

# REASON PAPERS

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## **Symposium: Andrew Jason Cohen's *Toleration***

- Comments on Andrew Jason Cohen's *Toleration* —Emily M. Crookston  
Comments on Andrew Jason Cohen's *Toleration* —David Kelley  
Response to Emily M. Crookston and David Kelley —Andrew Jason Cohen

## **Articles**

- Freedom: Positive, Negative, Expressive —Danny Frederick  
Memorializing Genocide I: Earlier Holocaust Documentaries —Gary James Jason

## **Review Essays**

- The U.S. Founding: Washington's Allies and Opponents: Review Essay of  
John Ferling's *Jefferson and Hamilton*, Stephen Knott and Tony Williams's  
*Washington and Hamilton*, Thomas Fleming's *The Great Divide*, and Carson  
Holloway's *Hamilton versus Jefferson in the Washington Administration*  
—Richard M. Salsman  
Review Essay: The Politics of Defeat: A Tribute to Sadik al-Azm's *Self-  
Criticism after the Defeat* —Kanan Makiya  
Review Essay: Timur Kuran's *The Long Divergence: How Islamic Law Held  
Back the Middle East* —Salim Rashid

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Vol. 38.2 – Winter 2016

**Editorial** —Carrie-Ann Biondi and Shawn Klein 6

## **Symposium: Andrew Jason Cohen's *Toleration***

Comments on Andrew Jason Cohen's *Toleration* —Emily M. Crookston 8  
Comments on Andrew Jason Cohen's *Toleration* —David Kelley 18  
Response to Emily M. Crookston and David Kelley —Andrew Jason Cohen 27

## **Articles**

Freedom: Positive, Negative, Expressive —Danny Frederick 39  
Memorializing Genocide I: Earlier Holocaust Documentaries —Gary James Jason 64

## **Review Essays**

The U.S. Founding: Washington's Allies and Opponents: Review Essay of John Ferling's *Jefferson and Hamilton*, Stephen Knott and Tony Williams's *Washington and Hamilton*, Thomas Fleming's *The Great Divide*, and Carson Holloway's *Hamilton versus Jefferson in the Washington Administration* —Richard M. Salsman 89  
Review Essay: The Politics of Defeat: A Tribute to Sadik al-Azm's *Self-Criticism after the Defeat* —Kanan Makiya 100  
Review Essay: Timur Kuran's *The Long Divergence: How Islamic Law Held Back the Middle East* —Salim Rashid 117

## Editorial

The primary focus of every contribution to this issue of *Reason Papers* is political philosophy, whether at the level of theory, public policy, or its intersection with culture. In a few of the pieces, philosophical reflection is joined with social-scientific insights from the fields of psychology and historiography. Our issue opens with a symposium on Andrew Jason Cohen's book *Toleration*. He makes a case for a classical liberal political order that is based on a principle of toleration inspired by John Stuart Mill's "harm principle" found in his 1859 classic *On Liberty*. Cohen defends his account against challenges raised by Emily Crookston and David Kelley. Crookston presses on whether the harm principle can adequately ground a principle of toleration, what role consent plays, and whether the harm principle might sometimes require interference. Kelley commends Cohen for his ability to counter ethical relativism, but wonders whether his account sufficiently clarifies what toleration means, especially with regard to thorny issues of moral judgment.

Also inspired by Mill's *On Liberty*, Danny Frederick defends freedom of expression on the ground that it is necessary for human fulfillment. He argues that exercising this right allows us to cultivate the critical rationality that he equates with positive freedom. Frederick concludes that freedom of expression requires universities to abandon their campus speech codes. Gary James Jason reviews and analyzes four early Holocaust documentaries. He does so with an eye toward understanding the psychology behind what makes for an effective versus an ineffective documentary in this genre. Jason finds that documentaries that included factually presented live footage of the horrors found in the death camps were more effective in bringing to light those atrocities than were ones whose narratives involved shaming and attempts to instill collective guilt.

In his review essay of four books about the American Founding era, Richard Salsman shows how they unseat the conventional view that the Founders were unified in their politics during war and peace. These books detail the close professional and personal relationship between George Washington and Alexander Hamilton—the "alliance that forged America"—as well as how other Founders, such as Thomas Jefferson, clashed with them over public policy in a pitched battle to shape the fledging country's future course.

We then have a pair of review essays on books emerging from studies about the Middle East. Kanan Makiya pays tribute to his mentor, Sadik al-Azm, who sadly passed away in December 2016. Originally published in 1968 and at last translated into English in 2011, al-Azm's *Self-Criticism after the Defeat* was a seminal and controversial book. It appeared shortly after the 1967 war that led to Israel's defeating Syria, Jordan, and Egypt. Al-Azm refused to take on the mantle of victimhood and shift the blame elsewhere for defeat; he instead insisted on a self-critique to understand why Arab cultures

were politically stagnating. Salim Rashid examines Timur Kuran's take on the role played by Islamic law in stymieing progress in the Middle East. While Rashid appreciates that Kuran raises important questions, he takes to task both some of Kuran's factual claims and his historical methodology. Ultimately, he concludes that Kuran has not done justice to an important topic.

Political discourse in the wider culture would be raised several notches, if more people took a cue from our contributors. We appreciate the vigorous yet collegial tone they strike, as they appeal to evidence and reason to guide their discussion of contentious issues.

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## **Symposium: Andrew Jason Cohen's *Toleration***

### Comments on Andrew Jason Cohen's *Toleration*

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#### **1. Introduction**

Andrew Jason Cohen begins his book *Toleration*<sup>1</sup> with the following: "In this book, I aim to provide a clear and lively introduction to the issues surrounding toleration" (p. 1). He delivers on this promise. I hope to return the favor. In my comments here, I aim to provide a clear and lively critique of his book.

Overall, I enjoyed the book for what it is: a brief overview of some of the philosophical issues concerning the concept of toleration. In particular, the conversational tone makes the book especially useful as a springboard for further discussion, for example, in the classroom. I will have some more words of praise to offer below; however, I found Cohen's glossing over certain complications a bit frustrating at times. Cohen's argument would have benefited from his having answered the following three questions: (1) Why is the harm principle the right principle upon which to base a theory of toleration? (2) How is Cohen thinking of the concept of *volenti*? (3) Is interference (i.e., the abandonment of toleration) ever morally required by the harm principle? Let's consider each question in turn.

#### **2. The Harm Principle**

Why is the harm principle the right principle upon which to base a theory of toleration? Let's examine Cohen's main claim. Following in John Stuart Mill's footsteps, he says that a violation of the harm principle is the only reason for which one is morally justified

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<sup>1</sup> Andrew Jason Cohen, *Toleration* (Cambridge, UK: Polity Press, 2014).

in abandoning one's default stance of toleration of others' actions. This "strict version of the harm principle" is the line Mill draws in the sand in his *On Liberty*,<sup>2</sup> and it has been fodder for philosophical criticism and deep discussion ever since. Indeed, as Cohen says, figuring out what should be tolerated is perhaps the most important question for political morality.

But neither Mill nor Cohen flesh out an argument for their claim that the harm principle is the best or only normative principle for determining which actions fall within the sphere of toleration and which allow for interference. While some have questioned the consistency between Mill's defense of the harm principle and his utilitarianism, drawing a connection between happiness and the harm principle at least points us in the direction of an explanation for why he endorses the harm principle. Mill's case for freedom of thought, speech, character, and action is built on his utilitarian conception about the conditions under which human beings flourish. According to Mill, autonomy is a necessary element in human happiness and autonomy requires an expansive concept of toleration. In this context, the harm principle is a reasonable limit to toleration.

If Cohen holds similar utilitarian commitments, he does not make them explicit in his defense of the harm principle as the normative principle determining when it is morally permissible to abandon toleration. In fact, Cohen explicitly rejects the promotion of autonomy as a reason to uphold the harm principle (pp. 122-23). He does, however, discuss his general orientation when it comes to his brand of liberalism. Perhaps examining this will provide an answer to our question.

When discussing John Rawls,<sup>3</sup> Cohen draws our attention to the distinction between strict political liberalism and comprehensive doctrine liberalism. According to strict political liberalism, no comprehensive doctrines can dictate the laws or other types of interference by the state, while comprehensive doctrine liberalisms of various types allow different concepts of "the good" for human beings to dictate the terms of non-toleration. By this definition, Mill's liberalism falls into the category of a comprehensive doctrine liberalism.

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<sup>2</sup> John Stuart Mill, *On Liberty* (New York: Penguin Books, 1986).

<sup>3</sup> John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993).

Comparing his own view to that of an autonomist comprehensive liberalism, Cohen says:

I do endorse a comprehensive doctrine liberalism, but it is a “thinner” version—that is, one with fewer commitments. As we will see, it does not require endorsing the promotion of autonomy for all . . . . I take myself to be a comprehensive doctrine liberal, dealing with principles of toleration that are defensible independent of any consensus. (p. 34)

For Cohen, then, the harm principle is defensible independent of any consensus. But rather than providing this defense, Cohen simply takes the harm principle as primary. While there is no denying the intuitive force of harm or a threat of harm as a reason to interfere with the actions of others, this alone doesn't lead to the conclusion that the harm principle is *the best* or *only* normative principle we should use to determine when toleration is the right action to take.

Although Cohen spends ample time in Chapter Three defining the harm principle and clarifying the definition, I cannot find an explicit argument for why he endorses this as a principle of toleration. He has a section on “Harm (and Objectivity),” so I expected that this might be part of the argument, but Cohen doesn't express the point in so many words. Perhaps part of my concern here comes from my skepticism about Cohen's “thinner” comprehensive doctrine liberalism. Following Joel Feinberg's lead,<sup>4</sup> Cohen defines harm as a wrongful (i.e., intentional) setback of one's interests. Harms must be objective, according to Cohen, so that the community can reasonably measure when someone's actions harm or threaten harm to another and that person's actions can justifiably be interfered with. In most cases, harms will easily be measurable, but there are, as Cohen acknowledges, complications to determining harm. He discusses one of these complications—baseline considerations—when discussing the case of floating Flo (p. 44). Suppose that I am out for a float in my lifeboat one fine day and come upon floating Flo, who is nearly drowning, through no fault of mine. Am I harming Flo if, instead of rescuing her, I turn the boat around and head in the other direction? As Cohen points out, answering this question depends on determining Flo's baseline

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<sup>4</sup> Joel Feinberg, *Harm to Others* (New York: Oxford University Press, 1984).



situation. Is her baseline the situation you find her in (nearly drowning) or is her baseline her normal situation (being on dry land)?

This is a good illustration of one of the shortcomings of the harm principle. It is intuitively morally wrong for me to leave Flo to drown. Perhaps it's true that we can't say one way or the other whether I have harmed Flo because that would require being able to determine her baseline and Cohen at least seems to think that it is not easy to do in this situation (ever?). I can say, though, based on the Samaritan principle, that I am violating a moral obligation. According to this principle, I have to save others from immediate peril when I am reasonably able and it is not too costly to myself. Without an argument from Cohen for why we should use the harm principle to determine when toleration is called for, it seems to me that we will be required to tolerate behavior that is objectively unacceptable. At the very least, we are not able to determine whether toleration is the right position to take in situations where it would seem crucial for us to make such a decision.

Some political philosophers argue that other principles come into play because of the shortcomings of the harm principle. Kit Wellman, for example, argues that the Samaritan principle comes into play when it comes to questions of whether the state can justifiably coerce us into obeying the law.<sup>5</sup> Wellman, like Cohen, also argues for this principle on objective grounds. The strict harm principle can't explain why the state is justified in coercing us to follow the law in cases where our non-obedience doesn't directly harm anyone. On Wellman's view, were political obligation based only on the harm principle, the state would not be able to provide for our well-being and protect us from the perils of the state of nature. Cohen's discussion of Flo shows that Wellman makes a good point here.

So we return to the question of why Cohen holds that the harm principle is defensible independent of any consensus, while other principles, like the Samaritan principle (similar to what Cohen calls the benefit to others principle [pp. 63-69]), are not defensible in the same way. Why should we accept Cohen's view that interference itself is a setback to one's interests instead of a way of furthering another's interests? Are these not two equally reasonable ways to look at a situation where the state coerces one in order to benefit another? Cohen says that he does not endorse the benefit to others principle because it

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<sup>5</sup> Christopher H. Wellman, "Toward a Liberal Theory of Political Obligation," *Ethics* 111, no. 4 (July 2001), pp. 735-59.

fails to be mindful of the incentives it sets up and the opportunity costs it imposes; in doing so, it encourages “too much interference” (p. 69). However, this conclusion only follows if Cohen is correct that social ills like poverty are not (or perhaps not always) the result of wrongful behavior by individuals or sets of individuals. In that case, it would seem that any interference is too much because there are in fact no harms that result from impoverishment.

If, on the other hand, we accept the Samaritan principle and we see that allowing poverty to exist where it could be alleviated is wrong in itself, then our conclusion about the benefit to others principle will be the opposite. Cohen doesn’t address this concern in his brief discussion of what constitutes wrongfulness. He says that answering the question of what exactly constitutes wrongful behavior would require “in-depth moral reasoning, including work in metaethics and epistemology” (p. 43). Fair enough, but then it’s difficult to see why we might easily agree with Cohen that poverty is not harmful—or at least that interfering with actions, like buying new bikes for our children, is “too much interference” (pp. 68-69).

I suspect that were Cohen to flesh out further his “thinner” comprehensive doctrine liberalism, which he calls a middle ground between strict political liberalism and a comprehensive doctrine liberalism, he could clear up at least some of the above confusion. I wonder whether this middle ground in fact exists. Mill can fall back on his idea of happiness, including a strong emphasis on individual autonomy, to explain his defense of preventing harm as the only defensible reason to interfere with the actions of others. Cohen, though, does not want to help himself to other liberal values like autonomy. He wants the harm principle to be the foundation for his liberalism, in which case I think the above question requires an answer.

### **3. *Volenti***

How is Cohen thinking of the concept of *volenti*? I want to explore Cohen’s claim that “*volenti* removes any wrongfulness” (p. 58). *Volenti* means voluntary participation. According to Cohen, whether I choose to ride on the bus when I know ahead of time that some will be engaging in a coprophagic picnic (pp. 58-59) or I decide to commit suicide, as long as I voluntarily participate in these activities, there is no wrongdoing and consequently no harm. In such cases, the right response is toleration.

You would be hard-pressed to find a philosopher friendlier than I am to the idea that consent and voluntary participation absolve

others of what would otherwise be considered clear cases of wrongdoing. My intuitions also mostly agree with Cohen's whenever he discusses *volenti*. However, there are many interesting puzzles in other areas of moral and political philosophy related to the concept of voluntariness. For example, how does the research on implicit association affect our concept of *volenti*? Is it possible to define rationality in a way that is both true to the social scientific research and philosophically illuminating? Can we use the same measure of voluntariness in both interpersonal situations and when it comes to determining whether state interference is warranted? While I realize that full treatment of these questions may not be appropriate for such a volume, pointing to the questions would be helpful for understanding the depth of Cohen's view about the relationship between the harm principle and consent.

Are there cases where even though a person consents, we should not tolerate the behavior? Cohen sticks to his strict harm principle here. In order to understand how strongly Cohen is committed to the view that *volenti* removes wrongdoing, let's consider his discussion of the odd case of Armin Meiwes, a German man who published an advertisement looking for a volunteer to be butchered and eaten by Meiwes (p. 83). In this case, Cohen admits that it is likely that the person who ended up volunteering and allowing himself to be slaughtered was not in his right mind, but if he were, then *volenti* applies and the state should tolerate the action. According to the strict version of the harm principle, the state should tolerate these and similar actions.

Paternalism has been used as a justification for ignoring *volenti*, but Cohen does not accept paternalism as a principle of toleration. I wonder whether a strong commitment to the harm principle, at least on the part of the state, requires at least some paternalism. If the state's primary goal is to prevent individuals from harming one another, then the state ought to prevent actions that are harmful to most people in most instances. In most cases, if a person wants someone else to slaughter and eat him, that person is not in his right mind. It is wrong to kill and eat a person who has not consented to the act, so the state should prevent such actions.

We could say something similar about other paternalistic prohibitions. In most cases, if someone wants to ride her motorcycle without a helmet, she either does not understand the risks or she understands the risks and is not in her right mind. Although Cohen conceptually denies that it is possible for someone to harm herself, it

seems reasonable for the state to prevent self-inflicted “hurts” that come about as a result of ignorance or mental illness. So again, if the state is interested in preventing wrongful setbacks to interests, it ought to prohibit such actions. While paternalism would no doubt set back the interests of a few (those who are in their right minds and still make choices that are highly risky because they enjoy the thrill more than most people), for the most part and given unavoidable epistemological constraints, the state will prevent more harm by prohibiting certain risky behaviors.

There are cases related to the question of *volenti* that are yet more complicated than the cases above. We might call these mixed or impure cases of consent. Suppose that a child is raised in a cultural group where autonomy is not valued and members of a certain subset are not taught to assert their own choices. For example, I am envisioning a cultural group like certain polygamous sects where women are subservient to their husbands. Still, suppose also that this cultural group allows members to leave the group if they so choose. Suppose that they are explicitly given the choice, say, at age thirty, when they would, under normal circumstances, be considered fully rational and autonomous. Can we really say that those who do not choose to leave or who actively choose to continue to live subserviently do so voluntarily? While it is not obvious that such a culture harms its members (since members who choose to stay believe that they are doing so voluntarily), it is difficult to say whether genuine consent is being exercised in such a case.

Cohen says, “Individuals can certainly be harmed by having their autonomy wrongly set back, but they can also be harmed by having their interest in conforming to a group—that is, an interest in being non-autonomous—wrongly set back” (p. 123). My concern here is that the origin of our interests matters when deciding whether someone has been harmed. A discussion of mixed or impure cases of consent, like the one above, would clarify Cohen’s view of *volenti* and how it removes wrongfulness. While it’s right to say that consent takes away wrongdoing, determining what counts as genuine consent is a thorny issue that too often gets short shrift in discussions like this one. While Cohen mentions prostitution, pornography, homosexuality, same-sex marriage, abortion, cloning, stem-cell research, assisted suicide, and euthanasia as examples of actions we should tolerate, he is silent about polygamy. Working through this example would be an interesting test case for sorting out where Cohen comes down on some

of the more difficult complications involved in consent and its relationship to toleration.

#### 4. Interference

Is interference (i.e., the abandonment of toleration) ever morally required by the harm principle? Could there ever be a time when interfering with one's harm of (or threat to harm) another is required? Cohen says that answering this question would involve getting deeper into a theory of justice. As he is presenting the principles of toleration here, which is only one part of a theory of justice, he doesn't commit to saying that interference could ever be required. He says, "interferences are, by definition, not acts of toleration and the book is not intended to offer a theory of ways to fail to tolerate" (p. 51). When it comes to interference, his language is always in terms of permissibility or justification. Consider an example, though, where two people's interests conflict and non-interference is simply not an option. It seems that if there is a conflict of interests and there is a possibility that both parties' interests will be set back, if the state does not interfere, the goal of minimizing harm would *require* the state not to tolerate. Again, if Cohen takes avoidance of harm to be primary in a liberal political theory, then there should be cases where interference will be required. I'm curious about why Cohen doesn't address this question head on.

Cohen suggests that the obligation to interfere is an element of justice rather than toleration (p. 51). However, I wonder what reasons or principles he has for drawing such a conclusion. Cohen endorses the claim that "justice requires that we never interfere where toleration is mandated" (p. 51). Why is it not the other way around? Why couldn't it be the case that justice requires that we interfere where there is wrongdoing and toleration is not mandated? Perhaps this would require accepting the principle of benefiting others who are not necessarily harmed, which Cohen explicitly rejects. Still, some guidance on either why Cohen rejects this concept of justice or why his theory of toleration does not speak to it would be helpful in evaluating Cohen's expansive view of toleration. This comment is more of an invitation for Cohen to expand upon his thoughts in this section of the book.

At times, Cohen seems to be presenting a complete theory of the principles of toleration, but at other times he seems to hold back from such an ambitious project. He says toward the end, "I favor a strict version of the harm principle and rejection of the others [i.e., other proposed principles of toleration] though I would not claim that

the arguments I have provided on that score are definitive (at least not all of them)” (p. 150). What are we to make of this?

To my mind, the biggest problem for Cohen, if he does not present an argument for when the harm principle requires us to abandon toleration, is that often one action both sets back the interest of one and furthers the interest of another. Let’s consider slavery as an example. Surely, Cohen would argue that slavery is a quintessential case of where toleration should not be tolerated, since slaves’ interests are wrongly set back. Even here, though, couldn’t we also look at the state choosing not to tolerate this action as an act of benefiting one group and wrongly setting back the interests of another group? Slaves were, at one time, legally property.

How are we ever to justify interfering with one group’s interests in order to promote the other’s, if there is no consensus about whether some action is wrong? It seems that more should be said about harm being a wrongful setback of interests. We could reasonably put all hard cases in terms of choosing whose interests are set back; without a second orienting principle like utility to weigh in the balance, it’s difficult to see who has the rightful claim to non-interference. In his brief discussion of wrongdoing, Cohen points to wrongdoings that are widely agreed to be wrong (p. 43). Of course, consensus won’t settle all cases. While consensus settles the case about slavery today, at the time when the U.S. government was deciding whether to interfere, consensus did not settle the issue.

The harm principle can’t settle all issues. Does it settle more than other principles? I’m not sure. Perhaps it settles the same number but a different set of disputes than do other principles. It is my hope that Cohen will have more to say in defense of the harm principle as the main principle of toleration in later work fleshing out a complete theory of toleration or justice.

### **5. Praise for Cohen’s *Toleration***

Despite the above questions, there is much to like in this book. Writing an introductory text that is at the same time interesting and worth the time of someone with advanced philosophical training is no easy task, and Cohen does this admirably well. It is impossible for a text like this to address every question; clarificatory questions dressed up as criticisms should not be taken as reasons to reject the ideas within.

I find Cohen’s *Toleration* to be an especially good teaching tool in many respects. He makes clear from the start his overarching

goal: to prompt further discussion about toleration, a historically complex philosophical idea. I appreciate that he did not pronounce his argument as the end-all-be-all statement on toleration that readers ought to memorize. At the same time, I appreciate that Cohen manages to avoid another pitfall that introductory books like this too often fall into: presenting the material in such an evenhanded, balanced way that what is philosophically interesting about the topic gets totally whitewashed, leaving the task of finding the value in it entirely up to the reader.

I also appreciate the transparency in the introduction and throughout. I especially appreciate Cohen's statement in the Introduction titled "Expectations and Warnings," where he writes: "[A]s the author, I will not refrain from making judgments. As the reader, you will decide for yourself if my being judgmental is a problem. That is not my concern. I am concerned to help you understand and appreciate the idea and practice of toleration" (p. 2). More generally, I like the message for students who are new to philosophy: don't shy away from passing judgment. Cohen makes the point that this is a necessary and natural thing to do from time to time—at least for beings possessing the ability to think critically. This is a wonderful reminder and invitation to students who are tentative about passing such judgments.

Finally, I like that Cohen takes a clear, firm stance on the question of when toleration is called for and when it is not. There are no mincing words here; the view is quite straightforward. His view about when toleration rightly ends (i.e., when the harm principle has been violated), while not without controversy, certainly creates clear guidelines for action and can be used well for teaching argument reconstruction.

There is a lot to appreciate about this book, both its goals and its method of achieving these goals. I hope my comments presented here lead Cohen and others to think and write further on the topic of toleration as it relates to liberal political philosophy.

## Comments on Andrew Jason Cohen's *Toleration*

David Kelley  
The Atlas Society

### 1. Introduction

Andrew Cohen's *Toleration*<sup>1</sup> is interesting on a number of counts. He offers what amounts to a philosophical case for classical liberalism or libertarianism based on a principle of tolerance akin to John Stuart Mill's 1859 *On Liberty*.<sup>2</sup> Individuals or the state, he argues, may interfere with the actions of people only if those people are engaged in harms to others. Interference is not permissible for actions that affect only the person in question or that affect others on a consensual basis. Cohen defends a strong form of this harm principle, according to which it is the *only* basis for prohibiting behavior. He rejects intervention based on other considerations, such as legal moralism or the offensiveness of the behavior. On the latter score, he certainly has the courage of his convictions. In order to test the limits of toleration, Cohen deals with consensual actions—sexual and otherwise—that are astoundingly repulsive and indecent. In my comments on Cohen's book, I will cover three issues: (1) his rejection of the link between toleration and relativism, (2) the concepts of toleration and endurance, and (3) a question about moral toleration.

### 2. Tolerance and Relativism

Cohen makes it clear from the outset that tolerating actions, including repulsive and indecent ones, does not mean withholding judgment. On the contrary:

[A]dvocating tolerance does not mean advocating some wishy-washy namby-pamby way of being that requires

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<sup>1</sup> Andrew Jason Cohen, *Toleration* (Cambridge, UK: Polity Press, 2014).

<sup>2</sup> John Stuart Mill, *On Liberty* (New York: Penguin Press, 1986).



you to refrain from judging others . . . . [I]f you oppose nothing, you cannot tolerate anything. Those of us who oppose things—those of us who are judgmental, i.e., *willing to judge*—can tolerate things. Toleration, as we shall soon see, is *the intentional and principled refraining from interfering with another whom one opposes*. (p. 2)

This point may be widely accepted among philosophers, but I think it has a huge cultural importance in light of common conceptions of tolerance today, especially on university campuses. Tolerance is widely advocated as an antidote to prejudice and bigotry. We are urged to tolerate those who differ from us in race, sex, ethnicity, sexual orientation, and other characteristics rather than allowing those differences to breed contempt and hostility among groups. There is no denying that such hostility occurs. Throughout the world, ethnic animosity has produced hatred of immigrants, discriminatory legislation, and bloodshed. The concept of tolerance, however, is not the right response to this problem. The right response is rationality.

