saying that

Boonin then suggests that we interpret Rand's view by considering the two abovementioned principles as two distinct and unrelated possibilities, each to be considered in turn. I don't think this is the right reading of the text. Rand clearly does not intend the two principles to be read separately, but intends them as two claims involving a single thesis. I take the "principle of retribution" to be a special case of the "principle of causality." The principle of causality enjoins us "not to evade or break" the connection between what the agent has caused and its effect; the principle of retribution, I take it, tells us to impose restraints on those who break or attempt to break that connection by force in criminal contexts (on the off-the-cuff assumption that few criminal offenders will want to embrace their punishment).²⁸

Taking the principle of retribution first, Boonin interprets it as saying that "the state is justified in harming an offender because the offender, by virtue of being an offender, harmed his victims."²⁹ But that's not correct. For one thing, there is no reference to "harm" anywhere in the passage. There is a reference to "painful consequences," but on Rand's view, not all painful consequences are harmful. Furthermore, Rand's point is not simply that the offender *qua* offender has harmed his victims, but that the offender deserves punishment by having incurred a debt to the victim which he must repay by bearing painful consequences. I grant that she doesn't explicitly say that *in* the Letter, but I think it follows from the account of the trader principle that I gave in the preceding section, and nothing she says in the Letter contradicts it.

With respect to the principle of causality, Boonin concludes that the principle only tells us what someone deserves, but "[t]o show that a person deserves something is not to show that we are entitled to impose on him what he deserves."³⁰ I think that Rand rejects the bifurcation assumed here between what someone deserves and how we should act toward him: desert dictates the payments and debts involved in any interaction. So it would not be a criticism of Rand's view to say that she had merely shown that an offender deserved punishment. If he deserves punishment, that is because he has incurred a debt to someone, in which case *someone* is entitled to collect the debt, presumably the wronged person himself or someone who could justifiably serve as the wronged person's proxy.

she is not explicitly discussing the magnitude of deserved punishment, but "can only indicate in a general way what principles should be at the base of legal justice in determining punishments" (*Letters*, ed. Berliner, p. 559). She then makes reference to three principles—enumerated in the text by the letters (a), (b), and (c)—which jointly constitute "the base" of punishment. Only in conjunction with other unspecified considerations do they determine the magnitude of deserved punishment.

²⁸ *Letters*, ed. Berliner, p. 559.

²⁹ Boonin, "Ayn Rand and the Problem of Punishment," p. 62.

³⁰ *Ibid.*

4. Boonin's Cases

Boonin ends his critique with four cases intended to illustrate the invalidity of the three-step argument he ascribes to Rand on the basis of the just-discussed principle of causality.³¹ The three-step argument, in turn, is described first as an application of the principle of causality to ourselves, and then, separately, as an application of the principle to the offender.³² I am skeptical that Boonin's three-step argument really captures Rand's view, and find the dichotomous applications of the principle of causality to self and others misleading. I want to focus, instead, on Boonin's four examples considered as counter-examples to Rand's conception of justice and punishment. I don't find them persuasive. For one thing, I don't think that the principle of causality really entails what Boonin takes it to entail in any of the four cases. As far as the first three cases are concerned, I don't think that Rand would say about them what Boonin thinks she would. And I think that all four examples suffer from a common methodological defect.

a. The passive interpretation of the principle of causality

The passive interpretation of the principle of causality (as I call it) asserts that the principle of causality enjoins us to take a "hands-off" attitude toward the causal chains initiated by other agents. On Boonin's view, this conception of the principle is too *weak* to justify punishment.

Take the case of the *Flourishing Entrepreneur*. As Boonin describes this case, "[a] brilliant, independent, hard-working entrepreneur exemplifies all of the Randian virtues to the highest degree," so that "he is extremely successful, wealthy, and happy."³³ On Boonin's view, the principle of causality tells "us to refrain from actively interfering with the natural causal chain" initiated by the entrepreneur, but "does not require us actively to reinforce or support it."³⁴ So Boonin concludes that the principle of causality precludes theft or coercive redistribution. It's tempting to agree and leave the matter there, since Rand would of course condemn theft or forcible confiscation of the entrepreneur's property. What I would contest, however, is the claim that the principle of causality "does not require us actively to reinforce or support" the entrepreneur's activities. The issue is more complicated than that.