Do we tolerate blondes? The question seems bizarre. For whatever reason, hair color has not been a basis of tribal identity or group politics in our culture; the concept of tolerance is never invoked in this context because there is too obviously nothing to tolerate. In a rational culture, the same would be true for race, ethnicity, and the like. There is nothing for a white person to tolerate in one whose skin is black, because skin color has no value significance whatever.<sup>3</sup> Describing the proper attitude toward people of a different race or ethnicity as one of tolerance assumes that human beings naturally fear and resent such differences. It perpetuates the expectation that tribal bigotry is natural, the to-be-expected, a kind of original sin that can be suppressed but never overcome.

This problem is compounded by identity politics, which assumes that people identify with their racial, sexual, and ethnic characteristics. It's compounded further by the view that tolerance is grounded on the premise of relativism, which is the doctrine that there is no objective basis for judging people as good or bad, ideas as true or false, or cultures as primitive or advanced. The result is the syndrome we see especially on college campuses. People search out words and actions that create some tiny offense to their group identity ("micro-

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<sup>3</sup> For most purposes, anyway. Among other exceptions, race can be significant in diagnosing and treating certain medical conditions.

aggressions”), which they denounce as intolerance even though the “offensive” remark or behavior in no way interferes with their freedom, and even though their relativist concept of toleration would undermine any judgment that bigotry is wrong.

### 3. Endurance and Tolerance

Cohen’s defense of toleration rests on his analysis of the concept. He defines tolerance in terms of three conditions:

For P to tolerate X,

- (a) P must intentionally refrain from interfering with X,
- (b) P must dislike or disapprove of X, and
- (c) P must have a principled reason for noninterference. (p. 16)

The reason for (c) is to distinguish tolerating from merely putting up with. It is not tolerance, for example, if P opposes some X and refrains from interfering because of other motives such as fear or laziness. Cohen’s definition applies only to agents who are capable of intentional action, normative judgment, and principled reasons. In other words, it applies only to humans and (with a few adjustments) to human institutions such as the state.

There is, though, a concept akin to tolerance that applies in other realms. Its core meaning in all applications is “to endure, allow, or put up with something.” Thus we speak of plants that flourish in sun but can tolerate shade. People can differ in their tolerance for pain, anxiety, change, and other conditions. Cohen is of course aware of such usage. In his article “What Toleration Is,”<sup>4</sup> he recommends using the term “endurance” for these cases and reserving “toleration” for human cases of deliberate non-interference with something a person opposes. I have no objection to that distinction, but I think there is more to be said about the relationship between these two concepts.

There is at least one parallel between them. Consider, to begin with, the following analysis of endurance. For P to endure X (where neither P nor X need be human),

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<sup>4</sup> Andrew Jason Cohen, “What Toleration Is,” *Ethics* 115, no. 1 (2004), pp. 73 and 76.

- (d) P does not eliminate, escape, or succumb to X;
- (e) X must have negative value significance for P;
- and
- (f) there is a reason or cause why P does not eliminate, escape, or succumb to X.

In the case of the shade-tolerant plant, the plant does not eliminate the shade; obviously, it can't. Nor can it escape the shade, as a sun-loving reptile might. Neither does it succumb. Unlike "sun-loving" plants, it can put up with shade; it will not wilt and die as they would. Nevertheless, shade has a negative value significance for the plant. It "prefers" sunny locations, which foster its growth and flourishing. There is a causal explanation; it was presumably a reproductive advantage for plants of this species to survive and propagate in shade as well as sun.

I would argue that each of the key terms in this analysis subsumes the corresponding term in Cohen's analysis as a special case. Consider an example that meets Cohen's criteria for toleration. I am speaking to someone on campus who holds the relativist egalitarian views I described above.

- (g) I refrain from interfering with this person, for example, by trying to silence him. Interfering would be an attempt to eliminate his speech.
- (h) I oppose his view. I think it is false and, to the extent that he influences others, will undermine the civility of campus life. Since truth and civility are valuable, his mindset has a negative value significance.
- (i) I have a principled reason for not interfering: Freedom of speech has a higher value significance in this context. It supports human life and flourishing by allowing the possibility of rational persuasion.

In regard to (i), my analysis is partly based on the Objectivist theory of value. In the Objectivist ethics and metaethics, values and disvalues are rooted in the phenomenon of life, specifically the fact that the life of any organism requires action in the face of the alternative of life or death, existence or non-existence.<sup>5</sup> Human beings

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<sup>5</sup> See Ayn Rand, "The Objectivist Ethics," in Ayn Rand, *The Virtue of*

face the same alternative, but have higher capacities to deal with this alternative, including normative judgment, deliberate choice, and reasoned action. Deliberately choosing not to interfere with the other person because of a consciously held value is of course a long way from the plant's continuing to live in the absence of direct sunlight. The latter has a purely causal explanation, whereas a person's tolerance is based on reasons. However, that human capacity has a causal basis in our cognitive systems, and I choose to tolerate in order to bring about—to cause—a social condition that supports our lives. In short, from an Objectivist perspective, there is more than a parallel between endurance and toleration in the full human sense. There is a deep link reflecting the biological basis of value.<sup>6</sup>

#### 4. Moral Toleration

Some years ago I wrote a short book addressing what I saw as intolerance in the Objectivist movement. That attitude manifested itself in condemning and shunning those who disagreed with “orthodox” leaders and spokesmen for the philosophy. The practice was to judge morally those who disagreed as irrational or worse, and to refuse to “sanction” the perceived error by engaging in discussion or argument.

In response, I argued that tolerance is a virtue, not just in the political sense of not suppressing speech, but in a moral sense:

In this sense, the action we forbear from taking is that of condemning and ostracizing the person. It's important to note that the object of toleration is the person, not the ideas per se. Tolerance does not mean refusing to express

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*Selfishness* (New York: Signet, 1964), pp. 13-39. In Cohen's terminology, Objectivism is a *comprehensive* theory of value. Comprehensive views have metaphysical commitments about the nature of persons and apply to the whole social realm, not just politics (Cohen, *Toleration*, p. 24). For a view of this type, which Cohen himself has, what we should tolerate (and that we should tolerate) is determined by objective principles.

<sup>6</sup> We do speak of machine parts engineered to a tolerance of, for example, plus or minus .01 centimeter. Cohen would treat this as a case of endurance; see his “What Toleration Is,” p. 86, n. 62. Machines are inanimate, and nothing has value significance to them as such. This may seem a counterexample to my analysis of endurance, but what we mean is that the machine won't work if the part is not within the tolerance. Whether it works or not does have value-significance—to us, to the humans who design and use it.

one's belief that the ideas are false or that their consequences are destructive. These issues are part of the normal content of discussion and debate among people concerned with ideas. Tolerance is a matter of one's policy toward such people as individuals, including one's willingness to engage in discussion with them at all . . . . Tolerance is at root a negative concept; it means not condemning a person solely on the basis of his ideas . . . . Except in rare cases, we cannot tell that a person is irrational merely from the content of an idea he holds. It would therefore be unjust to condemn him on that basis.<sup>7</sup>

I went on to argue that there is a positive benefit in this mode of toleration, for the reasons Mill sets out: confronting views at odds with your own will at least strengthen your case for your views, and may provide new insights.

The phenomenon I opposed is hardly unique to Objectivism. It happens frequently in movements based on intellectual viewpoints and ideologies, especially those based around a charismatic originator. Karl Marx and Friedrich Engels engaged in chronic infighting with other socialists at the time, denouncing and breaking with many of them.<sup>8</sup> Sigmund Freud broke with his best student, Carl Jung; the early psychoanalytic movement was notorious for demanding acceptance of Freud's views.<sup>9</sup> More recently, libertarian thinkers have provided other examples.<sup>10</sup> The tendency to denounce one's near relations seems to be part of the natural history of intellectual movements. It calls out for analysis. Cohen himself treats Spinoza's excommunication by the Jewish community of Amsterdam as a case of intolerance (p. 11).

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<sup>7</sup> David Kelley, *The Contested Legacy of Ayn Rand: Truth and Toleration in the Objectivist Movement* (New Brunswick, NJ, Transaction Publishers, 2000), p. 61.

<sup>8</sup> See, e.g., Jonathan Sperber, *Karl Marx: A Nineteenth-Century Life* (New York: W. W. Norton, 2014).

<sup>9</sup> Frederick Crews, et al., *The Memory Wars: Freud's Legacy in Dispute* (New York: New York Review of Books, 1995).

<sup>10</sup> See Brian Doherty, *Radicals for Capitalism: A Freewheeling History of the Modern American Libertarian Movement* (New York: Public Affairs, 2008), for numerous examples.

In his Introduction, Cohen seems sympathetic to the conception of moral tolerance I put forward:

Respecting someone does not require respecting his or her views . . . . We should assume the people we meet are intelligent and worthy of our respect, but we should not be surprised to find that sometimes they hold *views* we cannot respect (we should still respect the person) . . . . We can respect others, not respect their views, and tolerate their holding of false views. (p. 3)

Cohen is drawing the same distinction here that I draw between the person and his views. If respect for the person excludes the kind of moral condemnation I described, then it seems he considers such a moral judgment as incompatible with toleration. However, toleration, on his view, means not interfering with something that you oppose—in this case, a person holding views you consider false. Does moral condemnation count as interference, so that refraining from that judgment counts as toleration? In many of Cohen's examples, interfering involves coercion. By that standard, suppressing a person's views by force or punishing him for them is clearly a case of interference with the person, while rational persuasion is clearly not interference.

Cohen makes it clear, though, that coercion is not a necessary condition for interference, and he gives many examples in addition to Spinoza's excommunication. I can tolerate someone's playing music I don't like (p. 15). It isn't clear what action I refrain from taking (leaving the room? cutting off a friendship?), but Cohen does not seem to have coercion in mind here. Again, we may think that Sara's plan to go to law school is not in her best interests. Trying to persuade her is not interference, but it would be interference if we "sabotage" her application (p. 50). Again, it isn't clear what Cohen has in mind by sabotage, but, again, it does not seem to involve coercion. A final example, closest to the issue at hand, is where an Amish community shuns and banishes a member who violates one of their religious rules. Cohen's concern in this case is whether *we* should tolerate that Amish practice, but he says that if we do we are tolerating non-toleration (pp. 111-12).

To clarify the questions I have about whether and how Cohen's analysis applies to what I am calling moral toleration, let us apply the analysis to a different example. I have a colleague, Sam. Perhaps we

work together; perhaps we are scholars in the same field or movement. I disagree with Sam about an issue that I have strongly held views about.

- (j) I intentionally refrain from morally condemning Sam as a person. Does moral condemnation amount to interference? What about the other typical elements in schisms: denouncing, ostracizing, pressuring others to do so, etc.?
- (k) I dislike or disapprove of Sam. On my analysis, I dislike and disapprove of Sam's *views*. I think he is mistaken, and possibly that his views would lead to bad consequences. But do I dislike or disapprove of Sam as a person? My point is precisely that I cannot justify that judgment solely on the basis of what he believes.
- (l) I have a principled reason for noninterference: It would be unjust and would cut off the possibility for learning (on my part as well as Sam's).

Now suppose that I do condemn Sam. I denounce him and seek to ostracize him from our community of scholars. Should *you* tolerate *my* behavior? Or would you be justified in interfering (whether you choose to or not) by denouncing and ostracizing me, working to undermine me professionally, etc.? You would be justified, on Cohen's analysis, if my action harmed Sam, where harm consists in a wrongful setback to interests. Sam does have an interest in maintaining professional connections and status with certain others who disagree with his views, an interest that my action has set back; my action is unjust, and hence wrongful.

Cohen says elsewhere that "toleration is a behavioral matter," and recognizes that moral condemnation raises a question about that condition: "some might claim that . . . condemning a behavior even without interfering with it would be to fail to tolerate it."<sup>11</sup> The example he considers is quite different from the kind of case I am concerned with and it involves issues not relevant here. Nevertheless, his discussion suggests that Cohen would draw a distinction between

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<sup>11</sup> Cohen, "What Toleration Is," pp. 79 and 85.

the moral judgment itself (including perhaps the expression of the judgment) and actions such as ostracizing the person; the latter is interference, the former is not. I can agree that the latter is a more significant case of interference, and refraining from it is a clearer case of tolerating. However, such actions are grounded in the moral judgment. Conversely, the purpose of moral judgment is to guide our actions toward other people, so it is not clear why we would refrain from the kind of action I have described. Part of my analysis, moreover, rests on the cognitive error of impugning someone's character solely on the basis of believing that his views are wrong. In that regard, I would question Cohen's premise that tolerance is necessarily "a behavioral matter," but that is too large a question to consider here.

## **5. Conclusion**

Despite reservations I have about Cohen's analysis, I think his book is a valuable contribution to understanding toleration. I commented briefly above on its value as an antidote to "namby-pamby" relativism. It raises new questions (for me, at least) about the relationship between tolerating and enduring. His analysis also helps to clarify issues surrounding moral judgment and behavior in the realm of ideas.



## Response to Emily M. Crookston and David Kelley

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### 1. Introduction

To begin, I must express my gratitude to both Emily Crookston and David Kelley for their excellent commentaries on my book.<sup>1</sup> Non-academics often don't understand this, but it is always an honor to have colleagues criticize one's work. I am honored.<sup>2</sup> I hope my replies here do justice to their concerns.

Crookston begins her commentary by noting that *Toleration*<sup>3</sup> would have been better with answers to "the following three questions: (1) Why is the harm principle the right principle upon which to base a theory of toleration? (2) How is Cohen thinking of the concept of *volenti*? (3) Is interference (i.e., the abandonment of toleration) ever morally required by the harm principle?" (p. 8). She is right, and I address these questions below in Sections 2, 3, and 4.

Responding to Crookston's questions takes up the bulk of this essay. While she and Kelley both offered compliments and encouragement for further thought, Crookston's direct questions demanded substantial responses. By happy contrast, my response to

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<sup>1</sup> Emily Crookston, "Comments on Andrew Jason Cohen's *Toleration*," *Reason Papers* 38, no. 2 (Winter 2016), pp. 8-17; David Kelley, "Comments on Andrew Jason Cohen's *Toleration*," *Reason Papers* 38, no. 2 (Winter 2016), pp. 18-26. Hereafter, all citations to these articles will be parenthetical in the text.

<sup>2</sup> I am also grateful to Shawn Klein and Jen Baker for asking me to participate in an author-meets-critics section at the 2016 Central Division American Philosophical Association and to Shawn and Carrie-Ann Biondi for asking Emily and David to write up their commentaries and for allowing me to reply. Again, it is an honor. Finally, I appreciate useful feedback from Daniel Shapiro, who read a draft of my replies.

<sup>3</sup> Andrew Jason Cohen, *Toleration* (Cambridge, UK: Polity Press, 2014).

Kelley can be briefer. This is at least partly because I agree with much of what he says, and the way he frames the three issues he raises leaves me pleased that the book was so well understood (by both he and Crookston). His three issues have to do with “the link between toleration and relativism,” the way I distinguish “the concepts of toleration and endurance,” and a “question about moral toleration” (p. 18). Despite much agreement, there are points of contention and I try to make my position clearer by responding below to Kelley in Sections 6, 7, and 8.

## 2. Why Is the Harm Principle the Right Principle?

Regarding Crookston’s first question, it’s important that “there is no denying the intuitive force of harm or a threat of harm as a reason to interfere with the actions of others” (p. 10). This means defense of that claim is not what is at issue. What is at issue is showing that *only* harm or threat of harm is a reason to interfere. Perhaps more importantly, Crookston is right that my view will leave us tolerating immoral behavior (p. 11). She likely thinks that this implication is more problematic than I do. I think there are all sorts of immoral behaviors we ought to tolerate. For one simple example, I think it is immoral for individuals to waste their lives (perhaps by abusing drugs every day or spending their lives counting blades of grass instead of being productive), but I think we must tolerate such behavior unless it harms another.

Crookston’s concern with my example of Floating Flo is fair and common, but absent further argument that we must not tolerate someone’s non-harmful failure to save Flo, I cannot endorse coercion of Samaritan behavior. My leaving Flo in the water—by clear contrast with my causing her to be in the water—does not, I think, set back her interests but leaves them set (back) where they were. I agree that doing so is likely wrongful, but as I don’t set back her interests, I don’t harm her, and hence interference with my (admittedly immoral) behavior is unwarranted. As Crookston notes (p. 11), Kit Wellman’s arguments for the Samaritan principle are persuasive, but they are not definitive, in my view.<sup>4</sup> Of course, I agree we should act as Samaritans, but that is not the issue here; rather, at issue is whether we can be forced to act as Samaritans (or punished if we do not). I think we cannot.

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<sup>4</sup> I find Wellman’s view on this more persuasive for the topic he addresses—state legitimacy—than when applied to other topics.

Importantly, one need not endorse the Samaritan principle to think interference is permitted when “social ills like poverty are . . . the result of wrongful behavior by individuals or sets of individuals” (p. 12).<sup>5</sup> When poverty—clearly a setback of interests to the impoverished individual—is the result of such behavior, the harm principle allows interference to rectify that harm. That rectification will benefit the person who is impoverished, but that does not mean—in contrast to what Crookston suggests—that a benefit-to-others principle or a Samaritan principle is at play. To be clear, where poverty is not caused by a harm—whether intentional or not<sup>6</sup>—interference with others to eliminate it would not be warranted, though of course those others can choose to give charitable assistance. Nonetheless, on my own view—which I will not defend here—much of the poverty that exists in the U.S. is caused by harms; if I am right about that, interference to eliminate it would be warranted.

Nothing I have said thus far really answers Crookston’s query. What I hoped to do in the book was, in fact, a bit less ambitious than proving that “the harm principle [is] the right principle upon which to base a theory of toleration.” My aim was only to demonstrate the desirability of endorsing the strict harm principle over a less strict version that would incorporate one of the other standard jurisprudential principles I discuss: the offense principle, the principle of legal moralism, the principle of legal paternalism, and the benefit-to-others principle (of which the Samaritan principle is a version). However, showing that X is preferable to Y is not conclusive reason to adopt X. While I think I show that the strict harm principle is preferable to those other principles—by describing what each would commit us to—and I hope that many will follow me in adopting it, Crookston is right to want a more definitive defense of the principle. I offer that in a new book in progress, tentatively titled *Toleration and Freedom from Harm: Liberalism Reconceived* (Routledge Press). The defense is two-pronged; the first prong is more original and, I think, more definitive. It is the explication of a better understanding of freedom than heretofore has been defended—an understanding of freedom as

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<sup>5</sup> I assume that the concern is with absolute poverty. That is, the concern is with people not having enough to live, not with their having even substantially less than others (i.e., relative poverty).

<sup>6</sup> Crookston suggests that all immoral behavior is intentional. I do not think this is the case, though whether it is may depend on what intentionality is. I cannot address that here.

*freedom from harm*, which is conceptually connected to the harm principle such that endorsing the latter is protecting and promoting the former. The second prong makes use of Ricardian economics to show that accepting the harm principle as the sole normative principle of toleration benefits us all. I hope Crookston and our readers will await that work for a final response.

### 3. *Volenti*

When Crookston moves to consider her second issue, it becomes clear that she is less concerned with how I would flesh out the concept of *volenti* than she is with two other issues, both of which I find unproblematic. The first issue is simply that in some cases, it may be easiest to reduce or avoid harms in a society by making an activity illegal even if some people could genuinely consent to the activity and thus not be harmed by it. Here, Crookston considers cases of voluntary cannibalism (p. 13; looking at p. 83 of *Toleration*) and cases of risky behavior like riding a motorcycle without a helmet (p. 13). The second issue here is about how I would respond to cases where the consent or voluntary participation comes about because of how an individual is raised. If an individual is raised to see herself as subservient and then consents to lead a life of subservience, some—perhaps including Crookston, though this is not clear—will deny that her consent should be taken as removing whatever wrongfulness is otherwise involved. Those taking such a view do not (usually) deny the importance of *volenti*; instead, they deny that the individual in question is capable of giving genuine consent because of how that person was raised.

To take the first issue first, I offered a response to this sort of worry in an earlier paper on the topic: for some sorts of activities, where an agent is likely to risk danger to herself, “a test of competence would be mandatory. I do not think such a test is completely implausible. . . . Still, if the test is impossible or too expensive, that might justify legal prohibition.”<sup>7</sup> Putting the point differently, because law is a blunt instrument, we may find that efficiency concerns push us to permit interference in types of activities that we should otherwise tolerate in at least some cases. This is not a concession I would make lightly, if ever. I am not at all persuaded we should make it for the sorts of cases Crookston discusses.

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<sup>7</sup> Andrew Jason Cohen, “What the Liberal State Should Tolerate Within Its Borders,” *Canadian Journal of Philosophy* 37 (2007), pp. 491-92.

Regarding the second issue here, Crookston says that her “concern . . . is that the origin of our interests matters when deciding whether someone has been harmed. A discussion of mixed or impure cases of consent, like [the case of polygamy], would clarify Cohen’s view of *volenti* and how it removes wrongfulness” (p. 14). I think Crookston is mistaken here to think this is about how I construe *volenti*—or, if it is, she seems to be asking whether I would endorse a view of *volenti* such that only fully rational consent matters, where “fully rational consent” is the sort of consent that a fully rational agent, shorn of any empirical limitations, would be capable of. Here I rely on work in progress, where I defend my view of freedom from harm mentioned above. Simply put, I am concerned to protect individuals *as they are* and not *as they might be thought to be* or *as they (supposedly) ought to be*.<sup>8</sup> While some political philosophers today rely on a notion of ideal rational consent—think of the consent one might find provided behind John Rawls’s “veil of ignorance”<sup>9</sup>—my concern is with actual people. On my view, respecting freedom from harm requires respecting persons *as they are*. This means my liberalism *requires toleration of people acting on their own actual wishes, not ideal wishes* (that is, wishes determined by some fully rational agent which they are perhaps capable of being, but are not). To be clear, then, I do believe we must tolerate polygamy and many other practices that people engage in willfully, even though we believe (perhaps correctly) that at least some of them would not do so if they were raised in more reason- and autonomy-conducive ways.<sup>10</sup> What matters is only whether they—as the actual persons they are—rationally consent. (That is a question for positive psychology, not normative philosophy.)

#### **4. Does the Harm Principle Ever Require Interference?**

Now to consider Crookston’s last question: Does the harm principle ever *require* interference? My inclination is to answer in the negative; indeed, I take it that my stance that the harm principle provides only a necessary and not a sufficient condition for interference is standard among Mill scholars. There is one limit to that

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<sup>8</sup> Peter Balint takes a similar stance in his *Respecting Toleration: Traditional Liberalism and Contemporary Diversity* (New York: Oxford University Press, 2017).

<sup>9</sup> See John Rawls, *A Theory of Justice* (Cambridge, MA: Belknap Press, 1971).

<sup>10</sup> This response is also present in my 2007.

negative answer, namely, that because the harm principle indicates that an individual can be interfered with—that is, have his freedom limited—if he harms another, anyone endorsing the principle has *prima facie* reason to cause no harm. That is, since I believe I can be interfered with should I cause harm to another, I ought not harm another, because I do not want to be interfered with. Hence, the harm principle indirectly, and as a practical matter, offers each of us (and governing bodies) a practical injunction to do no harm. This is an old principle in practical ethics: *primum non nocere* (first do no harm). Some might think of this as an interference with individual freedom. More precisely, it is a normative limit to descriptive freedom and no limit to normative freedom properly understood.

Crookston suggests there may be times when “two people’s interests conflict and non-interference is simply not an option” (p. 15) and that while I claim that “justice requires that we never interfere where toleration is mandated” (p. 51), it may instead be “the other way around . . . that justice requires that we interfere where there is wrongdoing and toleration is not mandated” (p. 15). I gather that what Crookston has in mind here is the perennial worrisome sort of case where a governmental body must favor one party over another—where doing nothing is itself taking a stance. Perhaps the most discussed case of this sort is a law allowing abortions. Such a law is tantamount to the government siding with pro-choice advocates over pro-life advocates. The latter, after all, do not merely think abortion is wrong *for them*, but that it is always and everywhere something that must not be permitted. They do not get their way if abortion is legally permitted. Some may think, moreover, that abortion is wrongful even if no one is harmed and also think that toleration is not mandated. The latter, of course, is inconsistent with the harm principle; if there is no harm, toleration is mandated. Let’s look, though, at Crookston’s example.<sup>11</sup>

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<sup>11</sup> The most likely candidate for a harm in abortion is the fetus. Yet a fetus cannot have the sort of interests you and I have, and so has far fewer interests to be wrongfully set back. I would grant that the fetus has an interest in not suffering. That interest can presumably be wrongfully set back—there would then be a harm that *prima facie* warrants interference. If abortion could be made such that the fetus did not suffer (or suffer wrongfully), it would not be harmful and interference would not be warranted. Of course, it may be that in some cases someone *else* is harmed—if, for example, the mother is a contractually obligated surrogate.

Crookston does not raise the issue of abortion. She discusses slavery, instead. She writes that “Cohen would argue that slavery is a quintessential case of where toleration should not be tolerated, since slaves’ interests are wrongly set back” (p. 16). In fact, though, I have previously defended the claim that voluntary slavery must be tolerated<sup>12</sup>—that is, if someone with full information genuinely consents to be enslaved, the enslavement must be tolerated even if her interests are (or appear to be) set back. In such a case, the enslavement must be tolerated.

Of course, the real concern is not with voluntary enslavement but with involuntary enslavement. In the American case, for example, it would be absurd to think that the people kidnapped from their homes in Africa, taken from their family and friends, shipped to the Americas and sold to the highest bidders, consented. It would be equally absurd to think that their children, born while they were slaves, consented to be slaves. In the American case, that is, enslavement was quintessentially not voluntary. It was harmful and ought not to have been tolerated. Thinking about it that way, interfering with slavery is akin to interfering with murder. It’s true that in both cases someone’s interests are being set back—the slaveholder and the murderer. In neither case does that raise a serious objection. In both cases, it is simply a recognition that the harm principle indicates that interference is warranted when there is harm. This is actually too quick.