As I suggested in Section 2a above, Rand's trader principle entails that when we seek goods from others, we are obliged to pay them for what we

³¹ *Ibid.*, pp. 63-66.

³² *Ibid.*, p. 63.

³³ *Ibid.*

³⁴ *Ibid.*, pp. 63-64.

seek from them. Sometimes the payment in question will be a purely monetary one for a purely monetary good, but sometimes more will be involved. If we're aiming to interact at our best with the best in other people, we must pay them for the virtue they express in the interaction, as well as for any goods and services we seek. Part of this payment may be monetary, but some of it may not be. What Boonin omits in his discussion of this case is the payment owed the entrepreneur for the virtue expressed by his actions.

Consider the case in which I'm actively in business with the Flourishing Entrepreneur. Entrepreneurship is an inherently social activity requiring mutual reinforcement and support of causal chains initiated by many people at once (or close to at once). Even if we imagine a solitary entrepreneur starting a business entirely on his own, the successful effectuation of the causal chains he begins will require active reinforcement and support by others. If no one interacting with the entrepreneur had these obligations, entrepreneurial enterprise wouldn't exist at all. So a *completely* passive interpretation of the principle of causality is incompatible with the existence of entrepreneurship as such. It cannot be what Rand intended, and it's not what her words imply. In the case of the Flourishing Entrepreneur, the trader principle demands "value for value." That formulation requires more than not violating his rights and more than merely paying him the contract price of his goods and services. In the case of a person of great virtue, the full value of the interaction will exceed the contract price of any goods and services exchanged. What the trader principle demands here is business partners who match or strive to match the flourishing entrepreneur's virtues and act in appreciation of them.

Now consider cases in which I'm not actively in business with the Flourishing Entrepreneur, but still interact with him in some indirect way. Suppose that the flourishing entrepreneur and I are members of the same *social system*.³⁵ In this case, I may be a beneficiary of his work without having ever become a business associate of his. I may be affected by how the legal system treats him or by cultural attitudes toward him. And I have reason to want the indirect benefits of his actions to keep coming to me. In this case, the trader principle entails that I owe him payment of some attenuated kind. He has no legal right to collect on it, and it may not even be monetizable, but it exists. Rand in fact thought that we all (in a relatively capitalist economy) bear connections of this kind to the class of producers (whether rich or poor, entrepreneurs or wage earners), and owe them tangible expressions of gratitude, admiration, and moral-political support.³⁶

³⁵ See Rand's use of this term in her "What Is Capitalism?" in Ayn Rand, *Capitalism: The Unknown Ideal*, Centennial Edition (New York: Signet, 1967), p. 9. Thanks to Marsha Enright for drawing this term to my attention.

³⁶ Cf. the discussion of the "pyramid of ability" in Ayn Rand, *Atlas Shrugged* (New York: New American Library, 1957), pp. 988-89, with Peikoff's comment on the thematic point of *Atlas Shrugged* as well as his discussion of moral sanction in his

I conclude that the principle of causality *can* require “us” actively to support the Flourishing Entrepreneur’s activity—at least for those of us relevantly circumstanced.

Now take the *Not So Flourishing Loafer*. It’s true that the poverty that the loafer endures comes to him as a natural consequence of his loafing. The principle of causality entails that we ought not to breach such chains. One way not to breach the loafing-poverty connection is to leave the loafer alone to suffer his fate, and on Rand’s view that can be a justified response. But it is a mistake to conclude (as Boonin does) that the principle of causality always and everywhere entails that response, or that Rand believed that it did.

Suppose that I bear a special relationship to the loafer, for example, friendship.³⁷ A friend may be a loafer but may have some virtues as well. The natural consequence of friendship (with a virtuous person) is concern for the well-being of the friend, including concern for him when he’s about to harm himself. Is my berating my friend about the impropriety of his loafing a breach of “the” causal chain? That depends on which causal chain we’re talking about. One chain arises from the virtues my friend has displayed in the past (in virtue of which I befriended him). Another arises from his loafing now. The result is a complex combination of virtue-somewhat-vitiated-by-vice. Does the principle of causality entail that I focus on the vice and ignore the virtue? No. *Ex hypothesi*, the friend has some redeemable features by which he might be persuaded to reform his character. The natural consequence of having recognizably redeemable attributes is that your friends try to rescue you from your folly. A natural consequence of folly is that it evokes negative reactions. So it’s an oversimplification to say that the principle of causality entails indifference to the fate of a loafer, period. It could entail concern, condemnation, or assistance. It depends on the loafer.

In fact, Rand did not think that we ought never to cut checks to loafers. She thought we shouldn’t cut checks to loafers *qua* loafers (i.e., in virtue of their loafing), but that’s different from cutting a check to a loafer whom you intend to convince to stop loafing because you think he has some latent propensity for productiveness (or a smoker who might stop smoking, an

Objectivism, pp. 285-86.

³⁷ I use the example of friendship here, but as Rand makes clear, we need not confine the point to friends or intimates; it applies in a more complex way to strangers as well (cf. “The Ethics of Emergencies,” in Rand, *The Virtue of Selfishness*, pp. 52-55, and Ayn Rand, “The Question of Scholarships,” in *The Voice of Reason: Essays in Objectivist Thought*, ed. Leonard Peikoff [New York: Meridian, 1990], pp. 40-45). The issue of charitable assistance comes up repeatedly in *Letters*, ed. Berliner. There are many examples there of Rand’s charity (in many cases to loafers or loafer-equivalents), but among the most philosophically instructive are the ones to Marjorie Williams of the Studio Club (June 18, 1936, *Letters*, pp. 31-33), and to Rand’s niece, Connie Papurt (May 22 and June 4, 1949, *ibid.*, pp. 445-47). It’s worth noting that despite being her niece, Papurt was essentially a stranger to Rand.

overweight person who might lose weight, a drug user who might go into rehab, an F student who might start studying, etc.). Boonin's example is not sufficiently specified to distinguish between the very different sorts of cases we might confront here, and is insensitive to the different kinds of causes and effects in operation. The principle of causality is multiply realizable. In some cases, it entails a hands-off attitude. In others, it doesn't.

The overarching lesson, though, is that the passive interpretation of the principle of causality cannot be the whole story about its proper application.

b. The active interpretation of the principle of causality

Let's now look at the reverse cases, those in which the principle of causality is interpreted as requiring active support of natural causal chains. Boonin's point is that active support has implications inconsistent with Rand's views, and so, is in some sense too *strong*.

In the case of the *Unlucky Entrepreneur*, the entrepreneur exemplifies all of the Randian virtues to the highest degree but unluckily doesn't reap the expected reward for having done so.³⁸ I read Boonin as making one of three distinct suggestions here, but I'm not entirely sure which one he had in mind.

One suggestion is to "impose" a reward on the entrepreneur, presumably by forcing him to accept the money that he deserves but through bad luck hasn't earned and through stubbornness won't voluntarily accept. Apart from difficulties about determining what the deserved amount would be in abstraction from any market process, the trouble with this claim is that on Rand's view a forced imposition doesn't *count* as a reward. To force something on someone, even something (ordinarily or otherwise) good, is to induce him to act in a way that bypasses his reasoning.³⁹ A rational agent aims, *qua* rational, at what is best for himself, and what is best for an agent is to accept all and only those things that he autonomously *takes* himself to deserve (assuming the capacity to do so).⁴⁰ Since something forced on you is

³⁸ I take the "all" and "highest degree" literally here, so as to preclude the many cases of generally virtuous people who go into business insensitive to the fact that they are in the wrong line of work or are marketing a good product in an ineffective way. The *highest* degree of virtue would require full sensitivity to market conditions and full provision for the possibility of bad luck. There may be cases of unlucky entrepreneurs after that, but the situations will be sufficiently idiosyncratic to require us to think more concretely about them than a short description would convey. A paradigm fictional case might be Howard Roark at the lowest points of his career; see Ayn Rand, *The Fountainhead* (New York: New American Library, 1971), roughly pp. 94-275.

³⁹ See Rand's discussion of this point in her "What Is Capitalism?" in Rand, *Capitalism*, pp. 13-16.