Crookston rightly points out that ending slavery benefited (at least) one group—those formerly enslaved—and cost another group—the former slave owners. That second group does have their interests set back, because they suddenly do not have legal property they previously had. I just said that this doesn’t rise to the level of a serious objection, but I was being too quick because the situation in the U.S. was not merely one set of persons enslaving another and then being forced to release them. The situation, rather, was one wherein the entire legal system was complicit in the system of slavery. Not only would a slaveholder not have been forced to release a slave, but he would have found help from government agents in regaining a slave who ran away. The legal system promoted buying and selling human beings. What this means here—and I take it that this gets to Crookston’s point—is that the slaveholders had genuine *legal* property removed from their possession when slaves were emancipated. They thus suffered a setback to interests—immoral though they be. We could say the state set back the very interests of the slaveholders that it

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<sup>12</sup> See my 2007, esp. pp. 485 ff.

previously promoted. Some might think this was also wrongful—not because emancipation was wrongful, but because the state allowed slave-holders to develop expectations that they would retain legal property in other people.<sup>13</sup> If this is right, it may well be that the state should compensate the slaveholders. It does not mean that the system of slavery should have been continued. As with the murder case and simple (non-governmentally endorsed) enslavement case, ending harms is permissible.

### **5. Transition**

I should admit, before turning in the next section to David Kelley's comments, that my view does not provide answers to all of the questions Crookston raises. She wants to know how we are "ever to justify interfering with one group's interests in order to promote the others, if there is no consensus about whether some action is wrong." As I say in the new work, we should admit that it is often difficult to determine whether a wrong is present or if interests have been set back, but we should also realize that there are tokens of obvious wrongs and obvious cases of interests being set back. Perhaps more importantly, we should not shy away from the difficult work. We can use the tokens of obvious harms (and tokens of cases obviously lacking harms) to help by reasoning analogically (as one would expect in judicial cases). Given that there are many easy cases (with tokens of obvious harm and obvious lack of harm), it is a virtue of my (Feinbergian) account that it allows us to separate the easy from the difficult cases and pushes us to do the difficult normative work in the latter before concluding that a harm is present or absent.

### **6. Toleration and Relativism**

Taking Kelley's first point first, as I understand him, Kelley and I agree that belief in relativism is a problem. He may think I offer toleration as a solution to some problems that relativist thinking causes. I didn't intend to do that, but I think it does. In fact, I think it does more, as I explain here.

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<sup>13</sup> These expectations would be illegitimate, but because of state involvement, would seem to the slave-holders as legitimate. In any case, because the state was responsible for the presence of those expectations, it bears responsibility. David Boonin's *Should Race Matter?* (Cambridge: Cambridge University Press, 2011) provides an excellent discussion of these issues.



Kelley thinks we do not need toleration—he often uses the term “tolerance”<sup>14</sup>—to deal with “those who differ from us in race, sex, ethnicity,” etc. Instead, he says, we need rationality (p. 19). He makes something of a case for this claim by noting that “[t]here is nothing for a white person to tolerate in one whose skin is black” just as there is nothing to tolerate in someone who is blonde (p. 19). At root, I agree. To tolerate X, there must be something about X that one opposes, and to oppose someone because of his hair or skin color seems clearly irrational. I would very much like to live in a society where people were always rational about such things. Unfortunately, we don’t live in that world. In the world we do live in, some people will be rational about such things and some will not. My hope is that until we live in a world where everyone is rational about such things, those who are not will tolerate those they irrationally oppose. Toleration can be used by those who are less than rational. Even those who are irrational about something can tolerate it.

Now step back from this point and reconsider the issue of relativism. Kelley and I both oppose relativism, as should all critical thinkers. However, toleration as an important moral and political project well pre-dates the rise in relativist thinking. Toleration, to my mind, is central to the Enlightenment project of classical liberal thought, a project that I think is inherently opposed to relativism. Indeed, its roots go back to Saint Augustine, hardly an advocate of relativist thinking. However, Augustine gave up on toleration because he saw what he thought of as the Catholic Church’s successful ending of the Donatist heresy by means that did not require toleration.<sup>15</sup> It may well be that Augustine and the Catholic Church were not being rational, but if so, such a claim needs defense. (Whether they were rational or not depends, I believe, on what their goal was. If the goal is to rid the world of a religious sect, non-toleration may be rational.) Importantly, they took themselves to be rational and objectively—even absolutely—in the right; they would have no truck with relativism. That makes my point: toleration is not merely opposed to relativism. It

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<sup>14</sup> Indeed, he misquotes me as using the term (e.g., Kelley, “Comments on Andrew Jason Cohen’s *Toleration*,” pp. 18-19, quoting my *Toleration*, p. 2). On my view, as Kelley notes, toleration is a behavioral matter; tolerance is a virtue or attitude. See Andrew Jason Cohen, “What Toleration Is,” *Ethics* 115, no. 1 (2004), pp. 76-78.

<sup>15</sup> See my *Toleration*, pp. 134-35.

is also opposed to objectivist and absolutist thinking that leads to harm (whether such thinking is correct or mistaken).

The ideal world that Kelley and I both seek is a world wherein all think and act rationally and where this never leads one to harm another. In that world, identity politics and toleration will not be important. Indifference to things that do not (objectively) matter to us will rule.<sup>16</sup> Unfortunately, that world will not emerge in our lifetimes.

### **7. Toleration and Endurance**

I have very little to say in response to Kelley's thoughts regarding the relationship between toleration and endurance. I agree with much of what he says, but would caution that even if it's true that his analysis of endurance "subsumes" my analysis of toleration (p. 21), there are instances of human persons *enduring* others that are different from persons *tolerating* others. With Kelley, I would tolerate the relativist egalitarian. Perhaps I would also endure him. By contrast, though, a prisoner likely endures his jailor but does *not* tolerate her. He would escape if he could, but cannot, and so endures. Perhaps toleration is a specific type of endurance. We might even say, for example, that "while the prisoner merely endures his jailor, we do not merely endure, but also tolerate, the relativist egalitarian." To return to my 2004 article that Kelley cites, the difference seems to be that "toleration is something we must do for the right reasons such that one endures what one (believes one) has to; one tolerates what one (believes one) should."<sup>17</sup> When we merely endure, we are like the shade-tolerant plant in Kelley's example or the concrete on my driveway, which is also shade-tolerant. When we tolerate, by contrast, something more—our reason—is involved.

### **8. Moral Toleration**

Finally, with respect to the issue of moral toleration, Kelley asks two clarificatory questions. First, he asks whether moral condemnation amounts to interference. To know whether it does, though, we must know what it is. I know various people who I think hold morally bad ideas but who I do not seek to correct. The ideas I am thinking of are widely accepted and I reasonably believe that my explanations as to why they are bad will make no difference, so I

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<sup>16</sup> See *ibid.*, pp. 155-56.

<sup>17</sup> Cohen, "What Toleration Is," pp. 72-73.

(usually) keep my condemnation to myself. I think it's clear that my condemnation in such cases is not interference. In other cases, it is possible that someone might state condemnation forcefully and in a way that embarrasses the condemned person and stops him from doing as he would. That may well be interference, and may thus be impermissible according to the harm principle.<sup>18</sup> In between, of course, are cases where I present my condemnation calmly and the other person is persuaded by my arguments not to do as he would have; in those cases of rational persuasion we may want to say that I interfered or we may not. I take no stand on that issue; it is a question of conceptual analysis only. If it counts as interference, it is permissible nonetheless; rational persuasion is always permissible.

Kelley's second clarificatory question here is whether disliking Sam's views amounts to disliking Sam. Here, I tend to agree (once again) with Kelley: "I cannot justify that judgment solely on the basis of what he believes." I would note, though, that many people would make that judgment nonetheless. I would also add that one might dislike someone even when one does not dislike or disapprove of that person's views. Indeed, one may find oneself in complete agreement with another person and still dislike that person. I would not claim that this was fully rational, but it is not necessarily irrational.

Kelley next asks whether we should tolerate his denouncing and ostracizing Sam, whose views Kelley dislikes. He also correctly anticipates my answer: mere denunciation is to be tolerated, but ostracizing need not be (assuming that it is harmful). Kelley thinks this view mistaken because "such actions [the ostracism] are grounded in the moral judgment" and the "purpose of moral judgment is to guide our actions toward other people, so it is not clear why we would refrain from" the ostracizing action (p. 26). My view here is simple: Even if the purpose of moral judgment is to guide our actions toward others—on my view this is only one purpose of moral judgment—it would not entail that just any action we choose as a result of that judgment is permissible or such that it must be tolerated. If Kelley decided to water board Sam, we would have reason to interfere. My view makes sense out of both; harm is the only thing that justifies interference. Waterboarding harms, so interference is permissible. If ostracism harms, interference is permissible. (Whether ostracism harms, in different sorts of cases, I can't take up here.)

It may be that Kelley believes that certain sorts of actions—ostracism in some cases, for example—are rationally connected to a

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<sup>18</sup> Ibid., pp. 85-87.

moral judgment such that failing to take that action indicates one did not actually have the morally condemning judgment. If this were true, then rationality might be thought to require the actions in question—that is, non-tolerating actions like ostracism—must be permissible. This line of argument might be thought a problem for the harm principle, but I do not see why. First, even if the action is rationally connected to the judgment, the two are clearly conceptually distinct and we can fail to tolerate one without even considering the other. Second, I admit to difficulty understanding why failing to take a particular action would indicate one did not actually have the morally condemning judgment, especially where the action in question would also cause harm (which one opposes) or where one is akratic. Perhaps this brings us back to Crookston’s point that there are times “where two people’s interests conflict and non-interference is simply not an option.” Here we either tolerate Sam or we tolerate Kelley’s non-tolerance of Sam—doing both is impossible. Of course, that is not quite right: it may be that we can tolerate both, though that would also leave one of the two getting what he wants and the other losing out. If Kelley has the power to ostracize Sam and we tolerate both, he gets what he wants and Sam does not. Still, if what Kelley proposes would harm Sam, we may not need to tolerate his actions.<sup>19</sup>

## 9. Conclusion

Writing this response has been helpful. It serves, for me, as a bridge between *Toleration* and *Toleration and Freedom from Harm*. I did not anticipate that, but probably should have. Crookston and Kelley rightly pushed me on issues that I either failed to address at all in *Toleration* or did not address clearly enough. Hopefully, what I say here will help with the latter and also whet everyone’s appetite for what I will say about the former in *Toleration and Freedom from Harm*.

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<sup>19</sup> See my *Toleration*, pp. 89ff. See also my “What the Liberal State Should Tolerate Within Its Borders,” pp. 479-513.

## Articles

### Freedom: Positive, Negative, Expressive

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#### 1. Introduction

I offer a defense of freedom, particularly freedom of expression, that is ethical, in that it shows freedom to be essential for general human fulfillment, and metaphysical, in that it grounds freedom in a characteristic attribute of persons. I take up Karl Popper's insights that what distinguishes persons is their capacity for critical rationality and that criticism is essential for the growth of knowledge, applying them to the problems of freedom and fulfillment in a way in which Popper did not do himself. In Section 2, I explain how fulfillment for persons in general is inseparable from critical rationality. In Section 3, I identify the exercise of critical rationality, including inter-cultural criticism, with positive freedom. In Section 4, I argue that positive freedom requires the negative freedom to conduct "experiments in living" and that an obligation of a legitimate state is to secure such negative freedom of the persons within its jurisdiction. In Section 5, I explain what freedom of expression is and why it is a part of the negative freedom required for positive freedom and personal fulfillment. In Section 6, I rebut objections commonly made to freedom of expression and I argue that currently fashionable university speech codes should be abandoned. I offer concluding remarks in Section 7.

#### 2. The Good for Persons<sup>1</sup>

In the case of an animal that is not a person, the best type of life that it can lead is determined by its biology; the animal normally

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<sup>1</sup> This section draws heavily on Danny Frederick, "Voluntary Slavery," *Las Torres de Lucca* 4 (2014), pp. 115-37, sec. III.

tries to live a life of that kind by acting in accord with its biological instincts and the culture, if any, that it acquires from its local conspecifics. In contrast, a person is a creature with self-consciousness and the capacity for the argumentative use of language. Self-consciousness enables a person to be aware of her beliefs, thoughts, desires, expectations, emotions, and such like. Use of a language enables her to express the content of those states in words or other signs. The capacity to use language argumentatively enables her to distance herself from those linguistically formulated contents, to raise questions about them, to consider other options, and to formulate criticisms and tests to decide between alternatives.<sup>2</sup> This capacity for *critical rationality* can liberate a person from the blinkers that instinct and local culture impose upon non-persons because it enables a person to *evaluate* the way of living exemplified by herself and the people around her, by comparing it with alternative possibilities. Some of those possibilities may be more fulfilling for a person than the lifestyles that are traditional in her local community. Indeed, some possibilities may be fulfilling for some people while others (including a traditional lifestyle) are fulfilling for others. In consequence, critical rationality differentiates persons from non-persons in offering them not only liberation from inherited types of life, but also the possibility that fulfillment is relative to the person rather than to the species, the tribe, or the form that a species takes within a locally developed culture. Unlike animals that are not persons, a person is faced with the question:

(q) What sort of life will be most fulfilling for me?

Exercise of critical rationality with regard to (q) might initially have been prompted by the discovery, through migrations, wars, trade, and travel, of previously unknown kinds of life being lived by other people.<sup>3</sup> Today, thanks to the knowledge created by centuries of

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<sup>2</sup> Karl Popper, "Epistemology Without a Knowing Subject," in Karl Popper, *Objective Knowledge*, corrected edition (Oxford: Clarendon Press, 1973), pp. 119-21 and 142-48; Karl Popper and John Eccles, *The Self and Its Brain* (London: Routledge and Kegan Paul, 1983), pp. 57-59, 108-12, and 144-46.

<sup>3</sup> Cf. Karl Popper, *The Open Society and Its Enemies* (London: Routledge and Kegan Paul, 1945), chap. 10; and Karl Popper, "The Myth of the Framework," in Karl Popper, *The Myth of the Framework* (London: Routledge, 1994), pp. 36-43.

investigation and experimentation, there is an abundance of material that can help a person to answer that question, including studies by psychologists, anthropologists, and other social scientists concerning different ways of life; accounts of how different people have fared in different kinds of life in biographies, autobiographies, novels, dramas, and lifestyle discussions throughout the popular media; and a diversity of pornography replete with unusual ideas that can help people to discover sexual fulfillment.<sup>4</sup> People for whom no currently available kind of life is fulfilling may imagine new options. The sort of life that a person will find fulfilling will still be related to the biology of that person's species (human, Martian, or whatever), but that relation may be tortuously indirect. For example, humans today can live sorts of lives that would have been inconceivable or thought physically impossible a few centuries ago, such as an astronaut, a transsexual model, a genetic engineer, or a web-site designer. In choosing a suitable kind of life a person also needs to know about herself, because what will fulfill one person may not fulfill some others. She may be able to learn about herself from family, friends, teachers, and other acquaintances, since other people sometimes know a person better than she knows herself, in at least some respects.

Such research will enable a person to form some conjectures about the sort of life she will find fulfilling, but those conjectures need to be tested. Even if another person's knowledge of the sort of life that will fulfill a specific person is better than the knowledge that that specific person has herself, the other person's knowledge is still fallible and needs to be put to the test. The crucial test of whether a type of life will fulfill a person is that person's own experience of living that type of life. That is especially so if the kind of life she conjectures will fulfill her is one that no one has lived before. Therefore, in order to answer (q), a person has to form a hypothesis about what type of life will fulfill her, criticize and improve that hypothesis in the light of available information, and then test that hypothesis by living that type of life, or at least an approximation to it, learning by trial and error. If she finds that the life she has chosen does not fulfill her, then her hypothesis is refuted. If she is to find an answer to (q), her next steps must be to try to learn from her mistake, think up another theory about who she is or who she should be, and then, insofar as she can extricate

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<sup>4</sup> Danny Frederick, "Pornography and Freedom," *Kritike* 5, no. 2 (2011), pp. 84-95.

herself morally from the circumstances of her current life, set out to test that new theory.

That, of course, is not a description of what people generally do. Some people, it seems, do not bother to strive for something better even if they are dissatisfied with the kind of life they have. Some strive but in a haphazard way, without properly evaluating results and learning the lessons from them, so their progress is meager unless they chance to be lucky. Although all persons have the capacity for critical rationality, they do not all exercise it, or exercise it well, with regard to what is personally the most important matter, namely, what kind of life will give them most, or at least better, fulfillment. Perhaps there are some tragic persons for whom no kind of life would be fulfilling, so that their striving, if they do strive, will never meet with success.<sup>5</sup> One would expect evolution to produce some such defective cases.

Fulfillment is a matter of degree. A particular kind of life may be fulfilling, but not as fulfilling as another kind of life as yet untried. The question (q), therefore, may always be asked, even by a person who is satisfied with her current way of life. Fulfillment is not simply a matter of pleasure or of happiness in any purely subjective sense. Achieving fulfillment normally requires an open mind, the willingness to consider critical arguments and new theories that challenge currently cherished assumptions, and to behave in new, possibly very different ways. All of that can create in the agent a good deal of anxiety, fear, or other distress, and many experiments in living may be disappointing, extremely so in some cases. Still, even a life that contains little in the way of feelings of pleasure or happiness may be valuable for the agent and for others if it includes significant achievements and important lessons learned.

### 3. Positive Freedom

Isaiah Berlin characterizes positive freedom as follows:

I wish to be . . . self-directed and not acted upon by external nature or by other men as if I were a thing, or an animal, or a slave incapable of playing a human role, that is, of conceiving goals and policies of my own and realizing them . . . I wish, above all, to be conscious of myself as a thinking, willing, active

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<sup>5</sup> Cf. Philippa Foot, *Natural Goodness* (Oxford: Clarendon Press, 2001), pp. 90-98, for some relevant, though tangential, reflections.



being, bearing responsibility for my choices and able to explain them by reference to my own ideas and purposes.<sup>6</sup>

Positive freedom, as Berlin characterizes it, requires that the agent's actions depend upon his own ideas and purposes, not upon external influences. That suggests, if it does not explicitly state, that positive freedom requires that the agent reject all inherited presuppositions and starts from scratch, accepting only those ideas and purposes that he has accepted after critical appraisal. Similarly, Gilbert Ryle says, "The rationality of man consists not in his being unquestioning in matters of principle but in never being unquestioning; not in cleaving to reputed axioms, but in taking nothing for granted."<sup>7</sup> And Thomas Scanlon says, "An autonomous person cannot accept without independent consideration the judgment of others as to what he should believe or what he should do."<sup>8</sup>

However, critical appraisal of theories (presuppositions, new hypotheses, received wisdom) requires an argument, and an argument requires premises. Where will those premises come from? The agent could take the premises from the theory being appraised and try to derive a contradiction from them. If he succeeds, the *reductio ad absurdum* will refute the theory. However, that method cannot be used to select a theory for acceptance unless all of the possible rival theories can be articulated and all but one of them shown to be self-contradictory. That is rarely possible outside of logic and mathematics. Generally, then, if the agent is to be able to accept a theory after critical appraisal, then at least some of the premises of the argument(s) used in the appraisal must come from outside of the theory being appraised. Either those premises have been accepted after critical

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<sup>6</sup> Isaiah Berlin, "Two Concepts of Liberty," in Isaiah Berlin, *Four Essays on Liberty* (Oxford: Oxford University Press, 1969), p. 131. He goes on to describe and criticize the way in which the idea of self-direction was equated by many thinkers with the potentially tyrannous idea of being a participant in collective coercion, but we need not consider that development here.

<sup>7</sup> Gilbert Ryle, "Review of Karl Popper, *The Open Society and Its Enemies*," *Mind* 56 (1947), p. 167.

<sup>8</sup> Thomas Scanlon, "A Theory of Freedom of Expression," in Thomas Scanlon, *The Difficulty of Tolerance* (New York: Cambridge University Press, 2003), p. 16.

appraisal or they have not. If they have not, then the agent is not positively free. If they have, then the agent has accepted arguments which have further premises which, if the agent is positively free, must have been subjected to critical appraisal, and so on *ad infinitum*. Positive freedom, on this interpretation of Berlin's characterization, involves a vicious infinite regress, and is thus impossible.

In contrast, critical rationality offers a characterization of positive freedom that is possible. When a person comes to exercise his critical rationality, he has been formed by his biology and culture, which means that he has a wealth of inherited assumptions. Some of those assumptions can be used as premises of arguments deployed in critical appraisal of alternative theories about how he should live. Such arguments will rule out some theories and render other theories more or less plausible. One inherited assumption, probably to be found in all cultures that have survived, is that rival theories should, where possible, be tested against experience and be rejected if they fail the test. Some inherited assumptions may be rejected after such testing. Since a proposition assumed uncritically at one time may be subjected to critical review at a later time, positive freedom is a matter of degree, depending on how much of an agent's inherited theoretical framework has so far escaped critical scrutiny. The fact that an agent cannot subject *all* of his inherited assumptions to critical scrutiny (at the same time) does not entail that there is *any* particular assumption that is forever immune to criticism.<sup>9</sup>

Some inherited theoretical assumptions can be difficult to identify because they seem so obvious that we do not even realize that we are making them. Even when they are identified, their apparent self-evidence can make it difficult to produce cogent criticisms of them. For instance, the proposition that if *A* is simultaneous with *B*, and *B* is simultaneous with *C*, then *A* is simultaneous with *C*, was

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<sup>9</sup> Karl Popper, "Towards a Rational Theory of Tradition," in Karl Popper, *Conjectures and Refutations*, 4<sup>th</sup> rev. ed. (London: Routledge and Kegan Paul, 1972), pp. 120-35; Karl Popper, "Science: Conjectures and Refutations," in Karl Popper, *Conjectures and Refutations*, pp. 49-52; Karl Popper, *Knowledge and the Body-Mind Problem* (London: Routledge, 1994), pp. 134-39. Also see Friedrich Hayek, "Rules, Perception, and Intelligibility," in Friedrich Hayek, *Studies in Philosophy, Politics, and Economics* (London: Routledge and Kegan Paul, 1967), pp. 60-63; Friedrich Hayek, "The Errors of Constructivism," in Friedrich Hayek, *New Studies in Philosophy, Politics, Economics, and the History of Ideas* (London: Routledge and Kegan Paul, 1978), pp. 3-22.

accepted uncritically for millennia in European societies, until Albert Einstein, wrestling with problems of Newtonian mechanics, discovered that the proposition may be false if the coordinate system in which *A* and *B* are simultaneous is not the same coordinate system as that in which *B* and *C* are simultaneous.<sup>10</sup> An agent's enterprise of critical appraisal can be conducted more effectively if people with different perspectives can be recruited to participate by offering criticisms of his arguments and conjectures, and by proposing alternatives which he may criticize in return. Different cultures are a particular source of new ideas that may suggest novel solutions. For example, Benjamin Lee Whorf contends that Native Americans had a non-Newtonian conception of time.<sup>11</sup> Involving people from different cultures in open critical debate should generate a wider range of options for kinds of life to lead and a wider range of critical objections to each of them.

Consequently, positive freedom, though a property of individuals, is a social product. First, it depends upon arguments, which depend upon language, which evolves to satisfy a need for communication with others; an individual thus becomes capable of positive freedom only by being a member of a linguistic community. Second, the degree of positive freedom that an individual can attain depends upon inter-subjective criticism, particularly criticism from people with very different views, including different inherited theoretical assumptions.

Positive freedom is, in general, a requirement of human fulfillment—though only *in general* because there may be some persons whose most fulfilling life happens to be the traditional kind of life that they have been brought up to lead. For many people, positive freedom is not only a means to self-discovery by trial and error, it is also an end in itself, and is thus part of their fulfillment. For some people, critical appraisal is a burden. For them it will not be a part of their fulfillment but at best a means to it.

#### **4. Negative Freedom**

Positive freedom involves an agent formulating and criticizing conjectures for how she should live and then testing the most

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<sup>10</sup> Albert Einstein, *Relativity*, enlarged ed. (London: Methuen, 1962), pp. 21-27.

<sup>11</sup> Benjamin Lee Whorf, *Language, Thought, and Reality* (Cambridge, MA: MIT Press, 1956), pp. 57-64.

promising of those conjectures by living them. That requires that her experiments in living be permitted. Thus, positive freedom, which is generally required for personal fulfillment, in turn requires negative freedom.

Berlin describes negative freedom as follows: “I am normally said to be free to the degree to which no man or body of men interferes with my activity.”<sup>12</sup> He goes on to identify this negative freedom with “political rights, or safeguards against intervention by the state,”<sup>13</sup> thereby conflating negative freedom as a contingent fact (no one happens to interfere) with negative freedom as a right (others have a duty not to interfere).<sup>14</sup> It is the latter sense in which I use the term here: the scope of a person’s negative freedom is delimited by her rights to non-interference in her activities by others. Negative freedom is a matter of degree. That raises the question of whether the negative freedom of some should be greater than the negative freedom of others. Aristotle thinks so, claiming that some humans (including all non-Greeks) are natural slaves while others are natural slave-owners, with the latter entitled to enslave the former against their will. He argues that the difference in moral entitlement is due to the natural slave being deficient in moral reasoning so that, although the natural slave is enslaved for the slave-owner’s benefit, she is better off being enslaved.<sup>15</sup>

Virtually all thinkers who have pondered the point or function of morality have thought it to be the fulfillment of persons indiscriminately, not the fulfillment of some persons at the expense of others. Rule-consequentialists and act-consequentialists have stated the point explicitly. Theologians have opined that moral rules are designed for that purpose by God. Contractarians or contractualists think that

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<sup>12</sup> Berlin, “Two Concepts of Liberty,” p. 122.

<sup>13</sup> *Ibid.*, p. 124; see also p. 126.

<sup>14</sup> We could call this “freedom as non-domination,” except that Philip Pettit has already appropriated that term to describe an attempted “naturalistic” analogue of the notion. See Philip Pettit, “The Instability of Freedom as Noninterference: The Case of Isaiah Berlin,” *Ethics* 121, no. 4 (2011), pp. 693-716.