⁴⁰ The parenthetical comment is important. Nothing about Rand's view precludes the "imposition" of an unconsenting benefit in cases in which I literally lack the *capacity*

not something you can *take* yourself to deserve (even if you do in fact deserve it), nothing forced on you can be as good as the same thing accepted voluntarily. An agent capable of revising his conception of desert is thus better off being left free not to accept what he deserves (so that he can freely revise his conception and accept it) than to be *forced* to accept it. The free agent may be in error now, but can benefit from self-generated correction gained by observation from the consequences of his error. The coerced agent is *ex hypothesi* in error now, but doesn't benefit from being coerced out of error because coercion not only masks the consequences that would generate correction, but in demanding acquiescence rather than offering reasons, "corrects" the agent by subverting his capacity for independence. Since independence is a virtue,⁴¹ such acquiescence is a vice, in which case coerced instruction counter-purposively "rewards" the agent by harming him. It follows that "imposing a reward" is, on Rand's view, a contradiction in terms. The agent has to accept reward voluntarily in order to benefit from it.

A second suggestion is to write the Unlucky Entrepreneur a "welfare check." In colloquial parlance, a "welfare check" is one distributed via a government agency, with funds taken by coercive redistribution from taxpayers. If that's what Boonin intends, he is right that Rand wouldn't endorse it, but that's because it violates the rights of third parties (something that violates the principle of causality in *their* case), not because the entrepreneur doesn't deserve some support.

Alternatively, by a "welfare check" Boonin might mean a check voluntarily written against the check-writer's own funds, paid to the entrepreneur as a means of relatively temporary assistance. Boonin describes this as "a result that Rand would surely be unwilling to accept,"⁴² but I don't see why. She might object to a check written from a problematic motive (e.g., altruism; pity; a desire to reward the entrepreneur's vices, errors, or irrationality), but I see nothing in her work that suggests that she would object to the idea of assistance to a deserving-but-unlucky person as such. On the

to benefit myself. If I'm unconscious in the street after being hit by a car, you may call 911 and have the paramedics treat me (without my consent) and rush me to the hospital (without my consent), where the doctors and nurses save my life (without my consent). But that is because I literally lack the *capacity* to consent throughout the event. Once I regain the capacity, consent is required. Thus Rand's view is compatible with what Gerald Dworkin calls "soft paternalism," but incompatible with "hard paternalism"; see Gerald Dworkin, "Paternalism," *Stanford Encyclopedia of Philosophy*, accessed online at: <http://plato.stanford.edu/entries/paternalism/>. The ban on paternalism applies only in cases where the agent *could* choose what is best for himself but either does choose or is likely to choose what is bad.

⁴¹ See Peikoff, *Objectivism*, pp. 251-59, and Smith, *Ayn Rand's Normative Ethics*, chap. 5.

⁴² Boonin, "Ayn Rand and the Problem of Punishment," p. 65.

contrary, she repeatedly insists on the reverse in her letters, her fiction, and her non-fiction: deserving but unlucky people ought to get assistance because they have enacted virtue without receiving the deserved payment.⁴³

So I don't think that Boonin has correctly handled this case. The principle of causality does not entail forced imposition of rewards, and Rand has no objection to assisting the deserving but unlucky.

Finally, as to the *Lucky Loafer*, Boonin suggests that the active interpretation of the law of causality entails that the loafer's unearned billion dollars ought forcibly to be confiscated from him. In this case, Boonin is right to say that Rand would reject forcible confiscation, so the question becomes whether the principle of causality really entails forced confiscation. I don't think it does. There's no question that, on Rand's view, an injustice takes place in this example: both parties violate the trader principle. *Some* punishment may well be justified (e.g., condemnation, ostracism, etc.). The question is whether forcible punishment is. Consider three reasons against its use.

First, recall that rights establish the background conditions for the operation of the trader principle in a social system. The principle cannot operate properly unless everyone is left free of coercion (i.e., everyone's rights are respected). And people who refrain from force do not *deserve* to have it initiated against them. So both parties have rights to voluntary exchange even if the exchange is immoral, which in this case it is.

Second, recall that in a voluntary exchange, both parties voluntarily assume the risks of the exchange. What we have in this case are two people consensually violating the trader principle, assuming the risks of doing so, and taking the consequences. Neither party can claim to be aggrieved by the other or have a further debt to the other. So the outcome in the *Lucky Loafer* case is accurately described as an application of the principle of causality if *no* confiscation takes place.