<sup>15</sup> Aristotle, *Nicomachean Ethics*, trans. J. A. K. Thomson (Harmondsworth: Penguin, 1973), VIII, x; Aristotle, *Politics*, trans. T. A. Sinclair (Harmondsworth: Penguin, 1962), I, ii, iv-vi, and xiii; III, xiv.

moral rules are, or would be, agreed between all individuals with a view to their own interests or the interests of all. Yet other theorists maintain that biological or cultural evolution tends to bring about general adherence to that moral code which, if acted upon, most benefits the species. It should be noticed that Aristotle is not an exception to this trend, for he claims that slavery fulfills the natural slave as well as being beneficial for the natural slave-owner. The problem with Aristotle's theory, given our account of critical rationality, is that it presumes to know which people will be fulfilled by living the life of a slave. Let us allow, for the sake of argument, that there are some people whose most fulfilling life would be that of a slave. We must also allow that the only way to find out *which* people are natural slaves would be by allowing people the negative freedom to experiment with slavery, or something close to it, and awaiting *their* verdict on whether it fulfills them. Thus if the function of morality is to facilitate the fulfillment of persons indiscriminately, then slavery is permissible, if at all, *only* when a person submits to it voluntarily after experimenting with it, or something close to it, thereby using her negative freedom to renounce her negative freedom (what David Archard calls a "self-abrogating" use of freedom<sup>16</sup>).

If the function of morality is the fulfillment of persons indiscriminately, and that fulfillment requires negative freedom to experiment with kinds of life, then persons ought to have equal initial negative freedom, even though some of them may freely relinquish at least part of their initial negative freedom for some advantage, for example, as employees submit to temporary and circumscribed domination within working hours.<sup>17</sup> The question of what constitutes equal initial negative freedom is not easily answered.

John Stuart Mill famously proposes that an individual should have negative freedom with regard to actions, or "experiments in living," which do not harm others without their consent.<sup>18</sup> However,

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<sup>16</sup> David Archard, "Freedom Not to Be Free: The Case of the Slavery Contract in J. S. Mill's *On Liberty*," *Philosophical Quarterly* 40 (1990), p. 459.

<sup>17</sup> Ronald Coase, "The Nature of the Firm," in Ronald Coase, *The Firm, the Market, and the Law* (Chicago, IL: University of Chicago Press, 1998), pp. 39 and 53-55.

<sup>18</sup> John Stuart Mill, *On Liberty*, in *Utilitarianism and On Liberty*, ed. Mary Warnock, 2<sup>nd</sup> ed. (Oxford: Blackwell, 2003), pp. 147-48, 152, and 163.

the interconnectedness of people in society means that many quite ordinary exercises of negative freedom cause harm to others without their consent. For instance, a man who marries a woman prevents her other suitors from marrying her (at least until a divorce). If I ride on a bus, I delay the journey of other passengers while I board and pay my fare, which may mean that some of them miss a train or are late for an important appointment. I might also take the last available space thereby preventing another person from making a planned journey. My offer to purchase a house, if accepted, will prevent others from buying that house; if rejected, it may raise the price that the buyer has to pay. If I paint the exterior of my house, I may seriously disturb the aesthetic sensibilities of some of my neighbors and even of passers-by. Almost everything we do in some way harms some other people, in the ordinary sense of making them worse off, so the harm principle would leave us hardly any negative freedom. If we restrict the relevant harms to those which involve physical injury, then the harm principle would allow people the negative freedom to swindle others by means of theft and fraud.<sup>19</sup> Mill later recognizes such points and proposes that actions that cause harm to others can be permitted when it is “better for the general interest of mankind” to do so.<sup>20</sup> That brings us back to the thought that the equal initial negative freedom that persons should have is that which offers the best prospects for the fulfillment of persons indiscriminately.

The moral legitimacy of the state must depend upon its contribution to the provision of conditions in which its people can thrive. It must therefore be a duty of the state to secure that equal initial negative freedom which offers the best prospects for the fulfillment of the persons within its jurisdiction indiscriminately. (Delimiting the extent of that initial negative freedom is a large task for a separate inquiry.)

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<sup>19</sup> Mill sometimes defines “harm” as injury to a person’s rights (ibid., p. 147). Unfortunately, that prevents the harm principle from being used to delimit individuals’ negative freedom, because negative freedoms (rights to non-interference) are an important subset of rights; so, in order to determine what is a harm (in the sense of “injury to rights”) we must first know what people’s negative freedoms are.

<sup>20</sup> Ibid., pp. 163-64. See also John Stuart Mill, *Utilitarianism*, in *Utilitarianism and On Liberty*, ed. Warnock, pp. 190, 196, and 226.

## 5. Freedom of Expression

Freedom of expression is broader than freedom of speech in that it also covers the wordless expression of content, as in drawings, photographs, performance art, and symbols (e.g., a swastika). Freedom of expression obtains in a society when

- (a) no content is prohibited from being expressed and made available to the public at large *and*
- (b) no content is regulated in such a way as to make it unreasonably difficult to express it or to make it available to the public at large.

Freedom of expression is consistent with there being many restrictions on where or when or how specific types of content are expressed.<sup>21</sup>

Examples of defensible restrictions on where, when, or how specific types of content are expressed include the following. The risk of injury and death makes it reasonable to prohibit anyone from shouting “Fire!” in a crowded theater unless the theater is on fire, but the opinion that the theater in question is on fire at that time may be ventured freely in a discussion at another place or time. The opinion that the theater was on fire at an earlier time may be voiced in that theater when crowded, but not by shouting out the word “fire” while speaking the rest of the sentence in a whisper. Mill says:

An opinion that corn-dealers are starvers of the poor, or that private property is robbery, ought to be unmolested when simply circulated through the press, but may justly incur punishment when delivered orally to an excited mob assembled before the house of a corn-dealer, or when handed about among the same mob in the form of a placard.<sup>22</sup>

It seems reasonable that in most public places the display of pornographic images should be forbidden, because many people do not want to see them or do not want to see them in those types of places.

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<sup>21</sup> Joel Feinberg, *Offense to Others* (Oxford: Oxford University Press, 1985), pp. 37-44; Mill, *On Liberty*, pp. 99-100; Laurence Tribe, *American Constitutional Law* (Mineola, NY: Foundation Press, 1978), pp. 580-82.

<sup>22</sup> Mill, *On Liberty*, p. 131.

However, that is consistent with there being other, easily accessible, public places in which pornography is openly displayed, at least so long as those places have signposts or other means to warn unsuspecting persons of what they are likely to encounter there. Similarly, while freedom of expression demands that Nazis should not be barred from conducting processions involving the expression of anti-Semitic slogans and insults, they might reasonably be prevented from staging such a demonstration in a residential area with a large Jewish population.<sup>23</sup> A person may be sued for making false statements about a product as part of a contract of sale, but there is no penalty for making the same statements in some other contexts. If defamatory (libelous or slanderous) statements about an individual should be actionable because of their potential adverse effect on the individual's livelihood, they may yet be expressed with impunity after the individual's death. A devout person may bar guests from ridiculing his religion in his own house, but such ridicule may be expressed elsewhere. All such limited restrictions are enforceable either by prevention or by the imposition of penalties of some kind. In the case of the householder, the penalty may be the removal of the offender from the house.

Discussions of freedom of expression that do not observe the distinction between the prohibition of the expression of specified contents and restrictions on the time, place, and manner of their expression<sup>24</sup> are confusing. The question of what sorts of limited restrictions should be placed on time, place, and manner of expression of various types of content and what sorts of consideration are relevant, is important, complex, and much debated, but that is not our concern here.

Personal fulfillment generally requires positive freedom, which is attained through subjecting one's inherited views to critical appraisal by comparison with rival views, and replacing inherited views with any

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<sup>23</sup> Famously, the U.S. Supreme Court came to a different decision in the case of *The National Socialist Party of America v. Village of Skokie*, 432 US 43 (1977).

<sup>24</sup> Such as Stanley Fish, *There's No Such Thing as Free Speech...and It's a Good Thing Too* (Oxford: Oxford University Press, 1994), pp. 102-19, and David van Mill, "Freedom of Speech," in *The Stanford Encyclopedia of Philosophy* (Summer 2014 ed.), ed. Edward N. Zalta, accessed online at: <http://plato.stanford.edu/archives/sum2014/entries/freedom-speech/>.



rival views that better withstand criticism. It requires a willingness to review and to shed long-held or ingrained theses, and a willingness to change one's style of life if an alternative offers the prospect of greater fulfillment. Every aspect of one's currently held view of the world, including one's most deeply held beliefs, hypotheses, arguments, loves, desires, hopes, and fears, must in principle be open to critical attack. Critical debate between people from very different cultures can achieve the most radical changes of view and can thus be a spur to the substantial development of the positive freedom of the participants of such debates, who will consequently have greater scope to discover which kind of life will better fulfill them. To achieve the best prospects for the fulfillment of persons, therefore, the negative freedom that is safeguarded by a legitimate state must include freedom of expression. Even people who do not exercise their critical rationality with regard to how they should live must be allowed the option of doing so; the challenges to their views that they are likely to encounter, if freedom of expression is permitted, may prompt some of them to exercise their critical rationality in new ways, thus increasing their positive freedom. So, freedom of expression permits and encourages a virtuous spiral of increasing positive freedom among the populace. Thus, the state is morally obliged to ensure freedom of expression and therefore to ensure that people with dogmatic mindsets either are prevented from encroaching upon the freedom of others to express types of content which the dogmatists dislike or face legal penalties for such encroachment.

Unfortunately, the greatest threat to freedom of expression typically comes from the state itself, since governments regularly institute laws prohibiting the expression of types of content. For example, the Australian, Austrian, British, Danish, Dutch, German, New Zealand, Israeli, and Swedish states have laws prohibiting "hate speech," which includes expressions of content which ridicules, insults, offends, or humiliates persons on account of their nationality, race, color, religion, ethnic origin, beliefs, or sexual preferences.<sup>25</sup> The states of Austria, Belgium, the Czech Republic, France, Germany, Hungary, Israel, Liechtenstein, Lithuania, Luxembourg, Poland, Portugal, Romania, Slovakia, and Switzerland have laws prohibiting Holocaust

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<sup>25</sup> Raphael Cohen-Almagor, *The Scope of Tolerance* (Oxford: Routledge, 2006), pp. 11-12; Jeremy Waldron, *The Harm in Hate Speech* (Cambridge, MA: Harvard University Press, 2012), pp. 236-37.

denial.<sup>26</sup> The British state has prohibited “extreme pornography” that involves sado-masochism, bestiality, or necrophilia<sup>27</sup>; other states prohibit “obscene” content.

Such state prohibitions of the expression of types of content, being curtailments of freedom of expression, are illegitimate, unless they are somehow required to enhance the prospects for the fulfillment of persons indiscriminately. It is therefore important to evaluate the sorts of reasons that theorists offer for such prohibitions.

## **6. Objections to Freedom of Expression**

The reasons offered for prohibiting the expression of some types of content appeal to four kinds of consideration: falsity, harm, offense, and democratic principles. I consider these in turn before briefly considering freedom of expression in higher education.

### ***a. Falsity***

It may be said that there are some views which we now know to be so mistaken that they can safely be forbidden expression, and they ought to be forbidden expression so that people, particularly the less educated, cannot be misled by them. In this spirit, van Mill asks: “Is it likely that we enhance the cause of truth by allowing hate speech or violent and degrading forms of pornography?”<sup>28</sup> One problem with that is that we can never be sure which views are mistaken. Even if we could, some such mistaken views might contain hints or suggestions which, to an acute mind, can be used to transform the debate and lead to new discoveries. Science is the domain in which currently accepted theories are often thought to be most secure, but even in science views which had long been consigned to the dustbin have been resuscitated and transformed to make the next step in the progress of scientific knowledge. Describing a couple of such examples will suffice.

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<sup>26</sup> Jacqueline Lechtholz-Zey, “The Laws Banning Holocaust Denial,” *Genocide Prevention Now* 9 (2012), sec. III, accessed online at: <http://www.genocidepreventionnow.org/Home/GPNISSUES/GPNBulletinLAWSAGAINSTDENIALSpecialSection9/tabid/164/ctl/DisplayArticle/mid/971/aid/470/Default.aspx>.

<sup>27</sup> HM Government, *Criminal Justice and Immigration Act* (London: The Stationery Office, 2008), part 5, secs. 63-71.

<sup>28</sup> Van Mill, “Freedom of Speech,” sec. 5.

The theory that the earth orbits the sun was propounded by Aristarchus in the third century B.C., but it was discarded in favor of Aristotle's geocentric theory, which held sway for almost two millennia. When Nicolaus Copernicus revived and modified the heliocentric theory in the Renaissance it was generally regarded as a fiction, despite being useful for prediction, because it conflicted with so much of what was taken to be known at the time, including the available theories of the motion of terrestrial bodies and the accepted metaphysics concerning heaven, hell, and our place in the universe. The further work of Galileo Galilei and Johannes Kepler turned the long-discarded and apparently discredited heliocentric theory into the leading scientific theory of the heavens.<sup>29</sup>

The birth of modern science in the Renaissance was inspired, amongst other things, by a revival of the ancient corpuscular metaphysics that sought explanations of physical changes in the motions of small particles which act on each other by means of collisions. Explanations in terms of Aristotelian "substantial forms" or Neoplatonic "occult influences" were derided. Astrologers had offered an explanation of the tides in terms of the influence of the moon, but the new mechanists would have no truck with that. Galileo offered an explanation of the tides in terms of the combination of the earth's orbital and rotating motions, but that explanation failed. A successful explanation, proposed later by Isaac Newton, took up the discarded astrological idea of the influence of the moon, but in the form of a gravitational force of attraction.<sup>30</sup> Many of Newton's contemporaries could not accept that theory because they regarded the force of gravity as occult.<sup>31</sup> Indeed, the idea that matter could act at a distance through a vacuum was thought absurd even by Newton himself, who hoped eventually to replace it with something better.<sup>32</sup> However, the law of gravity formed part of Newton's system, which explained not just the

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<sup>29</sup> Thomas Kuhn, *The Copernican Revolution* (Cambridge, MA: Harvard University Press, 1957).

<sup>30</sup> Karl Popper, "On the Theory of the Objective Mind," in Popper, *Objective Knowledge*, pp. 170-76.

<sup>31</sup> Kuhn, *The Copernican Revolution*, pp. 258-59.

<sup>32</sup> Isaac Newton, "Letter to Bentley, 25 February, 1693," in *Newton: Philosophical Writings*, ed. Andrew Janiak (Cambridge, MA: Cambridge University Press, 2004), pp. 102-3.

tides but celestial and other terrestrial phenomena so successfully that the existence of a force of gravity was soon accepted as scientific fact (until it was later rejected by general relativity theory). In these examples, if discredited theories had been prohibited expression, if their advocates had been silenced by adherents of the prevailing orthodoxies, the spectacular growth of knowledge through the rise of modern science would have been frustrated.

The claim that there were no extermination camps in the Third Reich seems plainly false. However, if we attempt to expose the falsity of the claim in detail, we may discover that some significant parts of what we think about the Holocaust are false or that there are facts not previously generally known which alter our understanding of what happened or why it happened. Even views with minimal and derogatory content, such as “Muslims suck,” can be criticized, reformulated, further criticized, and so on, possibly leading to new discoveries. In principle, any new discovery may help someone somewhere in putting together a view of life and the world that helps her to formulate or criticize a theory about how she should live.

***b. Harm***

We saw in Section 5 above that some types of content are very likely to lead to harm if expressed in a particular way in particular circumstances, as with a denunciation or exhortation delivered to an excited mob, or shouting “Fire!” in a crowded theater. Insofar as the circumstances are easily recognizable, they can ground restrictions on time, place, and manner of expression. Such considerations could be invoked for complete prohibition of expression of a type of content only if expression of a content of that type would be highly likely to lead to harm in any circumstances (or, perhaps, almost any). However, there is no type of content that meets that condition, for two reasons.

First, anyone who encounters the expression of a particular content must interpret it. How a person interprets a particular content, including any implications for action that she draws from it, will depend upon her background views and her imagination. For example, in 1992, feminists in Canada succeeded in changing the law to prohibit materials that are degrading or dehumanizing to women. Given their background views, they expected the authorities to crack down on heterosexual pornography, but the enforcement agents, whose background views were more traditionalist, interpreted the law as applying primarily to gay, lesbian, and feminist material. In two-and-a-half years, well over half of all Canadian feminist bookstores had

material confiscated or detained by customs.<sup>33</sup> While those enforcement agents with their traditionalist background views interpreted feminist literature as degrading or dehumanizing to women and consequently acted in harmful ways, another person with the same background views, but who has started to question some of them, may find that the same feminist literature inspires her to take liberating actions that enrich her life.

Another example that depends on interpretation of content is a pacifist who accepts the injunction “We should kill the whites,” but who interprets “kill” metaphorically so that the injunction has no implication that white people should be harmed (except metaphorically). Another example is someone who accepts the proposition that we should do our best to help others but is thereby inspired to harmful actions because she holds a background theory according to which the best way of helping non-Greeks is to enslave them against their will, or the best way of helping people with physical or mental disabilities is to kill them humanely. Any content may inspire either beneficial or harmful actions, if accepted by a person with suitably tailored background views and imaginative capacity.

The second reason why it is false that expression of any particular type of content would be very likely to lead to harm in almost any circumstances is that a person need not accept a communicated content. Once she has interpreted it, she may ignore it, reject it, or criticize it. Even if she accepts the content while interpreting it in a way that implies that she should perform actions which (whether she realizes it or not) are harmful to others, she may yet go on to reject that content, along with its implications, if the next piece of content she encounters and accepts contradicts it. That can be illustrated with empirical research on pornography. Some laboratory research (contradicted by other laboratory research) has found that while men exposed to pornographic depictions of rape are more likely to behave aggressively toward women, the effect can be negated by pointing out to the men, after the experiment, that women do not like being raped.<sup>34</sup> As two critics put it, “if we were to take this discovery at

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<sup>33</sup> Nadine Strossen, *Defending Pornography* (New York: Doubleday, 1996), pp. 229-32.

<sup>34</sup> Dennis Howitt and Guy Cumberbatch, *Pornography: Impacts and Influences* (London: UK Home Office, Research and Planning Unit, 1990), pp. 52-56.

face value, it would not entail censorship but the encouragement of exposure to pornography of all sorts combined with the education of the public regarding the facts of rape and assault.”<sup>35</sup>

Catharine MacKinnon claims that pornography propagates a view of women that undermines their demand for equality and she recommends that pornography should be prohibited.<sup>36</sup> Even if her claim were true, her recommendation would be mistaken. Insofar as views that hold women to be inferior are reflected in, and reinforce, social practices that violate women’s moral rights, it is important that the views be openly expressed, dissected, and criticized so that the social practices can be rectified. Prohibiting expression of the views will mean that they are never effectively debated and rebutted, as their proponents will not get a hearing. As a consequence, the errors in the views will be insufficiently exposed and understood. That will hamper efforts to identify and institute better practices. Furthermore, without a good understanding of *why* they are better, any improvements in moral practice will be easily reversed in response to the next intellectual fad that runs counter to them.

MacKinnon’s discussion is obscure. One mystifying claim that she makes is that pornography silences women and thus violates their freedom of speech. Rae Langton and Jennifer Hornsby have attempted to formulate a literal version of that claim and to explain how it could be true, but their hypothesis has been effectively criticized by Alexander Bird.<sup>37</sup>

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<sup>35</sup> Augustine Brannigan and Sheldon Goldenberg, “The Study of Aggressive Pornography,” *Critical Studies in Mass Communication* 4 (1987), p. 277, quoted in Howitt and Cumberbatch, *Pornography*, p. 56.

<sup>36</sup> Catharine MacKinnon, “Francis Biddle’s Sister,” in Catharine MacKinnon, *Feminism Unmodified* (Cambridge, MA: Harvard University Press, 1987), pp. 163-97.

<sup>37</sup> Rae Langton, “Speech Acts and Unspeakable Acts,” *Philosophy and Public Affairs* 22 (1993), pp. 293-330; Jennifer Hornsby and Rae Langton, “Free Speech and Illocution,” *Legal Theory* 4 (1998), pp. 21-37; Alexander Bird, “Illocutionary Silencing,” *Pacific Philosophical Quarterly* 83 (2002), pp. 1-15.

*c. Offense*

It is a commonplace in multicultural societies that many people are made very uncomfortable by criticism of their firmly held assumptions. Joel Feinberg proposes the following principle:

It is always a good reason in support of a proposed criminal prohibition that it would probably be an effective way of preventing serious offense (as opposed to injury or harm) to persons other than the actor, and that it is probably a necessary means to that end.<sup>38</sup>

Feinberg's "good reason" is intended to be a *pro tanto* one that may be overridden by other considerations. He also does not intend his principle to apply to the expression of particular contents *as such*, but only to their expression in *particular circumstances*.<sup>39</sup> Others regard offense as grounds for prohibition of types of content. In Britain, for example, sado-masochistic pornography is prohibited if it is "grossly offensive,"<sup>40</sup> and religious leaders have called for prohibition of contents that offend "widespread sensibilities" or "the feelings or beliefs of any section of society."<sup>41</sup>

Prohibitions of contents that offend are mistaken because they would create an obstacle to general human fulfillment not only for the people who would express or willingly receive the contents, but also, and primarily, for the people who are offended by them. It may be that for some people the most fulfilling life that they can lead just happens to be a kind of life which is compatible with their most cherished assumptions. However, no one can know that to be so if those people have never explored alternatives. Furthermore, for many people who unquestioningly accept a particular kind of life (often the kind of life that they have been brought up to live), there will be other kinds of life which offer greater opportunities for fulfillment. Protecting them from

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<sup>38</sup> Feinberg, *Offense to Others*, p. 1.

<sup>39</sup> *Ibid.*, pp. 26, 32-33, and 37-44.

<sup>40</sup> HM Government, *Criminal Justice and Immigration Act*, part 5, sec. 63.

<sup>41</sup> See Peter Jones, "Respecting Beliefs and Rebuking Rushdie," *British Journal of Political Science* 20 (1990), p. 435.

offense by prohibiting attacks on their cherished assumptions will tend to deny them the prospect of a more fulfilling life. In general, people must bear or overcome the discomfort of hearing their familiar assumptions impugned, and considering alternatives, if they are to achieve a greater degree of positive freedom. They can then take advantage of their negative freedom, either to experiment with different kinds of life or to continue with their current kind of life because their critical assessment of alternatives makes it plausible that a life of that kind is the most fulfilling one that they can lead. Even if, irrationally, they use their negative freedom to stop up their own ears, it is impermissible for them, or anyone else, to frustrate the fulfillment of others by stopping up the ears or mouths of those others.

Parenthetically, we should distinguish *being offended* from *taking offense*. Being offended involves feeling upset and feeling resentful toward the person who caused the upset. It is a natural reaction of a person when one of her cherished assumptions, particularly moral assumptions, is gainsaid. The person can free herself of her feeling of being offended by taking a critical attitude toward it and toward the cherished assumption in question, that is, by increasing her positive freedom. If a person is unable to do that, she is to that extent deficient as a rational creature, suffering some kind of neurosis or psychopathology.<sup>42</sup> A person who has freed herself from her feeling of being offended may nevertheless *take* offense, that is, behave in ways typical of someone who is offended and perhaps try to convince herself that she is offended. Similarly, a person who has adopted dogmatically an assumption which she had previously either rejected or remained indifferent to, may *take* offense whenever that assumption is criticized. *Taking* offense is therefore phony.<sup>43</sup> People who are offended and remain so, and people who take offense, are to be pitied because they are closing their minds to potential opportunities for greater fulfillment.

Peter Jones points out that prohibition of content that some find offensive is often urged in order to prevent public disorder.<sup>44</sup> That

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<sup>42</sup> Popper, "Science: Conjectures and Refutations," pp. 49-50.

<sup>43</sup> Cf. Jeremy Waldron, "Tribalism and the Myth of the Framework," in *Karl Popper: Critical Appraisals*, ed. Philip Catton and Graham Macdonald (London: Routledge, 2004), pp. 209-16.

<sup>44</sup> Jones, "Respecting Beliefs and Rebuking Rushdie," p. 435.



places freedom of expression at the mercy of the willingness of some to react in disorderly and violent ways. That is unjust because the more aggressive and intemperate a group, the greater the “protection” it will receive<sup>45</sup> and because it frustrates the fulfillment of people in general in order to satisfy the demands of those who have turned their backs on fulfillment. It is analogous to outlawing fraternization between people of different races because racist bigots are liable to run riot at the sight of a black person and a white person holding hands.

***d. Democratic principles***

Raphael Cohen-Almagor says, “Democracy that is based on tolerance without proper boundaries endangers its [own] existence.”<sup>46</sup> He proposes that the public expression of contents which “do not coincide with the moral rationale at the base of liberal democracy”<sup>47</sup> should be *restricted*, though not wholly prohibited.<sup>48</sup> Jeremy Waldron says that a well-ordered society is one that assures its members of its commitment to the fundamentals of justice and which enforces “hate speech” laws to prevent that assurance from being undermined.<sup>49</sup> He recommends *prohibiting* publication of types of content that affirm that members of an identifiable group “are not worthy of equal citizenship.”<sup>50</sup> If that recommendation were followed, Aristotle’s *Politics* would be consigned to the flames (see Section 4 above). Typically, a totalitarian state prohibits views at variance with its basic principles. A liberal democracy is open to improvement through critical comparison of its basic principles with alternatives.<sup>51</sup>

Our previous discussion allows us to deal briefly with such proposals. Insofar as the ground for prohibition is the (assumed) falsity

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<sup>45</sup> Ibid., pp. 435-36.

<sup>46</sup> Cohen-Almagor, *The Scope of Tolerance*, p. 26.

<sup>47</sup> Ibid., p. 80.

<sup>48</sup> Ibid., pp. 127-31 and 146-47.

<sup>49</sup> Waldron, *The Harm in Hate Speech*, pp. 69 and 93-94.

<sup>50</sup> Ibid., pp. 33, 37-39, 100-101, and 105-6.

<sup>51</sup> At *ibid.*, p. 198, Waldron, inconsistently, acknowledges that last point.

of contents which contradict the principles of liberal democracy,<sup>52</sup> the arguments that counter the objection from falsity rebut it. Insofar as the ground for prohibition is the *protection* of liberal democracy or of identifiable groups,<sup>53</sup> the arguments that counter the objection from harm rebut it.