Third, it's worth remembering that, on Rand's view, there is no pressure to assume that either party has gained from the transaction in such a way as to require rectification. In both cases, perhaps counterintuitively, each agent suffers a *loss* from the transaction. The billionaire loses a billion dollars while incurring the opportunity costs of having used it more wisely. The loafer *qua* loafer wastes a billion dollars on loafing. The loafer's acquisition of the money will *seem* like a reward or benefit if we assume that receipt of any wanted good is a sufficient condition for achieving a net gain, but on Rand's view that is an illusion. As Tara Smith argues,⁴⁴ a single transaction will not yield a net gain if it violates a virtue. There is thus no desert-based motivation for confiscation, unless we assume that the loafer's possession of the money is an intrinsic bad that requires rectification simply because it

⁴³ See the references in note 37 above.

⁴⁴ Smith, *Viable Values*, pp. 168-73.

obtains, regardless of whether anyone is culpably put into debt by it. But Rand rejects that assumption.⁴⁵ In this case, both parties are punished by their folly, leaving no further parties with a debt in need of collection.

I suspect that the Lazy Loafer case gets its bite from the supposition that the loafer, on receiving the money, suddenly reforms his character and uses it wisely—certainly a possibility. If he reforms his character, though, he's initiated a new causal chain, and the wiser he becomes, the more he comes to deserve the money. In that case, it would violate the principle of causality to take it away from him. The initial unearned receipt would deserve contempt and criticism, but receipt of it is compatible with moral reform in the direction of moral desert. Our loafer might not deserve a billion dollars at t_1 , but might, on getting it, learn to live up to it at t_2 . On Rand's view, he deserves the freedom to do so.

So I don't think that the Lucky Loafer is a counter-example to Rand's view. Since I don't agree with Boonin's handling of any of the four cases, I reject the dilemma for Rand that he takes to follow from them.⁴⁶ It also seems to me that the distinction between active and passive interpretations of the principle of causality is a red herring. That principle is best understood in terms of the trader principle, which takes active and passive forms in different contexts.

Finally, it seems to me that there is a basic problem common to all four cases—underspecification. In each case the reader is treated as a spectator surveying a scenario from afar without being told what relation he bears to the actors in the scenario. Since the reader's "relationship" to the actors is unspecified, it is unclear what is intended by asking about or asserting what "we" would do in each situation. Who is "we"? If "we" are mere spectators utterly disconnected to the situations—watching them, so to speak, on YouTube after a random Google search—then we might justifiably do nothing but make judgments as to who deserves what, leaving it at that. But if we are presumed to be interacting with the people in each scenario, then we're obliged to act a certain way vis-à-vis them. What way? In order to answer that question, the agents' relation to us would have to be specified in more detail than Boonin provides. As suggested above, the cases are insensitive to the difference between bearing no relation to us and bearing some specific one.

5. Conclusion

Despite the length of my discussion, I have in many ways just scratched the surface of the issues. I end, then, with some parting thoughts on what is needed for the further development of the Objectivist theory of justice

⁴⁵ See Rand, "What Is Capitalism?" in Rand, *Capitalism*, pp. 13-15.

⁴⁶ Boonin, "Ayn Rand and the Problem of Punishment," p. 66.

generally, and of punishment in particular—thoughts gained in large part by reflection on Boonin’s critique and his book.

As I’ve argued here, the Objectivist theory of punishment is really just a theory for handling non-compliance with or violations of the trader principle. However, development of a theory of non-compliance presupposes a fuller grasp of the nature of compliance than I think we currently have. In particular, we need a more developed account of the nature of *payment* involved in Rand’s theory, and by implication, a more developed account of the nature of debt.

Second, we need a more explicit account of the role of government in implementing punishment. Presumably, government confines itself to the implementation of punishments where force is required for the collection of a debt. But where is that? Rights can after all be violated in a Lockean state of nature where there’s no government to respond to them. If punishment is justified there, then some debts can be collected by force in the *absence* of government. On the other hand, if promissory reliance is sufficient for contractual obligation, and if every breach of contract is a rights-violation, there might well be rights-violations that are too trivial or problematic to be adjudicable in a court of law (e.g., I stand you up for a date, I promise to have sex with you but don’t). So government’s relation to punishment is extremely complex, and could use a more systematic exposition.

Finally, I think Boonin’s challenges acutely suggest that we need a more systematic and coherent account of the various different principles at work in the Objectivist social philosophy. There are four or five such principles (depending on how one counts them): several different versions of a principle of causality or responsibility (mentioned in the Letter, in “The Objectivist Ethics,” and in “Causality Versus Duty”),⁴⁷ the trader principle (discussed in “The Objectivist Ethics”),⁴⁸ the principle of ends (invoked twice in *The Virtue of Selfishness*),⁴⁹ and the principle of rights and non-initiation of force (discussed in several places in *The Virtue of Selfishness* and *Capitalism: The Unknown Ideal*).⁵⁰ These principles clearly were not intended to be

⁴⁷ *Letters of Ayn Rand*, ed. Berliner, p. 559; Rand, “The Objectivist Ethics,” in Rand, *The Virtue of Selfishness*, p. 28; Rand, “The ‘Conflicts’ of Men’s Interests,” in Rand, *The Virtue of Selfishness*, pp. 59-60; and Rand, “Causality Versus Duty,” in Rand, *Philosophy: Who Needs It*, pp. 133-36.

⁴⁸ See Rand, “The Objectivist Ethics,” in Rand, *The Virtue of Selfishness*, pp. 34-35, where the trader principle is described as governing “all human relationships.”

⁴⁹ See *ibid.*, p. 30, where this is described as the “basic social principle of the Objectivist ethics.” Cf. a related formulation in Rand, “The Ethics of Emergencies,” in Rand, *The Virtue of Selfishness*, pp. 53-54.

⁵⁰ See, in particular, Rand, “The Objectivist Ethics,” in Rand, *The Virtue of Selfishness*, p. 36, where non-initiation of force is described as “the basic political principle of the Objectivist ethics.”

equivalent, but if not, we need a better understanding of the distinct roles that they play in Rand's theory, and of the places they occupy in the hierarchy of principles that make up that theory.

Appendix A: Peikoff and Smith on the Definition of "Punishment"

Leonard Peikoff defines punishment as "a disvalue inflicted in payment for vice or fault; it is a negative such as condemnation, the withholding of friendship or even outright ostracism, or the loss of money or prerogative, including (in criminal cases) the loss of freedom or of life itself."⁵¹ Smith closely follows Peikoff's definition in her discussion of justice in *Ayn Rand's Normative Ethics*.⁵² I find the Peikoff-Smith definition problematic on at least three counts.

(1) The word "disvalue" in Peikoff's definition is ambiguous as between "something that harms the agent" and "something that the agent does not value," but these involve very different claims, and as it happens, I don't think that either is essential to the Objectivist conception of punishment. What is essential (as I state in the text above) is that punishment collects or exacts a culpably delinquent debt. The collection of a culpably delinquent debt may well impose suffering on a given agent, but it need not harm him, and there is no reason to think that the offender cannot in principle value the process of paying back his debt. Indeed, in following Peikoff, Smith fails to see that his definition is (depending on how we interpret it) incompatible with her own (correct) claim that punishment need not be harmful.⁵³ Perhaps Peikoff means that the unjust person fails to value the paying of his debt in the *act* of being delinquent, and thus in *that* act "disvalues" paying it. That's a possible interpretation, but it is not what he says, and I am not sure it is what he means.

(2) The phrase "disvalue inflicted in payment" is misleading and potentially self-contradictory. Since "disvalue" could mean "harm," and payment typically denotes "something beneficial," the phrase "disvalue inflicted in payment" could easily be interpreted to denote *a harm inflicted in benefit*, which makes no sense (a harm cannot be inflicted in benefit, and a benefit cannot be inflicted at all). The phrase need not be interpreted in this way, but Peikoff says nothing to exclude the preceding interpretation, and a reader unsure about his meaning on issue (1) would be unsure of it on issue (2).

⁵¹ Peikoff, *Objectivism*, p. 283.

⁵² Smith, *Ayn Rand's Normative Ethics*, p. 156.

⁵³ See *ibid.*, p. 147.