A principle canvassed, but not endorsed, by Jones is that in liberal democratic societies people are required to *respect the beliefs* of others, which prohibits attacks on those beliefs.<sup>54</sup> However, if we respect people's beliefs by refraining from criticizing those beliefs, we are not respecting the people who hold the beliefs, because we are not treating them as persons capable of fulfillment through self-discovery.<sup>55</sup>

***e. Education***

Mill defends freedom of expression as indispensable for the development of intellects, the growth of knowledge, and the consequent improvement of institutions. He argues that we can never be sure that our opinions are not false. Furthermore, engaging with diverse opinions and diverse criticism can help to expose our errors, to show the strength of our views that manage to withstand such critical onslaught, and to foster the moral courage to explore daring new hypotheses which enlarge the minds of those who propose them and those who evaluate them.<sup>56</sup> We might, then, expect that higher-education institutions would safeguard free debate and oppose attempts to prohibit types of content that may be expressed on their premises. That expectation is disappointed. In recent decades, many institutions of higher education in Britain and America have introduced restrictions on speech that prohibit the expression of specific contents. A 2016 survey of 115 British universities indicates that in 55% of them, the administration or the students' union mandates explicit restrictions on student speech, including, but not limited to, bans on specific

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<sup>52</sup> Ibid., pp. 192-97.

<sup>53</sup> Ibid., pp. 105-11.

<sup>54</sup> Jones, "Respecting Beliefs and Rebuking Rushdie," pp. 421-24.

<sup>55</sup> Cf. *ibid.*, pp. 429-32.

<sup>56</sup> Mill, *On Liberty*, chap. 2.

ideologies, political affiliations, beliefs, books, speakers, or words.<sup>57</sup> A 2015 survey of 440 American universities and colleges found that 49% of administrations maintain “speech codes” that clearly and substantially prohibit types of content concerning such things as race, color, national origin, age, marital status, sex, sexual orientation, disability, or religion, which are “biased,” “inappropriate,” “threatening,” “offensive,” “demeaning,” etc., where the quoted terms are given an unusually broad sense.<sup>58</sup> Such prohibitions are inimical to critical debate, upon which the growth of knowledge depends.

Popper traced the roots of the scientific tradition to the Ionian school of philosophy in ancient Greece. Primitive schools make it their task to impart a specific doctrine and preserve it, pure and unchanged. New ideas are not admitted; they are treated as heresies and lead to schisms. There is little rational discussion, though there may be denunciation of dissenters, heretics, or competing schools. In the main the doctrine is defended with assertion, dogma, and condemnation, rather than argument. In contrast, the Ionian school founded by Thales was based upon a new relation between teacher and pupil in which the pupil was encouraged to criticize the theories of the teacher, to attempt to come up with something better. The Ionian school was the first in which pupils criticized their teachers, in one generation after the other. That broke with the dogmatic tradition which permits only one school doctrine, and introduced a tradition that admits a plurality of doctrines which are critically appraised and compared as better or worse.<sup>59</sup> Thus, we can contrast schools of indoctrination, which have restrictive speech codes and whose teachers and pupils tend easily to be offended and often to take offense, with schools of learning, which encourage free debate and whose teachers and pupils tend not to take offense or to be offended. Even if citizens should have the negative freedom to set up schools of indoctrination, state funding or other support for such

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<sup>57</sup> Spiked-online, *Free Speech University Rankings* (Spiked Ltd., 2016), accessed online at: <http://www.spiked-online.com/free-speech-university-rankings#.V-KdoK2dfwQ>.

<sup>58</sup> FIRE, *Spotlight on Speech Codes* (Philadelphia, PA: The Foundation for Individual Rights in Education, 2016), accessed online at: [https://d28htnjz2elwuj.cloudfront.net/wp-content/uploads/2013/06/27212854/SCR\\_Final-Single\\_Pages.pdf](https://d28htnjz2elwuj.cloudfront.net/wp-content/uploads/2013/06/27212854/SCR_Final-Single_Pages.pdf).

<sup>59</sup> Karl Popper, “Back to the Presocratics,” in Popper, *Conjectures and Refutations*, pp. 136-53, sec. xi.

schools is incompatible with the state's duty of enforcing rules that offer the best prospects for the fulfillment of persons within its jurisdiction.

### **7. Conclusion**

A person is distinguished from other beings by his capacity for critical rationality, which enables him to ask the question: What sort of life will be most fulfilling for me? In order to answer the question and achieve fulfillment he needs to undertake a critical review of different actual and possible kinds of life, including the kind that he is currently living, and then formulate a conjecture about how to live which he can test by trying to live that kind of life or something close to it. His engagement in that exercise is a central part of his positive freedom. It requires the negative freedom to experiment with kinds of life. Thus, personal fulfillment normally requires positive freedom, primarily as a means to self-discovery, and secondarily, for some people, as an end in itself, as a form of fulfillment appropriate to rational beings. It also requires the negative freedom to experiment with different kinds of life which are compatible with other persons doing the same sort of thing.

Freedom of expression means that no content is forbidden expression or made unreasonably difficult to communicate to any who may be interested in it. It is consistent with there being many restrictions concerning the time, place, and manner of expression. Freedom of expression is a component of negative freedom. It is also inseparable from positive freedom, because effective critical appraisal requires inter-subjective criticism, especially that which includes the participation of people from very different cultures, so that a wide range of alternative theories and criticisms are debated.

It is a duty of the state to secure the equal initial negative freedom of persons within its jurisdiction indiscriminately, including their freedom of expression. Objections made to freedom of expression on grounds of falsity, harm, offense, or the principles of liberal democracy do not withstand criticism. Speech codes that prohibit the expression of specific contents are incompatible with the purpose of an institution of higher education.

In short, the capacity for critical rationality makes persons responsible for discovering their own fulfillment in life; a person's discovery of what sort of life fulfills him normally depends upon his exercise of his capacity for critical rationality. The effective deployment of critical rationality constitutes positive freedom, the realization of which requires negative freedom. A central component

of both positive and negative freedom is freedom of expression, which is thus crucially important for the fulfillment of persons in general and so is a central ethical concern.

Finally, it might be protested that freedom is just the right to act without interference from others, so that all freedom is negative freedom. Expressive freedom, being the right not to be prevented from expressing any type of content, is just a specific form of (negative) freedom. So-called positive freedom, the exercise of critical rationality, is an activity rather than the right to act without interference. It is therefore not a kind of freedom.

There is, however, an analogy between freedom and critical rationality. As we noted above, a person's inherited social customs and ways of thinking define or indicate boundaries to what is permissible, praiseworthy, possible, and plausible. Those boundaries can operate like constraints on what hypotheses a person can entertain or even formulate (recall the example of simultaneity). So the exercise of critical rationality, which challenges and, in some cases, demolishes, those constraints is *analogous* to freedom. Prefixing "positive" to "freedom" signifies that the latter word is being used metaphorically, just as prefixing "social" to "justice" indicates a non-literal use of the latter expression. Of course, some analogies are better than others.<sup>60</sup>

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<sup>60</sup> I am grateful to Mark Friedman, the editors of *Reason Papers*, and an anonymous referee for helpful comments on earlier drafts of this article.

## Memorializing Genocide I: Earlier Holocaust Documentaries

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### 1. Introduction

As I write this review essay, Holocaust Memorial Day (May 5, 2016) has just passed. At this time when anti-Semitism is evidently on the rise again in Europe,<sup>1</sup> it seems appropriate to review some of the cinematic record we have of this murderous episode in the history of humankind. In this first of a two-part series, I review four of the most useful Holocaust documentaries, addressing a number of pertinent issues they raise. We are lucky that a number of excellent old documentaries showing the horrors of the Nazi crimes against humanity in general (and the Holocaust in particular) have now been made readily available.<sup>2</sup> The ones that I will examine here include two early documentaries produced by the U.S. War Department contemporaneous with the liberation of the death camps, a classic French film from 1955, and a 1973-1974 British television documentary. I intend to explain which of these documentaries work well as effective film, and exactly why they do so. I will also explain why one was a relative failure, in that it was shown only briefly, and explore an ambiguity in the term 'Holocaust' that informs how these films document the mass murders by the Nazi Regime.

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<sup>1</sup> I sketched this rise in Gary James Jason, "Disquieting Developments," *Liberty*, April 22, 2015, accessed online at: <http://www.libertyunbound.com/node/1404>.

<sup>2</sup> They are available for purchase through specialty film outlets, as well as through Amazon.com. The three best specialty outlets are: International Historic Films Inc., at: <http://www.IHFfilm.com>; Artsmagic Limited, at: <http://www.artsmagicdvd.net>; and The History Channel's internet store, at: <http://www.shophistorystore.com>. Moreover, many of these documentaries are available for free viewing on Youtube.com.

## 2. Contemporaneous U.S. War Films

Let's start with the two Holocaust documentaries made by the U.S. War Department at the end of World War II, using footage taken by the U.S. Army Signal Corps, the branch of the Army tasked with not just facilitating communications, but also filming major Army actions. The first was *Death Mills* (1945). This short film was directed by the great German émigré director Billy Wilder (1906-2002) at the behest of the U.S. War Department.<sup>3</sup>

A brief sketch of Wilder's life is in order here. Born Samuel Wilder in Sucha (in what is now Poland), he went into journalism, winding up in Berlin in 1926. In 1929, he broke into the German movie industry as a scriptwriter. In response to the rise of the Nazi Party, he moved first to Paris briefly and then to Hollywood in 1933, becoming a U.S. citizen in 1934. He started writing scripts in 1938, including for the hits *Ninotchka* (1939), *Hold Back the Dawn* (1942), and *Ball of Fire* (1942). He got his first directorial job in 1942 for *The Major and the Minor*. Wilder both directed (and often co-wrote) major classics, including *Double Indemnity* (1944), *The Lost Weekend* (1945), *Stalag 17* (1954), *Sabrina* (1954), *The Seven Year Itch* (1955), *Witness for the Prosecution* (1957), *Some Like It Hot* (1959), and *The Apartment* (1960). During his career, he won six Oscars, the AFI Life Achievement Award, the Irving Thalberg Award, and the Medal of Arts.

Wilder served as a colonel in the U.S. Army's Psychological Warfare Department (PWD) in 1945. The Department of War especially wanted him for the production of the first concentration camp documentary. This documentary was intended primarily to be shown to German audiences as part of the post-war de-Nazification program (see Section 5 below). Wilder—whose mother, stepfather, and grandmother were all killed in the camps (as he discovered while serving in Berlin)—directed the short documentary *Death Mills*. The film, which includes footage of nearly one dozen camps, was compiled from footage taken by the Allied forces when they liberated the concentration camps as the war came to an end.<sup>4</sup>

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<sup>3</sup> Production details can be found in "Death Mills," accessed online at: [http://en.wikipedia.org/wiki/Death\\_Mills](http://en.wikipedia.org/wiki/Death_Mills).

<sup>4</sup> Ibid.

The film opens with the printed statement (inter-title), “This is a translation of a film called ‘*Death Mills*’ which our State Department is showing to the German people. It is a reminder that behind the curtain of Nazi pageants and parades, millions of men, women and children were tortured to death—the worst mass murder in human history.” The inter-title fades to a scene showing what the narrator explains are townspeople of Gardelegen (Germany) carrying crosses to a local barn containing the remains of 1,100 victims of the nearby concentration camp. The narrator explains that this is just a fraction of the 20 million people killed in over 300 camps run by the Nazis.<sup>5</sup>

We then see recently liberated prisoners in their striped prison camp garb cheering, and the infamous “Arbeit Macht Frei” (“Work sets you free”) motto on the main gate. The narrator notes that many were freed only to die from their prior starvation and abuse. “They had been beaten down to live like animals,” the narrator intones over a scene of ex-prisoners digging into a cart full of potatoes. As Allied soldiers carry out the sick, we see a man crying with hands folded together carried on a litter. We see more victims, including women, and many are dead.

We next see Allied doctors examining horribly starved prisoners at Auschwitz. The film cuts to scenes of major Allied military and other leaders witnessing instruments of torture and piles of dead bodies. We see also piles of bones, “the foul wretched remnants of human beings.” We see the torture chamber at Majdanek, as well as the gas chambers (disguised as showers) together with pictures of Zyklon gas canisters, and the crematoria where the bodies were destroyed—crematoria kept running night and day “like blast furnaces at Pittsburgh.”

The narrator then notes that the Nazis tried to profit from their victims. We see pictures of how the bones were ground up to be used as fertilizer by German farmers. The prisoners’ clothes were stripped and later sold, as were shoes and children’s toys and dolls. We see bags of women’s hair cut before they were gassed. We see the storage room at Buchenwald, where the Nazis kept the jewelry and watches they stole from the prisoners. We also see heaps of gold teeth, with a soldier

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<sup>5</sup> The currently accepted figure is about 11 million victims in total, 6 million of which were Jews; see, e.g., Jennifer Rosenberg, “What You Need to Know about the Holocaust,” accessed online at: [http://history1900s.about.com/od/holocaust/a/holocaust\\_facts.htm](http://history1900s.about.com/od/holocaust/a/holocaust_facts.htm); and “The Holocaust,” accessed online at: [http://en.wikipedia.org/wiki/The\\_Holocaust](http://en.wikipedia.org/wiki/The_Holocaust).



emptying out a box of gold teeth and fillings that had been extracted from the camp's victims.

The fact of profiting from their victims raises an often overlooked aspect of the Nazi reign. "Nazi" means "National Socialist." The targeting of Jews and other groups helped to solidify the regime's nationalistic side of the Nazi ideology. The socialist side of it was that in killing Jews and others, the regime collected much-needed assets with which to pursue its militaristic agenda. Every prisoner killed—often enslaved and worked to death for German manufacturing—allowed the regime to enact a virtually 100% tax on that victim. The regime took everything the victim had to take, from personal property, labor, and harvesting of their dead bodies to bank accounts, stock and bond portfolios, real estate, and businesses.<sup>6</sup>

The film shows us how, as the Allied armies advanced, the Nazis tried to ship the prisoners elsewhere or kill them quickly so that there would be no witnesses left. There were railroad cars still filled with corpses and corpses alongside the trains, murdered "just before liberation." We watch the Belsen camp commander, along with captured male and female camp guards, being paraded down the street, as the narrator asks, "What sub-humans did these things?"

A survivor of one of the camps gives testimony as the allied guards bring in the camp commander and the camp doctor. The Nazis show no remorse when confirming that they injected poison into the prisoners. Members of the Wartime Crimes unit open graves of thousands of prisoners from various camps, the narrator observing that the methods include suffocation, shooting, injection of poison, starvation, and burning. For those who lived to see liberation, life for many of them was either brief—as thousands died from aid arriving too late—or tragically marred. We are shown women who survived with "wounds as ghastly as any on the battlefield"; children at Auschwitz, made orphans by the Nazis, and now only identified by the "numbers tattooed on their arms"; and emaciated men, one "with his eyes gouged out by the Nazis."

At Weimar, the narrator reports, all of the adult citizens were forced to visit the nearby camp: "They started the trip as if they were going on a picnic; after all, it was only a short walk from any German city to the nearest concentration camp." They were forced to walk by

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<sup>6</sup> Götz Aly explores this in a recent treatise; see his *Hitler's Beneficiaries: Plunder, Racial War, and the Nazi Welfare State* (New York: Henry Holt and Company, 2005).

the rows of corpses and smell the decomposition. Many of the citizens show horror or shame as they tour the camps. Here the film pushes a theme of collective guilt (which I discuss below in Section 5), when the narrator says:

These Germans, the ones who said they didn't know, were responsible too. They had put themselves gladly into the hands of criminals and lunatics. They tell you now that they meant no evil; that they know nothing of what was going on, or could not do anything about it if they did. But the farmers who received tons of ash as fertilizer apparently never suspected it came from human beings; the manufacturers received tons of human hair, but apparently never dreamed that it came from the heads of murdered women. No nightmares ever haunted the dreams of those who lived near concentration camps—the cries and moans of the tortured were no doubt believed to be the wailing of the wind.

We see images of the big Nazi rally at Nuremberg, as the narrator says, “Yesterday, while millions were dying in concentration camps, Germans jammed Nuremberg to cheer the Nazi Party and sing hymns of hate.” The film shows over the image of the Nazi rallies cut-in scenes of the shamed and horrified Weimar townspeople as they are forced to walk through the camps. The narrator continues, “Today, these Germans who cheered the destruction of humanity in their own land, cheered the attack on helpless neighbors, cheered the enslavement of Europe, plead for your sympathy. They are the same Germans who once Heiled Hitler.”

The film ends with scenes of townspeople carrying crosses for the graves of prisoners, as the narrator intones, “Remember, if they bear heavy crosses now, they are the crosses of the millions crucified in the Nazi death mills.” Wilder presents these images and narration against a stark, somber musical backdrop, a classical military march repeated over and over. This soundtrack serves to heighten the effect of an already powerful short documentary. As powerful as Wilder's documentary is, though, it was shown only briefly in Germany (in January of 1946),<sup>7</sup> and then left to languish in obscurity. (I will explore below in Section 5 why *Death Mills* had this fate.)

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<sup>7</sup> See “Death Mills.”

Another, even more powerful, documentary on our list is *Nazi Concentration Camps* (1945). It shows the variety of camps: prisoner of war, slave labor, and extermination. It's outstanding for its scope, unflinching accuracy, and directness. One reason for the power of this documentary is the quality of its director, legendary George Stevens.<sup>8</sup> Stevens was born in 1904, and dropped out of school to be an actor in his parents' touring stock theater company. After his family moved to Los Angeles, he broke into the movie business as an assistant cameraman at the Hal Roach Studios in 1921. Stevens directed his first feature-length film in 1934, and from then on until he joined the Army in World War II, he directed increasingly important films, such as *Swing Time* (1936), *Gunga Din* (1939), *Vigil in the Night* (1940), *Penny Serenade* (1941), *Woman of the Year* (1942), *The Talk of the Town* (1942), and *The More the Merrier* (1943).

Stevens joined the U.S. Army Signal Corps in 1943, serving under General Dwight Eisenhower. His stature as a filmmaker led to him being given a film unit to head, with assignments such as filming the landing on D-Day, the liberation of Paris, the meeting of the American and Soviet Armies at the Elbe River, and the liberation of the Duben and Dachau concentration camps. He helped prepare the film material used in the Nuremberg Trials. Out of this material, he created three documentaries in 1945: *That Justice Be Done*, *The Nazi Plan*, and *Nazi Concentration Camps*. Unlike the first two, the third was specifically intended for general release in America.

After the war, and very likely because of what he had seen in it, Stevens directed no comedies or musicals. Instead, he directed major serious works: *A Place in the Sun* (1951), *Shane* (1953), *Giant* (1956), *The Diary of Anne Frank* (1959), *The Greatest Story Ever Told* (1965), and *The Only Game in Town* (1970). Indeed, he remarked in 1964 of his wartime experience, "It must have changed my outlook entirely. Films were very much less important to me." He won several Oscars and other major film awards. For his film work in World War II, Stevens received the Legion of Merit. In 2008, the Library of Congress

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<sup>8</sup> See "George Stevens," accessed online at: [http://en.wikipedia.org/wiki/George\\_Stevens](http://en.wikipedia.org/wiki/George_Stevens); and the PBS American Masters entry on him, accessed online at: <http://www.pbs.org/wnet/americanmasters/episodes/george-stevens/about-george-stevens/710/>.

entered his footage into the U.S. National Film Registry, characterizing it as an “essential film record” of the war.

*Nazi Concentration Camps* was made at the specific request of General Eisenhower. He wanted Stevens to make a film to convince the people back home that these atrocities really occurred, since there had been a lot of false propaganda about German atrocities during the war. This documentary was also used as evidence at the Nuremberg trials.

The film opens with pictures of several affidavits. One is by Robert H. Jackson, stating that the film the audience is about to see is “an official documentary report compiled from films made by military photographers serving with the Allied armies.” Another is by George Stevens, explaining that he was in charge of the teams of photographers who took this footage and that it is accurate and unaltered. There is a third one, by E. R. Kellogg, the film’s editor, that the 6,000 feet of film used to make it were taken from 80,000 feet taken by the Army photographers, confirming that it is representative and unaltered. The film displays on a map of Europe the names of the 300 biggest Nazi concentration camps. Although we’ll view the conditions of fourteen selected camps, the narrator tells us that these are representative of the general conditions that prevailed at all of the camps.

At Ohrdruf, over 4,000 prisoners were starved or beaten to death. We see Generals Eisenhower, Bradley, and Patton inspecting the facility just liberated by Patton’s troops, viewing the rack used to hold prisoners while the prisoners were being beaten, and talking with survivors. They then view a shed containing stacked, emaciated bodies of victims, with Patton showing a look of disgust and anger. Former inmates demonstrate how they were tortured. The narrator quotes Eisenhower, who told the U.S. Congresspeople visiting the camp, “I want you to see for yourselves and be the spokesmen for the United States.” The assembled party looks at the make-shift crematorium for the camp, with the charred remains of its prisoners. Local townspeople, including the town’s top Nazi officials, are forced to tour the camp. They view the pile of bodies of prisoners who were massacred as the Allied troops approached. Some of the officials are visibly shocked, but most show no emotion and deny knowledge of what went on in the camp. The narrator tells us that the day before, the town’s mayor and his wife were forced to tour the camp—and that evening committed suicide.

At Hadamar, which operated “under the guise of an insane asylum,” 35,000 prisoners (mainly Poles, Russians, and Germans) were killed. We see Army personnel attending to those still barely alive. They reveal unmistakable signs of starvation, and we see bodies from the graveyard containing 20,000 victims being exhumed for autopsy. The film mentions for the first time gas chambers used to kill the prisoners and the narrator notes that the Nazis themselves kept detailed “death books” recording the killings. The camp doctor is interrogated; we learn that he often injected large doses of morphine as a method of killing prisoners and then buried them twenty to a grave. The doctor admits that no effort was made to make sure that the prisoners were all dead (as opposed to merely being comatose) before they were buried. The narrator informs us that when the ten thousandth victim was killed, the Hadamar staff held a celebration.

Nordhausen was a slave labor camp where thousands died; only about two thousand inmates survived to be liberated, and almost all of them required medical care. The filthy, cramped barracks are shown, and again the inmates were obviously starved. We view more piles of emaciated corpses, with a few prisoners still barely alive. Some were too far gone from starvation and sickness to live much past liberation. The mayor of the nearby town was ordered to provide hundreds of adult men to bury 2,500 corpses lying in heaps, and we watch them grimly doing this job. We finish with soldiers standing silently over long pits which will serve as common graves for the dead prisoners.

At Mauthausen, a liberated American naval officer testifies that although he was in uniform when captured, he was beaten savagely by the Gestapo and sent to the extermination camp. He tells us that two other American soldiers were also sent there and were killed in the gas chambers (as he displays their dog tags). When asked how the prisoners in the camp were killed, he answers that they were killed by gassing, shooting, beating, exposure, starvation, dog attacks, and by being pushed off a cliff.

The scenes and testimony of witnesses from Buchenwald, Dachau, and Belsen are especially horrific. At Belsen, for example, we see such extensive piles of corpses that bulldozers had to be brought in to push them into common graves. The narrator’s last words are, “This was Bergin/Belsen,” and the film ends silently with another showing of the film editor’s affidavit of accuracy.

### 3. A Classic French Film

The third film reviewed here is the classic 1955 French documentary *Night and Fog*, by eminent director Alain Resnais.<sup>9</sup> Resnais, generally categorized as a French New Wave director, studied acting and then film editing. After serving in the newly liberated French military for a year, he returned to Paris to start work as a film director. Resnais directed about twenty acclaimed films, ranging from *Hiroshima Mon Amour* (1959) to his final film, *Aimer, Boire, et Chanter* (2014).

*Night and Fog* opens with a contemporary scene of a peaceful field, but as the camera pans back, we see barbed wire and the narrator says, “Even a peaceful landscape, even an ordinary field with crows flying over it . . . can lead to a concentration camp.” We now see the electric fences, the guard-tower, and the main buildings of a camp. As the narrator names some of the major camps, he adds, “The blood has dried, the tongues are silent . . . . Weeds have grown where the prisoners used to walk. The wire is no longer live . . . . [N]o footfall is heard but our own.”

The film cuts to scenes of parading Nazis, as the announcer notes that in 1933 “the machine gets under way.” We see more pageantry and rallies and a field with a few men walking through it, while the narrator says,

A concentration camp is built like a stadium or Grand Hotel. You need contractors, estimates, competitive offers . . . . Meanwhile, Burger, the German laborer; Stern, the Jewish student from Amsterdam; Schmulski from Cracow; Annette, the high school girl from Bordeaux, go on living their everyday lives ignorant that there’s a place for them.

We now view people being rounded up, as the narrator identifies their cities of origin. They board the cattle cars for the trip to the camps, as Nazi soldiers check their papers and guard them. Many of the prisoners have the Star of David on their coats.

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<sup>9</sup> For biographical details, see Brian Baxter, “Alain Resnais Obituary,” *The Guardian*, March 2, 2014, accessed online at: <http://theguardian.com/film/2014/mar/02/alain-resnais>; and “Alain Resnais,” accessed online at: [http://en.wikipedia.org/wiki/Alain\\_Resnais](http://en.wikipedia.org/wiki/Alain_Resnais).

Trains then leave the stations, “anonymous trains, their doors well-locked, a hundred deportees to every wagon.” Along the way, some die—“Death makes its first pick . . . . Chooses again, upon arrival in the night and fog.” Over the camp gates, we see the mocking “Arbeit Macht Frei.” As the narrator states, “First sight of the camp—another planet,” we see a mass of prisoners crammed into its main square. Naked prisoners wait for the showers: “Nakedness . . . and the individual, humiliated, is surrendered to the camp. . . . Shaved, tattooed, numbered.” The prisoners are then dressed in blue-and-white striped uniforms—the “night and fog” colors referred to in the film’s title.