(3) Peikoff is insufficiently explicit about the fact that the concept of “infliction” he invokes must be broad enough to cover both actions and omissions, and among actions, must subsume acts that involve the use of force and those that don’t, as well as physical acts and speech acts. His discussion makes clear that he intends punishment to range broadly, but the choice of the word “infliction” is awkward and misleading. In fairness to Peikoff, I myself describe punishment above as an “exaction” or “collection,” and a similar criticism might be made of my usage. Since, like Peikoff, I grant that omissions can be punishments, a critic might reasonably ask how an omission can be an exaction/collection. I take it that when a punishment involves an omission, we are relying on predictable causal factors apart from our own actions to do the collecting or exacting of the relevant debt (consider, e.g., “the silent treatment”).

Appendix B: Rights-Violations and the Trader Principle

My claim that all rights-violations incur debts by violating the trader principle has, in discussion, been misinterpreted to mean that all rights-violations are to be understood as attempts (or “botched attempts”) at trade. To forestall confusion, it may be worth elaborating a bit on this issue.

The claim I defend in the text is that *every rights-violation violates the trader principle*. On my view, the trader principle governs all human interaction, whether trade is intended by any of the parties to the interaction or not. Since, according to the trader principle, mutual consent and requisite payment are necessary conditions of morally justified interaction, and all rights-violations violate both conditions, all rights-violations *ipso facto* violate the trader principle. Since every violation of the trader principle involves the failure to make requisite payment for the interaction in question, in violating the trader principle, every violator incurs a debt of some kind. Since every rights-violation violates the trader principle in a special way, every rights-violator incurs a debt of a special kind. If the rights-violation is culpable, the rights-violator incurs his debt in delinquent fashion and punishment is appropriate; the rights-violator is obliged to repay the debt he has delinquently incurred. In any case, note that the claim I defend, *every rights-violation violates the trader principle*, is neither equivalent to nor entails that *every rights-violation is (or is conceived by any interacting party as) either an actual or attempted trade*.

In discussion, Gregory Salmieri asks whether my view implies that all rights-violations are in some sense “takings.” The answer is “yes”: If every rights-violation fails to offer requisite payment for interaction, every rights-violation takes from the victim what belongs to him.⁵⁴ There may, of course,

⁵⁴ This is true whether the rights-violation is culpable or non-culpable. I might non-culpably dent your car, thereby taking from you its full use and value. That is a rights-

be *more* to a rights-violation than its being an unjustified taking (we might further describe it by the vices that brought it about or by the harm it did), but unjustified takings are, on my view, essential to rights-violations.⁵⁵ Salmieri also asks whether my view implies that every rights-violation is a “botched trade.” I find the question somewhat ambiguous, but if a “botched trade” involves the intention to trade either by the aggressor or the victim, the answer is “no.”

Appendix C: Interpreting the Rand-Hospers Letter Exchange

There are, in my view, special textual reasons for thinking that Rand’s Letter cannot stand on its own as an account of her view of punishment, but must be read in conjunction with “The Objectivist Ethics” (and other published writings), reasons that become clear if one reads the whole of Rand’s letter exchange with Hospers from beginning to end, starting in April 1960, a full year before the Letter.

If one reads the whole exchange, it becomes clear that rancor developed between Hospers and Rand over what Rand took to be Hospers’s failure to conduct their oral conversations and letter correspondence with more assiduous attention to her writings than he seems to have given, including the speeches in her fiction. The rancor develops long before the Letter discussed in the text, but it intensifies just a few weeks (and a few letters) before it.

A close reading of these letters suggests that Rand seems at first to have assumed that Hospers would have read her works very carefully and would have conducted their philosophical discussion by exhibiting full and explicit comprehension of all of her claims. Within short order, she seems to have become disappointed by his failure to live up to her expectations, repeatedly castigating Hospers, in effect, for failing to pay her writings the attention she took them to deserve.⁵⁶ Rand appears at some point to have inferred that Hospers was writing to her in bad faith, claiming on the one hand to admire Rand as a philosopher, while displaying on the other what struck Rand as a stunning incomprehension of her writings.⁵⁷ Matters are

violation, but not (on my view) a candidate for punishment.