The narrator informs us that the prisoners soon learn their place in a whole new hierarchy, where ordinary criminals are higher than the other prisoners. The highest-ranking prisoners are the capos, ordinary German criminals who aided the Nazi SS in exchange for a privileged position in the camps. Above them are the SS troops, and at the very top is the camp commandant.

We are shown contemporary scenes of the empty camp barracks and other buildings, as the narrator describes life for the prisoners, and then cut back to footage of prisoners crammed into bunks and marched under harsh conditions to work in the morning. We also witness horrifying images: meager rations the prisoners receive; latrines they are forced to use; children orphaned by the killings of prisoners; dead prisoners draped over electric fencing; naked, starved prisoners at roll call, camp gallows, and execution yard.

The next scene is the camp hospital, where prisoners faced “the risk of death by syringe” and got little true medical aid. As we watch an SS doctor and nurse in this pseudo-clinic, the narrator trenchantly avers, “What’s behind the set-up and scenes? Useless operations, amputations, experimental mutilations.” We learn how the inmates were experimented upon, poisoned, castrated, and burned with phosphorous.

In a dramatic cut, we jump to 1942 and pictures of high-level Nazis. Heinrich Himmler arrives to give the orders to start the mass exterminations. The prisoners are forced to build the very gas chambers and crematoria which for the next three years will be used to destroy them. A series of ghastly scenes is presented: the European-wide mass deportations by train, the division of prisoners upon arrival into those to be killed immediately and those to be worked mercilessly before being killed, gas chambers with their ceilings “scratched by fingernails,” crematoria ovens, heaps of prisoners’ belongings, a group

of beheaded corpses with their heads in a basket, soap made from human fat, and pointed parchment made from human skin.

The Nazi regime pushes hard in 1945 to complete its self-appointed task of genocide, but it loses the war. We observe what the Allies found when they open the camp doors: carpets of corpses. There are so many that bulldozers must be used to push the bodies into mass graves. Survivors look at us through barbed wire, while the narrator asks, "Will life know them again?" Footage of the capos and SS officers in court show them denying that they were responsible for the atrocities, after which the narrator queries, "Who is responsible then?" The film ends with contemporary scenes of concentration camp ruins, as the narrator talks about our fallible and evanescent memory (a theme Resnais was fond of exploring):

Somewhere in our midst lucky capos survive,  
recuperated [SS] officers as anonymous informers. . . .  
There are those reluctant to believe or believing from  
time to time. . . . There are those of us who look at  
these ruins today as though the old concentration  
[camp] monster were dead and buried beneath them.

This film was highly acclaimed; it won the Prix Jean Vigo in 1956 and fellow director Francois Truffaut called it the greatest film ever made.<sup>10</sup> This praise is well deserved for several reasons. The dialogue is moving, almost lyrical in places; the writer, Jean Cayrol, was himself a camp survivor. The cinematography is effective and well edited, with contemporary color footage of the abandoned camps mixed with original stock footage taken by both the liberating armies and the Nazis. The score is quietly haunting. Moreover, the film has an understated tone, which accentuates the images presented, possessing an emotional depth most of the others don't.

#### **4. A British TV Gem**

The next documentary under review was produced by a British company, Thames Television, as part of the highly acclaimed, extended 1973-1974 series *The World at War*. The documentary, titled *Genocide: 1941-1945*, was episode 20 of the first season of the series. Written by Charles Bloomberg, directed by Michael Darlow, and narrated by Sir Laurence Olivier, it differs from the films discussed

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<sup>10</sup> Baxter, "Alain Resnais Obituary."



above in featuring a number of fascinating interviews with survivors of the Holocaust as well as two ex-members of the SS: Karl Wolff and Wilhelm Hottl. It also differs from the others in that it focuses on the Nazi genocide of the Jews specifically, adopting a historical perspective and examining the development of Nazi racial theory and the creation of the SS. All of these features, coupled with the quality of its footage, make it an outstanding documentary.

The film opens with a view of Dachau, as the narrator reads a surviving prisoner's words: "What we went through will be difficult to understand even for our contemporaries, and much more difficult for the generations that have no personal experience from those days." *Genocide*, with its shocking footage and copious interviews, goes a long way toward bridging that gap in understanding.

The film opens in the Nazi Party offices in 1929, where we meet Heinrich Himmler. Himmler joined the party in 1923, two years after Hitler became its head. Himmler began as deputy propaganda chief, refining the Nazi ideology in general and Nazi race theory in particular. Later that year, he was chosen to head the SS. It had been set up in 1925 as the personal bodyguards of Hitler, and had several leaders before Himmler. He was the one who turned it into a formidable paramilitary organization.<sup>11</sup>

We hear an interview with Wolff, a much-decorated SS officer. He was personally recruited by Himmler, and became his personal adjutant. Wolff describes his involvement, and we learn how Himmler planned to use the SS to inspire a new vision of a glorious Germany.

The film then describes the pseudo-science supporting the regime's ideology—a kind of neo-Darwinian eugenicist race theory, or what one might call Aryan social Darwinism. Here we see scenes from a German movie of the time, *Only the Fittest Survive*, showing animals fighting to the death. The narrator says this was to be applied to humans, too, as we see scenes of German youth being examined by doctors and marching in parades. The idea was "to develop a better race, a race of supermen." Here we cut back to Wolff, who claims that this program of racial improvement was thought of only in a positive sense of breeding the best, as opposed to killing those "who had been born without a white skin, or was culturally inferior, or was undesirable."

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<sup>11</sup> For more details of the history of the SS, see "The SS," *History.com*, accessed online at: <http://www.history.com/topics/world-war-ii/ss>.

We watch an elaborate SS parade, as the narrator tells us that the SS was tasked with creating a racially pure Europe. The SS was modeled in some ways on the Jesuit order, including an elaborate ranking system and punishments for infractions. (The film doesn't note this, but in fact at Dachau there was a section of the camp reserved for SS troops who disobeyed orders or failed in some other way.) The narrator points out that the SS ran the camps. First incarcerated were the dissidents. The SS "schooled themselves in brutality," systematically brutalizing and dehumanizing the prisoners, giving them numbers instead of names.

We now cut to the Reichstag in 1935, where Goring spells out the Nuremberg Laws. Marriage, even sex, between the pure Aryans and the impure Jews is now illegal in Germany. We see some of the crude, vicious anti-Semitic cartoons of the time. The Nazis amplified the latest racism in Germany and used it to buttress their support. We see some enlightening footage of German schoolchildren looking at textbooks contrasting pure Aryans and "degenerate" Jews.

Kristallnacht, the 1938 nationwide regime-backed pogrom, leads to all adult male Jews being rounded up and forced to march to the concentration camps. At this point, most (if not all) Jews understood how targeted they were, and many emigrated—but "not many countries opened their doors to the Jews." And, as ex-SS Major Hotl reveals, while he worked to make it easier for Jews to emigrate, Adolf Eichmann—who at this point controlled emigration policy—made it more difficult, including imposing steep exit taxes on them.

In January, 1939, Hitler "threatens a new solution to the Jewish problem: if world Jewry drags Germany into another world war that will be the end of the Jews in Europe." That September, Germany rapidly took Poland, which is slated by the Nazis to be colonized and rid of its large Jewish population. The Nazis instituted ruthless terror, with mass executions, leading to Poles of German ancestry going to Germany, while the rest of the Poles—Slavs and Jews—moved to designated areas to be used as forced labor, "with Jews at the bottom of the heap." In Poland, in 1940-1941, the Jews were now forced into ghettos. The ghettos were then sealed by walls and barbed wire, and the Jews crammed in—often three families (with children) to a room. They were starved, beaten, and terrorized.

In 1941, the Wehrmacht invaded Russia. More resettlements of Jews and Slavs rapidly follow. We hear from Wolff again, saying that "in Poland we found 3 million Jews, in Russia 5 million more." The SS set up execution squads—the Einsatzgruppen—to shoot Jews wherever

they were found, and we see scenes of Jews stripped and shot. Wolff tells us that once, while Himmler was touring a Polish killing camp containing Jews and Soviet POWs to see how efficiently the killing was being done, Himmler was splattered by brain tissue and blood from one of the victims, and nearly fainted. The Nazis rapidly came to view the shooting of the prisoners as “inefficient,” however, so at the Wannsee Conference of 1942, plans were made for more efficient killing techniques. Eichmann was appointed administrator of this “final solution of the Jewish problem”: they were all to be gassed. The whole European Nazi camp system was to be used to execute this plan. In the East, new camps were set up and existing camps expanded for the mass slaughter. The biggest was at Auschwitz. The film explains how Eichmann used the railway system for this purpose. We see pictures of the actual plans for the gas chambers and crematoria at Auschwitz.

The film has extensive footage of the round-ups, with survivors recollecting their experiences. We see scenes of what happened when they arrived: healthy people were put to one side (to be worked to death as slave labor), and the old, infirm, very young, and pregnant women were put to the other side, and taken away to be gassed. The gassing is described calmly by ex-SS Major Hottl. The remaining Jews were worked to death, starved, beaten, shot, and often (as we are shown) threw themselves on the electric fences.

Anthony Eden, a high British official, recalls that as reports of these atrocities came out, they were initially disbelieved or viewed as exaggeration. But as the reports grew, by the end of 1942 a joint statement was simultaneously issued in all Allied capitals condemning the atrocities and promising to punish those responsible after the war.

The film next shows us the camp at Theresienstadt, and the Theresienstadt ghetto, located in what is now the Czech Republic.<sup>12</sup> It was set up in 1941 primarily as a holding camp, where prisoners were held until they could be shipped to the extermination camps (Auschwitz and Treblinka)—although tens of thousands of its inmates died from starvation, sickness, and shootings. Besides the prisoners in transit to the death camps, Theresienstadt held Jews (often elderly or infirm) from Austria, Czechoslovakia, and Germany who either had

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<sup>12</sup> For a detailed history of this camp, see “Theresienstadt Concentration Camp,” accessed online at: [http://en.wikipedia.org/wiki/Theresienstadt\\_concentration\\_camp](http://en.wikipedia.org/wiki/Theresienstadt_concentration_camp); and “Theresienstadt,” accessed online at: <http://www.ushmm.org/wlc/en/article.php?ModuleId=10005424>.

distinguished German military records or were famous in the arts and other areas of Germany's prewar cultural scene. These prisoners got somewhat better treatment than inmates of the other camps.

The reason for this is that Theresienstadt served as a Nazi propaganda device for deceiving the German public and the outside world at large. The Nazis presented it in one propaganda film as a "spa town," where elderly Jews could retire, and where other Jews worked in peace running their own city. The Nazi cover story was that Jews were being resettled in the East where they would do "useful" (forced) labor. The film shows us footage from a German propaganda film made in 1943 with well-dressed and healthy-looking Jews, in the library or working in the gardens. The narrator notes that "by the time this film was released, most of the people seen here were already dead in the gas chambers at Auschwitz."

By 1944, the Nazis knew they were losing in all theaters of operation, and accelerated the deportation of Jews from occupied Europe. The trains now went straight to the death camps. The film presents more survivor testimony. As survivor Dov Paisikowic puts it, "There we saw Hell on this Earth." The film recounts the liberation of Majdanek by the Soviets in 1944, and we see horrific footage taken by them of the victims. Only a couple of hundred miles away, the extermination at Auschwitz continued faster than ever. The Soviet Army finally liberated Auschwitz in 1945.

The film shows Hottl explaining that when Himmler was told that six million had been killed in the concentration camps and by the Einsatzgruppen, he was disappointed and set up his own statistics bureau to keep track.

By the middle of 1945, the Allies liberated virtually all of the camps. We see more footage of liberated prisoners—emaciated, sick, and pathetic. As the film ends, we see that iconic footage of bulldozers pushing heaps of corpses into a mass grave.

This film is distinguished by the quality of the historical footage, but also by the retrospective testimony of both surviving victims and perpetrators. I will return to this point in my concluding remarks.

## **5. Collective Guilt versus De-Nazification**

These documentaries raise a number of interesting issues, two of which I shall address. In this section, I take up the question I raised above in Section 2 about why *Death Mills* was shown only briefly and faded into obscurity. (In the next section, I will address the issue of

Jewish people being the primary target of the Holocaust.) In order to explain why *Death Mills* had this fate, we need to discuss several ancillary issues: the Allied de-Nazification campaign, shaming, and collective guilt.

The de-Nazification (and demilitarization) program was outlined in the 1945 Potsdam Agreement before the end of the war. The term was coined by the U.S. Pentagon in 1943 to mean removing Nazi doctrines and influence from the legal system, but it came to mean the extirpation of Nazi influence throughout German society—its culture, legal system, political system, economic system, and educational system.<sup>13</sup> The scale of the process was vast. It had to be, because at least 8.5 million Germans had been Nazi Party members. When you count Nazi-run organizations—including the German Labor Front, the Hitler Youth, the League of German Women, and the National Socialist People's Welfare Organization—the total was upward of 45 million German citizens.<sup>14</sup>

In 1945, in Western Germany, about 223,000 government agency and business officials were quickly stripped of their positions, permitted to do only “lowly” work. Then, 180,000 Germans were imprisoned in internment camps. In the East (which was occupied by the Soviets), 200,000 government agency and business officials were stripped of their positions, and 30,000 quickly tried for war crimes. The Soviets actually reopened notorious Nazi concentration camps such as Sachsenhausen; they started by incarcerating former Nazis, but soon thereafter imprisoned opponents of their new German puppet regime.<sup>15</sup>

However, by late 1945, it was clear to the occupiers of Western Germany that the country was unable to function with so many key personnel missing. Also, the workload of processing millions of forms that the Germans had been required to fill out was proving to be intractable. So in early 1946, the Western Allies turned

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<sup>13</sup> See “Denazification,” accessed online at: <http://en.wikipedia.org/wiki/Denazification>.

<sup>14</sup> Ibid.

<sup>15</sup> Theo Sommer, “New Life Blossoms in the Ruins. Germany After the Surrender: a Tough Start into a New Epoch,” *The Atlantic Times*, May 2005, accessed online at: [http://www.atlantic-times.com/archive\\_detail.php?recordID=209](http://www.atlantic-times.com/archive_detail.php?recordID=209).

the process over to the Germans. The Germans then streamlined the process—or watered it down, depending on your perspective.<sup>16</sup> Still, even in 1947, the occupiers of Western Germany held 90,000 accused Nazis in detention, and forbade another 1,900,000 to work in anything but menial labor. All of this was offensive to many Germans, naturally, and many of them called it “victor’s justice.”<sup>17</sup> By 1948, the American forces expedited the remaining cases by summary proceedings. The new West German government (founded in 1949) ended the formal judicial proceedings in 1951. (The Soviet de-Nazification program ended at about the same time.)

There are a number of geopolitical reasons why the de-Nazification campaign was shortened by the Western Allies. First, by 1946, there was substantial domestic pressure in the U.S. especially to bring home the troops (the deadline set to bring the bulk of all American troops home was 1947). Second, it proved simply impossible to evaluate, much less put on trial, every Nazi collaborator.<sup>18</sup> Attempting to prosecute so many ex-Nazi officials caused shortages of key personnel, which in turn impeded West Germany’s economic recovery. Most importantly, by 1948 there was a new war to be fought—the Cold War, dramatically underscored by the 1948 Berlin Air Lift. At this point, the need for the complete support of the West Germans made the Allies eliminate their role in the remaining de-Nazification program. The Allied de-Nazification campaign, which General Eisenhower projected would take fifty years, ended after only three. Was the campaign a success?

In the narrow sense of bringing to justice all (or most, or even the most important) of the people who committed crimes against the Jews (and all of the other Nazi-targeted groups), the campaign failed. Of the 3.5 million Germans the Allies indicted, for example, not even one million went to trial; of these, only 9,600 were sent to prison for long terms. Of those few, over 95% were paroled by 1949.<sup>19</sup> Especially egregious is the fact that half of the top SS officers got away

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<sup>16</sup> “Denazification.”

<sup>17</sup> Ibid.

<sup>18</sup> See “World War II Aftermath in Germany: Denazification,” accessed online at: <http://histclo.com/essay/war/ww2/after/ger/ga-dn.html>.

<sup>19</sup> Ibid.

completely free, including all of Eichmann's deputies and all of the commanders of the Einsatzgruppen, the "killing squads" who shot massive numbers of Jews on the Eastern front.

In the broader sense, though, the de-Nazification campaign did succeed. The West German (and later, with the fall of the Berlin Wall, the German) government acknowledged openly (and continues to this day to acknowledge) the Holocaust and other war crimes. It honestly pursued (and continues to pursue) anti-Nazi policies, including reparations to surviving Jews. Most importantly, Germany became and has continued to be a genuine democracy, with secure human rights to free speech, freedom of mobility, freedom of religion, and so on. It is a democracy within which the Nazi movement has never come even close to reasserting itself. Nor has Germany threatened (much less invaded) any other countries.

Against this general historical backdrop, we can take up the issue of why Wilder's documentary was shown only briefly at the start of the de-Nazification campaign. I believe that the answer lies in the concept of "collective guilt" as well as the psychology of shame, as they affected the geopolitical realities discussed above.

Wilder worked in the U.S Army's PWD. The PWD role in the de-Nazification program at that time was to attempt to arouse in the German populace an awareness of and a sense of guilt for the atrocities committed by the Nazi regime. This was controversial (and remains so to this day). Were the Germans "collectively guilty" for the Holocaust and other Nazi crimes?

The notion that the entire German people was collectively to blame was apparently first put forward by some Allied opinion makers prior to the end of the war to justify forcing severe terms of surrender on Germany and harsh treatment of it after the war.<sup>20</sup> Among the tactics used to convince the German people that they bore responsibility for the crimes against humanity committed by the regime so many of them had supported was the distribution of posters showing pictures of some of these atrocities with the message in large, bold print: "Diese Schandtaten: Eure Schuld!" ("These atrocities: your fault!").<sup>21</sup>

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<sup>20</sup> This point is made in "De-Nazification." One of the plans being considered was the Morgenthau Plan.

<sup>21</sup> Ibid.

Wilder's film was part of this campaign, quoting the head of the PWD, to "shake and humiliate the Germans and prove to them beyond any possible challenge that these crimes against humanity were committed and that the German people—and not just the Nazis and SS—bore responsibility."<sup>22</sup> The strategy here was (and is) common: induce guilt by public shaming. The relationship between "shame" and "guilt" is a matter of much theoretical discussion, especially in psychology.<sup>23</sup> For this article, I adopt the following analysis.

First, a person *p* feels guilty about *x* when *x* is something that *p* did or does, but *p* holds that *x* is immoral. Note that, on this view, a person can feel guilty about something that he knows that no one else knows about. For example, if I anonymously lie to the police, tipping them off falsely that my neighbor (whom I dislike) is a drug dealer, and my neighbor subsequently is killed when the police raid his home, I would feel guilty, even though I might be sure nobody else knew what I did.

By contrast, person *p* feels ashamed of *x* when *x* is something *p* did (or does), *p* believes that (at least some) other people know about *x*, and that (at least some) other people regard *x* as bad. Note that by my usage here, in the case above (where I falsely inform the police that my neighbor is a drug dealer), I might feel guilty, but I wouldn't feel ashamed, since other people wouldn't know what I did. Note also that by my usage, I could well feel ashamed about something without feeling guilty. For example, a person might be publically discovered making racist remarks, not feel guilty about it because he is in fact a profound racist, but feel ashamed because he knows most people in his society consider racism evil and are judging him accordingly.

Finally, note that by my usage, feeling ashamed is broader than feeling guilty. I might feel ashamed of my poor speaking ability, in that I realize that other people notice that I cannot speak grammatically and articulately and judge me to be ignorant (hence lacking intellectual virtue). However, I wouldn't feel guilty, because having poor speaking ability is not immoral.

I will use the phrase "to shame" as follows. A person or group *g* shames a person or group *p* when *g* informs third parties about something that *g* believes *p* has done that *g* believes the public views as

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<sup>22</sup> Ibid.

<sup>23</sup> See, e.g., "Guilt and Shame," *Therapists.com*, accessed online at: <http://www.therapists.com/fundamentals/guilt-shame>.



immoral. By my usage, when people shame a person, that person will feel ashamed (and perhaps also feel guilty), but only if he is guilty, that is, did (or does) what he is accused of doing. By contrast, if that person is innocent, that is, did not do what he is accused of doing, the shamed person or group will almost surely feel indignation or anger.

One last psychological point needs to be made. The shaming of a person, whether innocent or guilty, will likely make that person resentful. This is because shaming is a form punishment. As Jennifer Jacquet so well puts it, “Shaming, which is separate from feeling ashamed, is a form of punishment, and like all punishment, it is used to enforce norms. Human punishment involves depriving a transgressor of life, liberty, bodily safety, resources, or reputation (or some combination), and reputation is the asset that shaming attacks.”<sup>24</sup> She goes on to note that these deprivations can be “active,” in that something is taken from the punished (his life, liberty, or property), or “passive,” as when something is withheld (affection, love, or even attention). For example, she notes that a recent survey of Americans shows that two-thirds of them admit to using the “silent treatment” to punish others.<sup>25</sup> People resent being punished, even when they are guilty, and even more so when they are innocent. This is true of shaming no less than any other form of punishment. Jacquet explains, “Shame can lead to increased stress and withdrawal from society. Shame can hurt so badly that it is physically hard on the heart.”<sup>26</sup> Shaming, especially severe shaming, thus can lead to resentment.

Shaming has two different effects. It can lead to acceptance of guilt and a desire to make amends and improve behavior. However, it can lead to resentment and withdrawal, or even aggressive attack. Jacquet cites a 2009 study showing that of patients who felt shamed by their doctors for being overweight, about half felt grateful (and many subsequently tried to lose weight). However, nearly half subsequently “avoided or lied to” their doctors.<sup>27</sup>

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<sup>24</sup> Jennifer Jacquet, “How Shame Can Save the World,” *The Chronicle Review*, February 27, 2015, p. B16.

<sup>25</sup> Jacquet adds that shaming, while it can be accompanied by violence, is usually done nonviolently. It is then one of the “intricate nonviolent punishments” people have devised in our evolution; *ibid.*, p. B15.

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*

With these insights, I think we can plausibly explain why the U.S. Army used Wilder's documentary only very briefly. As the National Center for Jewish Film notes, his film is one of the few that pushes the notion of the "collective guilt" of the German people.<sup>28</sup> The theory of collective guilt was controversial even when it was introduced toward the end of the war by some Allied elites. The Army knew, despite the fact that some people believed in the doctrine of collective guilt, that most people—Allied citizens as well as Germans—rejected it.

This is reasonable, because the doctrine is untenable on its face. After all, many Germans surely either never supported the Nazi Party, supported it only under duress, supported some elements of its ideology (such as the need for societal order and stability) while rejecting its intense anti-Semitism, or accepted its anti-Semitism without wanting to see the extermination of European Jewry.<sup>29</sup> So even if we think that some (or perhaps most) Germans were anti-Semitic or pro-Nazi enough to support mass murder, surely not all were. Collective guilt, though, means that every German shares blame, without exception, for every atrocity committed by the regime. In fact, and ironically, the look of shock, horror, and sorrow on the faces of some of the Germans required to tour the death camps shown in the film itself belies the film's own message.

Guilt is not a moral property of people as groups, but only truly applies to individuals for their personal actions. Yes, a nation can be held liable for the actions of its government, in the sense that *its government* may be forced to pay reparations to another government, say, or pay fines to an international trade association. However, that does not mean each person of that nation is somehow guilty, and therefore must personally pay or face incarceration. In short, collective guilt is a metaphysical muddle that commits a logical fallacy, namely, the "fallacy of division."

Thus, shaming those Germans who either did not know of or did not support the mass killing of Jews and other targeted groups would only result in their feeling intense indignation and anger toward the Allied occupation forces. While many—perhaps even most—

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<sup>28</sup> "Death Mills."

<sup>29</sup> Indeed, it was only around 1941 that the Nazi regime seems to have decided to exterminate the Jews. As late as 1939, Eichmann himself favored shipping them all to the island of Madagascar.

Germans surely did feel intense anti-Semitism (enough in many cases to support or even participate in the Holocaust), shaming them—even rightly—would result in many simply withdrawing from or even opposing the Allied forces. The geopolitical needs to rehabilitate Germany and to stave off Soviet imperial designs led to the rapid end of the PWD’s planned campaign of shaming the Germans generally.

## 6. Holocaust or Shoah?

Another question is raised by the documentaries discussed above. While the Wilder, Stevens, and Resnais documentaries do not refer to the Holocaust as being focused on the Jewish People, the film *Genocide: 1941-1945* from the series *The World at War* does. In addition to all of the other qualities that make it an outstanding film, *Genocide* focuses on the impact of the Holocaust on the Jewish people in particular. In fact, of all of these documentaries, it is the only one to talk about Nazi race theory and its role in the unprecedented genocide of the Jews. I think this focus is appropriate, but since there is some controversy here, some explanation is in order.

The term “Holocaust” is used ambiguously.<sup>30</sup> Some use it to refer to all of the mass murders committed by the Nazis in the concentration camps and by the Einsatzgruppen, which over the dozen years the concentration camp system operated before the fall of the regime, killed about 11 million people. Besides the nearly 6 million Jews murdered, there were 5 million others: Soviet POWs (2-3 million), ethnic Poles (1.8-2 million), the mentally and physically disabled (270,000), the Roma (90,000-220,000), Freemasons (80,000-200,000), Slovenes (20,000-25,000), Homosexuals (5,000-15,000), Spanish Republicans (7,000), and Jehovah’s Witnesses (2,500-5,000).<sup>31</sup> Other people use the term to refer only to the extermination of the Jews specifically.

So the controversy is this. While 6 million Jews were murdered, so were (roughly) 5 million other people. In putting the focus on Jewish suffering, don’t we risk ignoring the horrible suffering of the other 5 million? However, if we talk about all of the murders taken together, don’t we risk trivializing the horrible burden borne by the Jewish people? Was not their suffering unique?

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<sup>30</sup> “The Holocaust.”

<sup>31</sup> Ibid.