⁵⁵ Cf. Smith’s claim that the “crucial, distinguishing feature” of a rights-violation is its preventing the victim from “acting as she chooses . . . *at the cost of something else that belongs to her*” (Smith, *Moral Rights and Political Freedom*, p. 146, italics added).

⁵⁶ The disappointment seems to have begun in earnest with the fourth letter, dated January 3, 1961 (starting at *Letters*, ed. Berliner, p. 517).

⁵⁷ See the end of the fourth letter (*ibid.*, p. 534) and the beginning of the fifth, dated March 5, 1961 (starting at *ibid.*, p. 534), where Rand (correctly, I think) describes their discursive situation as “tragic” (*ibid.*, p. 534).

complicated by the irony that Rand thought herself unjustly treated by Hospers while engaged with him in a discussion about the very nature of justice.

The Rand-Hospers letter exchange must be read with the preceding conversational context in mind: every claim made after January 1961 is one in which Rand expects that Hospers has read, grasped, and internalized the claims of her writings by *her* standards of “read,” “grasped,” and “internalized”—standards that Hospers clearly did not meet to her satisfaction. If I am right about this, then Rand had a reason to be *deliberately* elliptical about the background principles she was presupposing in the Letter. She may have wanted to see whether Hospers would read her writings carefully enough to make reference to the trader principle of his own accord.⁵⁸ When he did not, she inferred that he had failed to read her with due care, and abandoned the conversation.

If this conjecture is right, then contrary to Boonin’s way of reading the Letter, little turns on Rand’s use of definite articles when she adverts to, say, “the” principle of this or that in the exchange. When she uses locutions of this kind, she is not singling out a single principle as the only normative consideration worth considering. She seems instead to be presupposing a background context of principles and then singling out one for special consideration, as if to say: “Of the range of principles that are relevant here and with which, as a reader of my work, you’re already acquainted, the one easily forgotten and very much worth remembering is. . . .” This implicit preface is needed in order to make sense of her discussion of the principle of retribution,⁵⁹ where she enunciates *three* principles “at the base of legal justice” (enumerated as “a,” “b,” and “c”), none of which is identical to what Boonin calls “the principle of causality.” I take it that “the basic principle” is not the only relevant principle in the discussion, and item (b) on her list is a special case of “the basic principle.” Hence, I take myself to be justified in going beyond the Letter and invoking the trader principle so as to interpret the Rand-Hospers exchange.

In any case, both interlocutors repeatedly insist that the letter exchange is highly elliptical and potentially misleading,⁶⁰ and I myself would insist that Rand’s unpublished writings must always be interpreted in terms of

⁵⁸ Hospers had professed to liking Rand’s “The Objectivist Ethics” and of wanting to discuss it with her, and yet Rand repeatedly felt the need to remind him after his saying so of how he had either misunderstood it or failed to grasp its relevance to their discussions (see *ibid.*, pp. 542-43, 547, 555, and 561).

⁵⁹ *Ibid.*, p. 559.

⁶⁰ Rand seems to have felt special exasperation at Hospers for having to remind him so often of the content of writings he claimed to have read and understood. See *ibid.*, pp. 502, 503, 507, 530, 534-42 *passim*, and 544.

her published ones so that the latter take interpretive priority to the former—thereby putting the trader principle at the center of any interpretation of Rand’s conception of justice.⁶¹

⁶¹ I’d like to thank David Boonin for getting me to think harder about these issues, and for motivating me to try to get them right. Thanks also to Neera Badhwar, Benjamin Bayer, Carrie-Ann Biondi, Gregory Salmieri, and Christine Swanton for very helpful conversation on the earliest version of this article, and to members of The Atlas Society’s Online Research Workshop (Nathaniel Branch, Alexander Cohen, Kate Herrick, David Kelley, Shawn Klein, Will Thomas, and Jason Walker) for discussion of a later draft. Thanks as well to Jurgis Brakas for helpful written comments on an intermediate draft, and to Alina Tugend for stimulating correspondence on the nature of moral desert. Special thanks to Carrie-Ann Biondi for her editorial work on this published version, and to Allan Gotthelf for the invitation to present the paper at the Ayn Rand Society’s meeting at the Pacific Division American Philosophical Association meeting in April 2011.