There is no easy answer to this dilemma. The answer I favor is this. The Nazis used the camps and killing squads to target several groups for a number of reasons. They targeted the Jehovah's Witnesses, for example, because they wouldn't fight for the regime. The Nazis mass murdered the Soviet POWs because the regime considered the Bolsheviks their major ideological foes, and (I suspect) out of fury over their losses in the war against Russia. The disabled were targeted because of the Nazi eugenicist ideology. The Jews, along with the Roma and Slavs, were targeted because of Nazi racial theory. The Freemasons were targeted for allegedly being cat's-paws of the Jews by pushing tolerance of them.<sup>32</sup>

The Nazi crimes against the Jews were indeed unique, in several ways. First, unlike the other groups, the plan to annihilate European Jewry grew directly out of the virulent anti-Semitism which was an essential component of Nazi ideology at the outset. Nazi identification of the Aryan race is done in explicit contrast with the Jews.<sup>33</sup> For example, while in *Mein Kampf* Hitler makes no reference to the Roma, he makes numerous anti-Semitic remarks.<sup>34</sup>

Second, virtually none of the Jews imprisoned and killed ever fought for any army. While many Soviet POWs were starved and gassed, they had fought; moreover, the Soviets—especially by the end of the war—held many German POWs. For example, nearly 100,000 Germans surrendered when the Nazis lost the battle of Stalingrad. As one writer puts it:

The war in Russia had brutalized those who fought there—on both sides. The common standards of decency even in war all but disappeared . . . German POWs were seen as the people who had destroyed vast areas in western Russia and killed millions. Therefore, those who had been captured were used to rebuild

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<sup>32</sup> Hitler makes his view of Freemasonry quite clear early on; see Adolf Hitler, *Mein Kampf*, trans. Ralph Manheim (New York: Houghton Mifflin, 1999), p. 315.

<sup>33</sup> *Ibid.*, p. 300.

<sup>34</sup> *Ibid.*, see, e.g., pp. 50-65, 119-21, 300-316, 319-20, 622-24, and 637-40.

what they had damaged. If they died in doing so, then they died.<sup>35</sup>

Of the 3 million Germans taken prisoner by the Soviets, the Soviet records show that nearly 400,000 died, but later West German estimates run to about 1.1 million. Most German POWs were released by 1950, but some were held as long as 1956.<sup>36</sup>

Third, and most importantly, the sheer percentage of the targeted population killed was by far the greatest among the Jews. That is, the murders of the Soviet POWs, captive Poles, Roma, and others in each case did not come close to being a complete genocide of the groups targeted. However, something like 67% of the Jewish population in Nazi-occupied Europe were killed in a five-year period.<sup>37</sup> This was and is unprecedented in all of human history.

A balanced definition of the term “Holocaust” would therefore be: “The nearly total genocide of European Jewry, along with the targeted mass murders of other groups, by the Nazis who imprisoned them.” When referring specifically to the decimation of the Jewish people, I prefer to use the word Shoah. Shoah, which means calamity or destruction, has become the standard Hebrew word used to refer to the Holocaust.

## 7. Conclusion

I have reviewed four Holocaust documentary films, all of great power and effectiveness. All saw widespread viewing, with the exception of the Wilder film. I attributed this fact to its dubious and provocative thesis—the notion of collective German guilt. Let me conclude by pointing out some of the tools the filmmakers of these documentaries utilized to achieve the power these films have.

The most important tool these documentary filmmakers exploited was the use of actual footage of the liberation of the camps and what was discovered therein, which often included the Nazis’ own

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<sup>35</sup> See “German Prisoners of War,” *History Learning Site*, accessed online at: [http://www.historylearningsite.co.uk/german\\_prisoners\\_of\\_war.htm](http://www.historylearningsite.co.uk/german_prisoners_of_war.htm).

<sup>36</sup> “German Prisoners of War in the Soviet Union,” accessed online at: [http://en.wikipedia.org/wiki/German\\_prisoners\\_of\\_war\\_in\\_the\\_Soviet\\_Union](http://en.wikipedia.org/wiki/German_prisoners_of_war_in_the_Soviet_Union).

<sup>37</sup> “The Holocaust.”

film of what they were doing. As De Swann argues in his recent book on the nature of genocides,<sup>38</sup> mass killings have occurred throughout history, but we have photographic images of almost none of them, much less moving pictures of them. Thanks to the film crews of the American and Soviet Armies, we have extensive archival footage of the death camps. This allows the documentary filmmakers to exploit the nature of film as a unique visual medium to have an impact on the audience. The sight of one box full of gold-filled teeth is more powerful than dozens of pages of the description of the utilization of concentration camp victims' bodies.

Another important tool utilized, especially by the BBC film, is the use of later testimony of participants in the event. An SS officer being interrogated by officers of the army who just liberated the camp has only a limited grasp of the scale, evolution, and effects of the Holocaust. Listening to an ex-SS officer discuss the events he participated in decades afterward allows us to hear his retrospective understanding (or lack thereof) of what he did and why he did it.

Another tool is the use of subtle cinematographic tone and brilliant narrator dialogue to enhance the power of the imagery. This tool is most skillfully deployed by Resnais.

Finally, narrative focus is an effective tool. By "narrative focus" I mean simply the selection of specific aspects of the historical event or other phenomena used as the broad subject of a documentary. Both the Stevens and the BBC films stand out in this regard. Stevens's documentary focuses on showing *that* there had been a genocide, as well as the vast extent of it (the massive network of camps, numbers of victims, and depth of the atrocities committed). Stevens was doing exactly what Eisenhower hoped he would: proving—*documenting*—to the American public that, unlike the anti-German propaganda in World War I, these incredible reports were true. In contrast, the BBC documentary puts the focus on explaining the Shoah, the systematic total war against the Jews specifically, based upon a virulent racial form of anti-Semitism.

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<sup>38</sup> Abram De Swann, *The Killing Compartments: The Mentality of Mass Murderers* (New Haven, CT: Yale University Press, 2014).

## Review Essays

The U.S. Founding: Washington's Allies and Opponents: Review Essay of John Ferling's *Jefferson and Hamilton*, Stephen Knott and Tony Williams's *Washington and Hamilton*, Thomas Fleming's *The Great Divide*, and Carson Holloway's *Hamilton versus Jefferson in the Washington Administration*

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The evidence is abundant that George Washington, of all the American Founders, was the truly *indispensable* one.<sup>1</sup> Yet the books under review here<sup>2</sup> amply explain how another great man, Alexander Hamilton, was the Founder who was truly indispensable to Washington. John Ferling writes in *Jefferson and Hamilton* that a young Hamilton (age twenty) “quickly discovered that Washington was a demanding boss,” when he first served as the General’s key aide in 1777 (p. 69). “Hamilton was good—very good,” though, and “so good, in fact, that Washington soon thought him indispensable”; even “years later Washington [writing to John Adams, in 1798]

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<sup>1</sup> See James Thomas Flexner, *Washington: The Indispensable Man* (Boston, MA: Little, Brown & Company, 1974); and Ron Chernow, *Washington: A Life* (New York: Penguin Books, 2011).

<sup>2</sup> John Ferling, *Jefferson and Hamilton: The Rivalry that Forged a Nation* (New York: Bloomsbury Press, 2013); Stephen F. Knott and Tony Williams, *Washington and Hamilton: The Alliance that Forged America* (Naperville, IL: Sourcebooks, 2015); Thomas Fleming, *The Great Divide: The Conflict Between Washington and Jefferson that Defined America, Then and Now* (Boston, MA: Da Capo Press, 2015); Carson Holloway, *Hamilton versus Jefferson in the Washington Administration: Completing the Founding or Betraying the Founding?* (New York: Cambridge University Press, 2015).

characterized Hamilton as his ‘principal and most confidential aide’” (p. 69). Ferling, who openly sympathizes far more with Hamilton’s chief political critics, Thomas Jefferson and John Adams, nevertheless concludes that “next to Washington, Hamilton was the most important figure in the establishment of the American Republic” (p. 359).

These four books are well worth studying together by non-specialists in the Founding era who seek careful, in-depth, and reinforcing examinations of the handful of crucial men, ideas, and policies (in law, public finance, and foreign affairs) that most influenced Washington, primarily during the crucial first decade (1790s) of the U.S. founding. The Washingtonian-Hamiltonian Federalists erected a foundation sturdy enough to allow the new nation to withstand threats from both home and abroad. After the war, the main threat was not Britain but Revolutionary France and, later, despot and imperialist Napoleon. At home, Jefferson’s anti-Federalists didn’t even *want* the states to become united politically and thus were the main impediment to an actual founding of the United States of America. Even after the founding in 1788, the anti-Federalists tried to prevent its success and return to the equivalent of the woeful Articles of Confederation.

Washington eschewed partisanship and welcomed sharp but principled debate: on the one side stood clearly Hamilton and the Federalists, while on the other stood (opaquely) Jefferson and the anti-Federalists. In addition to demonstrating the many ways that Hamilton and his principles made the founding possible and its success enduring, these books reveal how Washington’s most capable political opponents—Jefferson, Madison, and Monroe—actively countermanded his (largely) Hamiltonian policies, even when serving officially in his administration. Indeed, Fleming argues, based on primary sources, that some of this opposition, especially from Jefferson (as Washington’s Secretary of State) was borderline treasonous, exposing the U.S. to real (war-like) harm. In foreign affairs, quite unlike Washington and Hamilton, the troika sided with revolutionary France, even amid its terrorism and (subsequent) Napoleonic imperialism, while actively opposing the attainment of peaceful relations and free trade with a constitutionally limited (albeit monarchical) Britain. All three men (with whom Washington eventually broke, upon learning of their subterfuges and perfidies) tried to reverse Federalist policies when they ruled the U.S. executive branch (1809-1825). They thereby reversed much of the peace and prosperity that was achieved in the 1790s. In early 1809, after eight



years of President Jefferson, America's economy was in tatters and another war loomed (the War of 1812), due mainly to Jefferson's and Madison's anti-British hostility, the 1807 Embargo Act, and support for Napoleon. Jefferson's Treasury secretary, Albert Gallatin, excused the sorry results by declaring that "we have been too happy and too prosperous" (Fleming, p. 365).

For nearly every policy in which Washington and Hamilton concurred and fought to implement, active opposition came from Jefferson, Madison, and Monroe, even though Federalist policies made the U.S. founding possible, made the launch of the U.S. federal government successful, and made for a peaceful and prosperous nation during its first decade. Whether the issue in dispute was the U.S. Constitution (and the powers it permitted or implied), public finance (and the crucial need to fix money, banking, and the national debt), or foreign policy (and the value of achieving a rapprochement with Britain while avoiding any tight alliance with a combative France), Washington and Hamilton were on the right side and the troika on the wrong side of the debate. One of the few controversies about which Hamilton and Jefferson agreed was the Louisiana Purchase (1803), which nearly doubled (and cheaply, at \$15 million) the nation's geographic footprint. Hamilton preferred that President Jefferson obtain legislative approval (if not a constitutional sanction). Some Federalists suspected that Jefferson's main aim was not so much to strengthen the united nation, but to keep the nation agricultural for as long as possible in order to divert population from its cities, to extend slavery westward, and to provide a near-bankrupt Napoleon with much-needed cash to extend his unjust war against Britain (which lasted another dozen years). Jefferson, Madison, and Monroe successively occupied the U.S. presidency from 1801 to 1825, benefiting from a rising tide of democratic sentiment. To the extent the troika succeeded in undoing Federalist policies, the nation weakened and tottered, but to the extent it failed to do so, the nation strengthened and endured.

Jefferson, Madison, and Monroe hid from public view their disdain for Washington and his policies (knowing well his sustained popularity), but their animus is obvious from their private correspondence, as these books reveal. Often, the three men couldn't admit even to themselves that Washington might rationally have endorsed Hamilton's advice, ranging from policies on federalism, constitutionalism, finance, and trade to the need for a standing army, an independent judiciary, a pro-capitalist economy, and a neutral

foreign policy. They chose instead to malign Washington as some untutored dupe of a supposedly manipulative Hamilton. Jefferson was the “unWashington,” in Fleming’s account, who frequently and falsely arraigned Washington and Hamilton as would-be monarchs, protectionists, and imperialists. Yet as president, Jefferson ruled in numerous ways that ignored the Constitution (Louisiana Purchase), elided Congress’s war powers (his venture in North Africa), and hurt the economy with discriminatory, punitive tariffs and harsh strictures to suppress smuggling (a consequence of his Embargo of 1807). All the while, he favored or excused France’s atrociously illiberal regicide (Robespierre) and multi-year imperialistic invasions (Napoleon).

These books are commendable as well because they de-emphasize the personality clashes that often occupy other accounts of the Founders. Instead, they focus on documenting and elucidating the important, principled differences to be found in the protagonists’ philosophies and policies. We get a clear portrait of Hamilton as the most erudite and brilliant of Washington’s supporters and detractors, but also the one who’s more consistent and principled in defending individual rights, as evidenced by his detestation of and opposition to slavery, his rigorous case for federal constitutionalism (entailing opposition to unlimited majority rule), his foreign policy of national self-interest (realism) in place of altruistic adventurism, and his strenuous defense of the virtue and productiveness of non-agricultural economic sectors like trade, manufacturing, and finance.

Ferling describes his effort as an exploration of “what shaped the thinking and behavior” of Jefferson and Hamilton (p. xv). Although his book is more biographical than the others, it’s also informative about the origins and evolution of Founding ideas and policies, avoiding the facile premise that ancestry inevitably determines ideology. America’s Founders differed politically, but they also actively studied, wrote, and ruled in accord with their own best judgments. For example, whereas Hamilton was an abandoned and poor immigrant and Jefferson was a home-grown product of a gentry life, each nonetheless was raised in a racist, slave-dominated culture. Yet Hamilton grew to believe that such a culture was morally and practically inexcusable and should be replaced by a virtuous, commercial republic, while Jefferson believed that the same culture was morally passable and generally unavoidable, such that its agrarian-feudalistic elements should be preserved against encroachments by interlopers (manufacturers, capitalists, and financiers). Hamilton, being more enlightened and less conservative than Jefferson, saw a free,

commercial society as both moral and practical; in this he was more prescient than Jefferson about what the American system eventually might achieve, including the institutional (and martial) eradication of its feudalistic slavery.

*Jefferson and Hamilton* “inquires into [Jefferson’s and Hamilton’s] activities during the American Revolution and the war that accompanied it, their hopes for the new American nation, and the political warfare that each waged against the ideas of the other,” yet “the book is about more than ideology and political confrontations” (p. xv). Ferling “aims to discover what shaped these men’s temperament, to understand the character of each, and to explain the role of character in the choices that each made. It also seeks to answer not only what made each a leader but also how each met the hard tests of leadership.” He also reveals that when he began the book, he “held Jefferson in higher esteem than [he] did Hamilton,” but found it “a bit startling” that he “grew far more appreciative of Hamilton.” This is an honest scholar. One drawback of Ferling’s account, however, which seems common to many Jefferson sympathizers, is his repetitive and tiresome claim that Jefferson “feared” one or another of Washington’s and Hamilton’s policies or actions, claiming they’d bring corruption, monarchy, tyranny, and war. In truth, we find that Jefferson in private correspondence only occasionally claimed to feel such fear, typically hoping to activate some public opposition. Madison and Monroe especially were susceptible to this ruse.

Stephen Knott and Tony Williams’s *Washington and Hamilton* is distinctive because it provides substantial, long-ignored evidence of Washington’s own intellectual development and long-standing hope for a unity of the states, a trustworthy system of money and credit, and a professional, standing army that could defend the United States from foreign foes (and hostile Indians on the western domestic frontier). These authors make it obvious that Washington developed his insights prior to and independently of Hamilton’s ultimate influence. This is a rarely revealed aspect of Washington and his greatness. Like Hamilton, he was an autodidact. As early as 1774 he wrote, in the face of unjust British acts, that “we must assert our rights or submit to every imposition that can be heaped on us, until custom and use will make us as tame and abject as the black slaves we rule over with such arbitrary sway” (p. 49). That same year, writing to Robert McKenzie, Washington extolled rights to “life, liberty and property” and hoped to find resolute defenders of “peace and tranquility, on constitutional grounds” so that “the horrors of civil discord are prevented” (p. 55).

By the time Washington and Hamilton became trusted political allies they had made up their minds already about many important things. After the war, in June 1783, Washington wrote an influential “Circular Letter to the States” urging a political union as a remedy for inter-state chaos and exposure to European domination (p. 124). As allies, Washington and Hamilton pursued what they saw both *separately* and *mutually* as necessary for their policy preferences and worthwhile for the nation’s well-being. Knott and Williams show that Washington was no empty vessel being filled by some upstart intriguer; this was a transparent and rational partnership fueled by mutual respect. The only important issue about which these two great men disagreed was slavery. For example, during the Revolutionary War Hamilton proposed to Washington a plan to recruit American slaves and offer them their post-war liberty in return for field service, a policy Britain had adopted and against which Jefferson and the Virginians had railed as an unjust violation of their “property rights.” The General rejected the plan as too radical and divisive at a time when war morale was low (and not because, like Jefferson, he saw blacks as non-human).

That Washington and Jefferson, “the two Virginians” who were raised in wealth and owned slaves, nevertheless “were unable to see eye to eye on the great issue of the day is revealing,” write Knott and Williams (p. 251). That “great issue” was not slavery but the question of whether the American states should be united or remain a loose confederation. Here’s how they explain the contrast:

Washington, shedding his Virginia parochialism, envisioned a nation, the United States of America, and thus more often than not sided with the cabinet member [Hamilton] with whom he had the least in common [personally]. Jefferson remained committed to an agrarian confederation that was slowly but surely fading away. All this could be seen in Jefferson’s fierce opposition to the administration’s proposals for a national bank, a manufacturing sector of the economy, and acceptance of the idea that a publicly financed debt had its benefits. Jefferson, to give him his due, was primarily devoted to liberty. Washington and Hamilton were devoted to liberty, but believed that this could be best achieved if America thought continentally, moving beyond the parochial and

developing more of an attachment to a traditional nation-state. (p. 251)

Washington is to be credited for breaking free (at least partially) of comprehensive belief in the more feudalistic aspects of the American South. Hamilton surely helped in this regard and was more consistently “Northern” (pro-capitalist) in thinking and policymaking, but at least Washington relied more on his counsel than on Jefferson’s. Contrary to the historical reputation of the two men, one might say Washington proved far more able and willing than Jefferson to embrace newer, more modern, and enlightened ways of living and governing.

After planning and fighting together intimately during the long war, and seeing America suffer from the impotency and indignities of the Continental Congress, Washington and Hamilton “understood that there was a thin veneer separating order from chaos,” per Knott and Williams, and this “led them to embrace the virtue of moderation and to revere stability. They were the sober revolutionaries, and thankfully so, for due to them, the American Revolution did not consume itself, unlike most modern revolutions. It was a close call, but because of Washington and Hamilton, the United States escaped this fate” (p. 256). Whereas conventional accounts see the main confrontation in the founding era between Hamilton and Jefferson, in fact it occurred mostly “between Washington and Hamilton on one side and Jefferson and Madison on the other. Jefferson helps to foster this myth” (p. 256). It was easier and less controversial, then as now, for critics of Federalists to vilify Hamilton than the well-known, popular Washington, but as the latter told Jefferson, Hamilton’s policies, in fiscal and foreign affairs alike, were the administration’s policies. “Remarkably,” write Knott and Williams, “these facts continue to be ignored; understandably so, for attacking Hamilton was and is a far more palatable approach than attacking the towering figure of George Washington” (p. 257).

Thomas Fleming’s *The Great Divide* presents Hamilton not as a caricature (which has been commonplace), but as he really was—both heroic in taking unpopular positions and implementing principled and propitious policies. Fleming also reveals the extent to which Jefferson and his allies opposed what Hamilton and Washington fought, stood, and governed for. Madison is portrayed as an intelligent, well-meaning, yet chameleon-like character who, lacking full confidence or fixed principles, performed better when influenced by Hamilton (at the Constitutional Convention and in the *Federalist*

*Papers*) but worse when influenced by Jefferson (as Congressman, cabinet official, and President).

Carson Holloway's *Hamilton versus Jefferson in the Washington Administration* is the most ambitious, scholarly, and edifying of the four books. This is especially so for readers least interested in biography and most interested in the finer aspects and subtle controversies associated with constitutional design and interpretation, political economy, money and banking, and foreign policy. Each of Holloway's chapters focuses on the influential official reports and memoranda crafted separately by Hamilton and Jefferson, at the request of the U.S. Congress or President Washington, when one or both were cabinet members (Hamilton at Treasury, Jefferson at State) in the brief but foundational years of 1789-1795. Washington, we learn, didn't always agree with the one or the other man, but in all of the key areas Holloway incisively and eloquently demonstrates that during these crucial, formative years Hamilton's more capitalistic, republican principles and policies contributed to "completing the Founding," whereas Jefferson's more feudalistic, democratic principles and policies contributed to "betraying the Founding." Like Knott and Williams, Holloway believes we should be thankful that Washington, Hamilton, and the Federalists won the day against the Jeffersonian anti-Federalists, however brief their day may have been. That Washington continued to rely heavily on Hamilton's erudite but practical judgment and memoranda in the years after Hamilton left the government (in 1795) and before Washington's death (in 1799), testifies to how indispensable each of these indispensable men were to each other. This couldn't be said of Jefferson, who Washington politically and personally disowned in 1794.

For Hamilton, writes Holloway, "government must be energetic, but not unlimited" (p. 69). He had "an expectation that rational self-interest will generally direct people's economic behavior in directions that are fruitful for themselves and the community, at least under laws that protect private property" (p. 65). Hamilton was thus no "statist," as most of today's anarchical libertarians falsely claim.<sup>3</sup> Holloway recognizes that Hamilton's *Report on Manufactures* (1791) was not some blueprint for industrial planning or for a

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<sup>3</sup> See, for example, Thomas DiLorenzo, *Hamilton's Curse: How Jefferson's Arch Enemy Betrayed the American Revolution* (New York: Crown Forum, 2009), and Thomas DiLorenzo, "The Founding Father of Crony Capitalism," Mises Institute, October 21, 2008, accessed online at: <https://mises.org/library/founding-father-crony-capitalism>.

protectionist system to turn the tables on mercantilist Britain, but rather,

the final step in Hamilton's effort to complete the founding by bringing energetic government fully into being. Like the previous steps, it illustrated his understanding of the mutual dependence of energetic government and a flourishing private sector. His *Report on Public Credit* sought to secure the government's ability to borrow at reasonable rates by making a sufficient provision for the public debt, thus fostering the development of a creditor class that could view the government as a worthy borrower. (pp. 136-37)

Hamilton's *Report on a National Bank* argued that a national bank would "promote a flourishing national economy" (p. 137). Jefferson, in contrast, didn't object to government renegeing on its debts or issuing inflation-stoking fiat paper money (as long as such powers were reserved to the states). Certainly there was rich irony in warnings about Federalist "monocrats" emanating so frequently from the Monarch of Monticello.

Holloway's deft illumination of the seriousness and import of the Hamilton-Jefferson policy debates, as cabinet members, provides a welcome respite from the trivialities and inanities that pass for political debate today. "To follow their arguments," he writes,

is to get a lesson in the importance of the earnestness about principles to constitutional—as opposed to merely pragmatic—statesmanship. Fundamental constitutional and political principles were never far from their minds, or absent from their arguments. . . . If our own approach to politics is often oriented around more partial, shorter-term or lower considerations, we find Hamilton and Jefferson united in calling us to a more principled and far-sighted statecraft. (pp. 327-28)

Principled, far-sighted arguments and perspectives are rare in politics today. Much of the current political system is simply taken for granted. If any genuine reforms are pushed, they're usually in the direction of

extending government's scope and reach into heretofore free and private matters. Careful examination of the Founder's erudite arguments about the proper size, scope, and power of government helps combat the myopia and illiberalism of contemporary perspectives. "No question divided Hamilton and Jefferson more emphatically than the scope of powers of the national government," Holloway writes: "Jefferson thought that Hamilton's approach to these powers betrayed the Constitution by abolishing all limits on the national government. Hamilton thought that Jefferson's approach would cripple the government and throw the nation's affairs into chaos" (p. 329). Holloway finds more evidence for Hamilton's fears than for Jefferson's:

Hamilton, after all, evidently believed that there was a good chance that—in America at least—republicanism could be made compatible with the rights of society, and he dedicated his considerable talents to establishing the kind of energetic republican government that could secure those rights. For Hamilton, the rights of society were primary, and republican government was secondary, but this did not prevent him from viewing republican government as a genuine good that should be pursued and defended where possible, even if it did not lead him to insist on republican government in the way that Jefferson seemed to. (p. 331)

Of course, we know that Jefferson's version of republicanism perversely rationalized slavery and condemned commercialization, financialization, and urbanization as inherently corrupt, which is counter to Holloway's odd claim that he opposed Washington and Hamilton's principles and policies because he was "too committed to the individual rights doctrine informing the founding" (pp. 331-32). In truth Jefferson was *too little* (or inconsistently) committed to rights, especially compared to Hamilton, who, as Holloway rightly acknowledges, viewed such rights as "primary."

Many classical liberals and libertarians today reserve their highest accolades for Jefferson and his anti-Federalist allies (especially Madison),<sup>4</sup> while misrepresenting Hamilton (and thus to a related, but

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<sup>4</sup> According to Murray Rothbard, Jefferson was "a brilliant libertarian-republican theoretician before achieving power and after leaving it," and his first term as president (1801-1805) "was one of the finest libertarian moments



lesser extent, Washington) as a mercantilist, a statist, and an imperialist. They interpret today's U.S. federal government as out-of-control, fiscally reckless, and globally hegemonic, and then illogically blame this on the Founders who fought to create the entity in the first place. But misuse of an instrument is no argument *per se* against the need for it. In truth Washington, Hamilton, and other top Federalists wanted the thirteen states united so that the U.S. could be *both* energetic and efficacious in carrying out proper but limited government functions. The constitutionally restrained U.S. government would also restrict the states' rights-violating powers, create a free trade zone, and protect against foreign aggressors, thus ensuring liberty and security alike. Jefferson and the anti-Federalists opposed uniting the states, sought to entangle the U.S. in foreign wars on behalf of "democracy" and a perpetually combative France, and preferred to preserve America's agrarian-feudalistic serfdom. These books are a treasure-trove not just for non-specialists seeking solid documentation and interpretation of America's Founding decade and traces of their relevance today, but for Jeffersonian libertarians, particularly, who are willing to delve more deeply into rather illuminating details, to expand their historical-interpretive horizons, and to check their Founding premises.

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in the history of the United States"; accessed online at: <https://mises.org/library/bureaucracy-and-civil-service-united-states#6>.

Review Essay: The Politics of Defeat: A Tribute to  
Sadik al-Azm's *Self-Criticism after the Defeat*

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**1. Introduction**

It is difficult to write objectively about a book that changed the trajectory of my life, forty-eight years ago when I was in my teens with hardly a political thought in my head. The first day of the Six Day War, June 5, 1967, took place after final exams in my senior year at Baghdad High School. I remember standing on the front steps of the school with classmates, arguing about what had just happened. I had the advantage of having listened to the BBC World Service, and heard that the Egyptian Air Force had been decimated in the first hours of the war without its aircrafts even leaving their hangars. My classmates had, by contrast, listened to the broadcasts on Baghdad Radio, which triumphantly proclaimed the complete rout of “the Zionist enemy,” and the imminent destruction of the Zionist state.

We were confused. I had assumed that this political discussion, my first, ought to follow the rules of a physics problem set—but such discussions never do, as I would learn years later. My classmates were sure of themselves. “We are winning!” they said, but without much conviction. What was happening to us, we all wanted to know?

You were defeated, explained Sadik al-Azm, in this hard-hitting, self-scrutinizing book, which appeared in 1968,<sup>1</sup> its subject being why “we”—and it is in that spirit of identification with his “Arabness” that the author was writing—were defeated. I became

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<sup>1</sup> Sadik Al-Azm, *Self-Criticism after the Defeat*, trans. George Stergios (London: Saqi Books, 2011). All further page references to this work appear in the text in parentheses.

political after reading it, meaning that I began to *think* about politics as opposed to having impulsive reactions to this or that political event.

On the occasion of Saqi Books's publication in English for the first time of *Self-Criticism*, and of the passing in December 2016 of a formidable Arab intellect to whom my own work is greatly beholden,<sup>2</sup> I am driven to re-think the implications of the book under review, in what I hope is my mentor's spirit.

## 2. Defeat

I start with the elephant in the room that no one had wanted to admit, at least not with al-Azm's searing honesty: the word *hazima* ("defeat") in the title. The first thing to note is that al-Azm was not writing about defeat in the uninteresting and purely military sense, but in the deeper one of a societal inability to rid itself of outmoded and irrelevant ways of thinking, ways encapsulated by the generals, leaders, and intellectuals who fought the war. "The blame . . . does not fall on the officers as individuals alone," al-Azm wrote, rubbing the point in. They are after all "a basic part of the fabric of Arab society, customs, and character, and it is this society that forms and produces these officers" (p. 86).

The defeat, in other words, was not about numbers and things, but about mindsets: the Israelis had fought a modern war, but our professed modernity was hollow. Being defeated is a state of mind, a stance one chooses to take upon the world. Redressing this was a monumental challenge; society as a whole needed to be overhauled, not merely its bankrupt politicians and military men replaced. The contrast with the heroic bombast all around him at the time of writing the book could not have been greater.

I was hooked; it felt to me at the time that someone had at last spoken the brutal truth. Al-Azm had said what everyone around him knew but dared not admit, and his book was my first introduction to political analysis. I started to read everything by him that I could get my hands on, as soon as it came out. His book had descended like a thunderbolt upon a whole generation, my generation that came of age politically in the aftermath of the 1967 War and that was to this day condemned to live in its shadow.

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<sup>2</sup> Sadik al-Azm died in Berlin, Germany on December 11, 2016. See his Wikipedia entry, accessed online at: [https://en.wikipedia.org/wiki/Sadiq\\_Jalal\\_al-Azm](https://en.wikipedia.org/wiki/Sadiq_Jalal_al-Azm).

Nizar Kabbani, a widely celebrated Syrian poet, called the 1967 defeat a *naksa* (“setback”), not a *hazima*. Most Arab intellectuals followed his example. It was so much more reassuring; a *naksa* is ephemeral and reversible, a *hazima* is forever and therefore history. The underlying impulse was that “victory” was a “historical” inevitability, because we had numbers, geography, and time on our side. Meanwhile, the “Zionist entity” was artificial, sustained by the largesse of Imperialism, and by nothing else. Kabbani’s poem, *Hawamish ‘Ala Daftar al-Naksa (Notes On The Margins of a Setback)*, which circulated far and wide, remains to this day the most celebrated literary testament to the 1967 War. Alas, not so al-Azm’s book, which, after a few years of notoriety, slipped out of sight, its truth-telling cast aside in favor of the soothing balm of moral righteousness and feeling oneself to be a victim.

What makes an exercise in political thinking published in 1968 stand the test of time and yet be ignored? Surely not the basic facts surrounding the events of 1967. Those are long since gone; nonetheless, something else about that war has lingered, turning into a kind of syndrome worse than the war itself. And if such a syndrome has lasted until our own times, does that somehow imply that the secular generation formed in the wake of that war, my generation, might in some way be responsible for it? In the wake of the 1967 defeat, are we somehow complicit in the birth of the irrational, nihilistic, nowadays “Islamic” (not Arab) psychoses ravaging the Middle East today?

I ask these questions with the benefit of hindsight, for it seems clear to me that the collection of unraveling countries which with increasing uncertainty we call “Arab” continue to live today in a state of defeat. Until 1967 they were proceeding along more or less the same lines as other developing countries in Asia, Africa, and Latin America, but post-1967, they stopped in their tracks, faltered, and began to regress to the pitiable state in which we find them today. The 1967 War was a watershed moment, and al-Azm was the first writer to sense this. The underlying conditions preceding June 5, 1967 diagnosed by him have not really changed. If anything, they have gotten worse. In this slim volume, al-Azm had already discerned the seeds of what would prove to be a growing malignancy in Arab politics, a fact that by itself makes his book a classic.

### **3. Self-Criticism**

The second important word in the title is “Self-Criticism.” We are fortunate in the English edition of *Self-Criticism after the Defeat* to

have an Appendix that includes a number of interesting reviews that appeared in Beirut shortly after the book's publication. All of them discuss, as does the author himself in his Introduction, the book's engagement in the exercise of "self-criticism," and that is because as practiced by al-Azm in 1968, self-criticism was a very unusual thing to do in the Arab world.

Ghassan Kanafani, a major twentieth-century Palestinian poet and literary figure, understood self-criticism as being about al-Azm's refusal "to explain the defeat in terms of Israeli treachery or colonialist intervention. The defeat, in his view, has one cause and that is the backwardness of Arab society" (p. 167).

How true, although the fault seems to lie more in culture than in social backwardness; it is a problem of ways of thinking, and of the people who do the thinking in the guise of the books, articles, reports, and journalism they produce. It is not primarily a problem of backward or traditional social relations, although the two undoubtedly connect at some point in deep time. Still, it was a difficult thing for Kanafani to say because Palestinians in those days looked not to themselves but to the armies of the Arab world for deliverance from Israel.

Al-Azm and Kanafani's quest, as Fouad Ajami in *The Arab Predicament* long ago pointed out,<sup>3</sup> was that of a younger generation of Arab radicals, ones who demanded new and even more revolutionary political solutions to deal with the world of the failed radicals of yesterday, Gamal Abdel Nasser and Michel 'Aflaq. Their forerunners had been tested in 1967, and failed. It was possible to say such things in the immediate aftermath of defeat, but, as time passed, the intellectual courage it took to look into oneself and see one's shortcomings waned.

Al-Azm's other books deal with religion and the thought of the Palestinian Resistance movement, of which he was at first an enthusiastic supporter in the 1970s and later on a critic (as was I, walking in his footsteps). Interestingly, the word *naqd* ("critique") often finds its way into his titles (for example, *Naqd al-Fikr al-Dini* [*Critique of Religious Thought*] or *Naqd Fikr al-Muqawamma al-Filistiniyya* [*Critique of the Thought of the Palestinian Resistance*]). This contrasts with the phrase "*Al Naqd al-Dhati*" ("Self-Criticism") used in the book under review. Criticism, of which there has always

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<sup>3</sup> Fouad Ajami, *The Arab Predicament: Arab Political Thought and Practice Since 1967* (Cambridge, MA: Cambridge University Press, 1992).

been a rich Arab literature, is not *self*-criticism, which was rare before al-Azm.<sup>4</sup>

The contrast is important and shows how deeply the wound of 1967 cut, even among those of us who were least inclined to be taken in by all of the pompous rhetoric of Nasser and Mohammed Hassanein Heikal leading up to the defeat; perhaps we too with our silly distinctions between “progressive” and “reactionary” Arab regimes, had misjudged the extent to which all of the bluster about “armed struggle” hid the true depths of “backwardness”<sup>5</sup> in the Arab world. Truth-telling and lacerating honesty is what is so important about al-Azm’s book, in spite of the fact that he clearly believed at the time, as did his followers and our whole generation: “I have not the slightest doubt that we will triumph over Israel one day, and I am of the highest certainty that our victory over it is historically and logically inevitable” (p. 53).

By contrast with the central themes of *Self-Criticism*, such sentences do not stand the test of time, and I think that al-Azm, were he still alive today, would agree. Still they need to be recalled because they reveal a failing from which we all suffered and which is still deeply resonant in the culture, especially among Arab intellectuals: an unwillingness to understand the nature of Israel.

Israel has never been real in the Arab political imagination; it is an uninteresting black box to bang away at from the outside, an alien outpost we choose not to know intimately (the only way to know anything), but nonetheless see as the source of unmitigated evil. It is not, for its Arab critics, a society which successfully acquired its own state, as it acquired the attributes of genuine nationhood, even as our own Arab societies are today in danger of losing theirs.

A conversation I had in 2001 a week or so after the collapse of the World Trade Center Towers and the attack on the Pentagon comes to mind. An Iraqi refugee and former activist in the Da’wa Party (an Islamist organization that had waged an underground war against Saddam Hussein), told me that the perpetrators “could not have been Arabs.”

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<sup>4</sup> The Iraqi lyricist Aziz Ali comes to mind, but he was imprisoned by the Ba’ath in 1972, and died in 1995 after a long imprisonment.

<sup>5</sup> A politically incorrect word today which makes many of us feel uncomfortable, but that neither al-Azm nor Kanafani hesitated to use.

“Of course they were,” I replied. “Read the list of names. Look at their pictures.”

My friend gave the matter little thought before saying, “No Arab is capable of planning an attack like this.”

I often recollect that reply. This individual, no stranger to political activism, could not imagine Arabs pulling off such a remarkable feat of planning and organization; it had to be the Israelis who have an interest in making “us” look bad, and who, as everyone knows, are “very smart.” This is not a pre-1967 mindset; it is a post-1967 one. It is as telling of my friend’s understanding of Israel as it is of his repressed contempt of his own Arabness.

Thirty-four years after 1967 and the condition of being defeated had drilled its way down into the core of my friend’s psyche, shredding his sense of self-worth. He was not even born in 1967, but that is precisely the point. Some of us were jerked into adulthood on June 5, 1967, but my much younger Arab friend is a child of the world that it left in its wake. No doubt other failures contributed to his choice of words, but those later ones, it seems to me, were derivative of the great conflagration of 1967. Until the Arab Spring of 2011, we remained stuck in the debilitating world that our reaction to defeat had created: the Occupied Territories, the Israeli settlements, Netanyahu, the PLO, and, with the exception of regime change in Iraq in 2003, the same constellation of regimes that began to flourish in the shadow of our defeat.

A visitor to Cairo can travel the length and breadth of that city visiting museums, monuments, and landmarks going back to ancient times. But he or she will find nothing to indicate that a great war which shaped Arab and Egyptian lives for so long took place here. There is a museum extolling a different war, the October 1973 War; it tells the story of an Arab victory over Israel in 1973, without a reference to its much more important precursor in 1967, and which after all was the reason the October 1973 War was fought in the first place. Worse yet, the “victory” that the museum extols never really happened, for had the Soviet Union and the United States not intervened to stop the October 1973 War when they did, following Israel’s capture of the city of Suez, the encircled Egyptian Third Army would certainly have been decimated. However, an Arab oil embargo had been announced and the Great Powers did not want another Arab humiliation, and so the Egyptian army survived to claim its hollow victory. Meanwhile, the West Bank and the Golan remain occupied; Gaza is in worse shape than ever before; the “authority” of the Palestine National Authority is

crumbling; and Israeli power relative to its Arab adversaries is many orders of magnitude greater than it was in 1967.

The Arab Mashriq (East), al-Azm wrote, was prone to “magical” and “rash” ways of thinking. These apply to the unwillingness to understand Israel as much as they apply to the inability to cope with the tragedy of the Palestinian people. “Our use of the term *nakbah* [disaster] to indicate the June War and its aftermath,” al-Azm wrote, “contains much of the logic of exoneration and the evasion of responsibility and accountability, since whomever is struck by a disaster is not considered responsible for it” (p. 40).

The discussion over terminology—was 1967 a *naksa* or a *nakba*?—was by itself a symptom of the unwillingness to get at the root of the problem. Al-Azm would argue that this has its basis in religion, and the sense of fatalism that can be engendered by the often-unforgiving environment of the Middle East. Certainly one of al-Azm’s other books, *Naqd al-Fikr al-Dini (Critique of Religious Thought)*, for which he was expelled from the American University of Beirut, explores this terrain. But when you add to those underpinnings of backwardness the cataclysmic shock of total collapse in a mere six days, along with the loss of huge swathes of Arab territory persisting until today, one can understand why 1967 is a turning point in Arab political life, as great if not greater than the formation of the State of Israel itself.

#### 4. Rejection

In politics, how one deals with defeat is more important than the brutal fact of defeat itself; it sheds light on the future of the defeated. In 1967 Nasser grasped the reality for which he was of course primarily responsible. He tried to resign, but was not allowed to do so by his inner circle and the intelligentsia which had so egged him on; nor was he allowed to resign by the hundreds of thousands who poured out onto the streets demanding that he retract the gesture. To continue living in a state of defeat, under its cloud, so to speak, is to begin to think of oneself only as a victim of “Zionist settler-colonialism,” not as having been defeated by it. Consequently, there is less of an imperative to come to terms with what happened. Accomplishing this entails a huge dose of denial, hypocrisy, and evasion of responsibility. Again, al-Azm was the first Arab thinker to understand this.

Since the publication of *Self-Criticism*, time has added another ragingly popular word to the Arab lexicon: “rejection.” Rejection first entered post-1967 politics in the shape of the famous three “no’s” of



the resolution of the Khartoum Arab League, adopted on September 1, 1967 (“No Peace; No Recognition; No Negotiations with Israel”), but it took off with a vengeance during the 1970s and 1980s in the form of the Arab “Steadfastness and Rejection Front,” a 1977 collection of Arab States and Palestinian organizations under the umbrella of the PLO that rejected the Camp David treaty between Egypt and Israel, along with U.N. Resolutions 242 and 338.

Rejection in this and other contexts in which it makes an appearance—for instance, “rejection” of *tadhbia*’ (“normalization with Israel”), the basis of the Ba’athist critique of Jordan and Egypt after the Camp David Accords—is a perfect illustration of the hypocrisy that was now becoming part and parcel of the language of politics. Thus the three “no’s” of Khartoum were soon followed by the acceptance of U.N. Resolution 242, which clearly contradicted the spirit and intent of the Khartoum Summit.

In essence, “rejection” meant allowing the idea of being Zionism’s victim to trump the humiliating fact of actually having been defeated by it. It was to treat defeat apolitically as it were, as if it were an affront to ego, dignity, and honor, not a failing in oneself. However, when forced by circumstance or someone of al-Azm’s stature to acknowledge that something terrible had happened in 1967, the first instinct of the “rejectionist” was to turn his back on it, ascribe responsibility to external forces outside his control, and to in effect politically freeze in place—that is, practice *al-sumud* (“steadfastness,” as the expression goes). By definition this is the opposite of politics. To a “rejectionist,” however, to do anything other than practice *sumud* was to recognize that something called Israel existed: that this “thing” was a real state, no longer just the “Zionist entity”; that if such a state existed, it had defeated you; if it had defeated you, then it was legitimate; and if it was legitimate, then the idea of a single Arab nation and Arab rights in Palestine would forever have been betrayed.

In this dead-end chain of reasoning lies the conundrum born in 1967 that Arab political culture (not “reactionary” Arab regimes, but the broad mass of the culture) has to this day not been able to escape. We remained in denial for decades, and all the while Israel was out there to remind us of what we were doing, standing strong and getting stronger, while we turned our backs like rejected suitors pretending that she was not in the room.

Half a century is a long time, long enough to change what is an understandable initial reaction to the psychological shock of a momentous event into something much worse. We all carry the mental

baggage of our former lives, no matter how much we may try to deny it. Carrying this for so long created what Samir Kassir, a Lebanese writer/activist assassinated by the Assad regime in 2005, called a “malaise,” one that has since 1967 turned into a constituent part of “Arabness.” This cultural malaise, Kassir wrote, has become exceptionally acute and “permeates every corner of the Arab world.”<sup>6</sup>

### 5. Identity

The decade after *Self-Criticism* made its appearance has been described by Paul Salem, a Professor of Arab Politics at the American University of Beirut, as being about “the supersession” of modernism in the Arab Muslim world, as “the main debate moved from the central-developmental issues of modernity . . . to second-level issues of identity, cultural authenticity and faith.”<sup>7</sup> Salem is here describing a general intellectual trend, by no means restricted to the Arab world, away from the kind of issues that were so important to al-Azm, as well as to new ones—ones which may help to explain why his book was forgotten so soon after it was published in 1968.

Following the retreat of imperialism, Salem argues, ideas surrounding our common humanity (human rights, or democracy as a universal and not culturally specific politics), along with the notion of modernization as “catching up” with the West, or of “replicating” its developmental experience, even of overcoming our own self-perceived “backwardness,” all gave way to “post-modernist viewpoints and discourses.” That which was shared or sharable by our whole species, irrespective of nationality, race, or religion, became relative and culturally determined. Liberal Arab political parties were now disappearing in the region, at the same time as it was harder than ever to make a case against torture or censorship on the grounds of the idea of the sovereignty of the individual person—the inviolability of his or her body, for instance. These trends occurred worldwide.

I recall, for instance, how Ayatollah Khomeini’s *fatwa* calling for the death of Salman Rushdie, the author of *Satanic Verses*, became difficult to oppose in absolute terms in London by friends of mine on the political left. The most that some were willing to say in his defense was the rather anemic thought that “while you [i.e., Khomeini] may do

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<sup>6</sup> See Samir Kassir, *Being Arab* (New York: Verso, 2013).

<sup>7</sup> Paul Salem, “The Rise and Fall of Secularism in the Arab World,” *Middle East Policy* 4, no. 3 (March 1996), p. 155.

things this way in your culture—which is none of our business—you are not allowed to execute your *fatwa* in ours.” We were all now drowning in the age of identity politics, or “abandonment of the universals,” as it’s been called.

In this post-Vietnam War era, the self-confidence of the U.S. was also taking big hits in the Middle East. Consider the humiliation for the United States of Khomeini’s 1979 Islamic Revolution, followed by the U.S. embassy seizure in Tehran, followed in turn by the fiasco of a hostage rescue attempt under President Jimmy Carter, followed by the hasty and unseemly exit of American troops from Lebanon under President Ronald Reagan following Hizbollah’s successful bombing of the U.S. embassy. Naturally, all of these American setbacks were noticed by Saddam Hussein and were part of his deliberations when he invaded, occupied, and annexed Kuwait in 1990, in his (as it turned out mistaken) belief that the U.S. would not act against him.

As early as the late 1970s, this post-imperial world-cultural shift left Arab cultural life without any “living intellectual lifelines.”<sup>8</sup> The new financial muscle of rentier oil states like Saudi Arabia after the October 1973 War, the Iranian Revolution in 1979, and the Saudi-American alliance in the 1980s supporting Islamic “jihad” against the U.S.S.R., did not facilitate the creation of such intellectual lifelines. Instead, the shift encouraged the “culturally specific” and politically regressive labels, now of “Islamic” rather than “Arab” provenance, giving them the room to flourish and grow.

There was nothing “traditional” about the political Islam that now began to replace the failed secularist and nationalist ideologies of my generation. To be sure, new “Islamic” ideological parties were emerging, but they operated much as their nationalist and leftist predecessors had done, and when they latched onto Islam in either its Sunni or Shi’a varieties, there was little that was “Islamic” about the way in which they organized themselves. The Middle East was not lapsing into its traditional religious and tribal patterns, as is often argued; it was forging its own new and grotesquely deformed kind of modernity. The Iraqi Islamic Da’wa party, for instance, or the Islamic Council for Islamic Revolution in Iraq, founded in 1960 and 1982, respectively (both of which are in government in Iraq today), have leading members who were Marxists at first, then Ba’athists, and finally Islamists after the 1979 Iranian Islamic Revolution. They have learned more about organization and politics from the Stalinist

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<sup>8</sup> Ibid., p. 156.

practices of the Iraqi Communist Party than they ever learned from Islamic history.

Being “defeated” in such a climate, followed by “rejection” and “denial” of that defeat, and an ever-growing sense of lack of self-worth and irresponsibility created a witches’ brew of poisonous sentiments that were now coalescing around an ever more regressive kind of politics. It is useful to recall similar situations in other parts of the world. Consider the rise of fascism in Germany on the heels of its defeat in World War I. Better yet, imagine a world in which Germany and Japan were to deal with their defeat in World War II in something like the way in which the Arab world dealt with its defeat in 1967. One shudders to think about the outcome.

Symptoms of the Arab malaise described by Kassir appear first of all in the cultural domain; its high priests, the intelligentsia, are the main carriers of the disease. Ordinary Arab men and women just want to get on with their daily lives; politicians, professionals, and businessmen have positions and privileges to protect. Only intellectuals have the tools with which to construct ways of reading the world designed to explain away uncomfortable facts by blaming it all on someone else (Israel, the West, Imperialism). After the 1979 Iranian Islamic Revolution, they used those same tools to discover virtues in an Islam that seemed to bestow upon them the kind of “cultural authenticity” they now so eagerly sought, and which their previous secularism had denied them.

I recall the ongoing reaction of Egypt’s secular intellectual class to *tadhbia*’ (“normalization”) with Israel, and the positions it took after the Camp David Accords. Sadat’s Egypt was opposed by them not in the first place for its autocratic nature, but for its attempt to get over the debacle of 1967, first by a limited war in October 1973 and then by a peace treaty with Israel. In Egypt more than anywhere else, the intelligentsia remained stuck in a pre-1967 mode, more backward on the question of Israel and “normalization” than either the state or the population at large (recall the huge demonstrations of support that Sadat received upon his return from addressing the Israeli parliament). Much the same argument can be made of Jordan, the popularity of Hizbollah before the Arab Spring, and the failure of the Palestinian-Israeli Camp David Peace Accords in 2000.

Sadik al-Azm wrote what is to this day the best intellectual critique of this whole turn of events. If “essentializing” the Orient is the cardinal sin of Western “Orientalism,” as Edward Said argues in

his influential book of the same title,<sup>9</sup> then surely there is also an “Orientalism in Reverse,” as al-Azm had written in 1981, which applies to these very same once-secular Arab intellectuals whose only constant was their “essentialization” of the West and Israel.<sup>10</sup>

## 6. Victimhood

Once the threat of the Palestinian resistance organizations had faded after their crushing 1970 defeat in Jordan, and after “armed struggle” and the “liberation of Palestine” had turned into a military occupation of Lebanon and participation in its bloody civil war, the form that “the supersession of modernism” took in Arab political culture was extolling victimhood—one’s own of course. A “politics of defeat” was morphing into a “politics of victimhood.”

Palestinian victimhood is of course real; it was real in the past and it is still real today. Iraqi and Syrian victimhood under their respective Ba’athi regimes was real, and in the case of the Sunni Arabs of Syria and Iraq, remains more real than ever today. But the concept of *Arab* victimhood (excluding today’s millions of Arab refugees) is not real, at least not in this day and age. Being defeated in war does not qualify, but that is how the regimes of Iraq and Syria successfully legitimized themselves after 1967.

Real or not, however, victimhood is never ennobling. Whether real or imagined, it is always a demeaning and dehumanizing condition. The attribute of being a victim permanently degrades one’s humanity, scarring its casualties for life. Victimhood is therefore something to be pitied and empathized with, but never eulogized or, worse still, striven after like a badge of honor. It is difficult to escape the fact that both Palestinian and Israeli identities have been constructed as mirror images of each other’s victimhood, neither being able to establish itself without active denial of the other. Victim and victimizer are thus caught up in a never-ending cycle of violence. The same vicious cycle describes Iraqi and Syrian politics today. Such symmetries (and there are many others) have sustained a powerful complex of victimhood which undermined reconciliation efforts like Oslo or Camp David, and which are applicable to one degree or another to all the peoples of the Middle East (Palestinians, Israelis,

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<sup>9</sup> Edward Said, *Orientalism* (New York: Vintage, 1979).

<sup>10</sup> See Sadik al-Azm, “Orientalism and Orientalism in Reverse,” *Khamsin* 8 (1981), pp. 5-26, reprinted in *Orientalism: A Reader*, ed. A. L. Macfie (New York: New York University Press, 2000), pp. 217-38.

Kurds, Armenians, Chaldean Christians, Turkomans, and all Syrian and Iraqi Shi'as and Sunnis). It sometimes feels as though the Middle East is peopled entirely and only by victims, politically speaking of course. There can be no political road out of such a morass when at some primal level all of these so-defined collectivities, through their politicians and intellectuals, are stuck in mindless competition with one another over who has suffered the most and whose cause is more just than that of the others.

Bathing oneself in the soothing balm of victimhood is a handy escape from the burdens entailed by acknowledgment of defeat. Victims after all can never be blamed. Nothing is their fault. The work of intellectuals turns into one of extolling the virtues of victims and defending their rights, but this, over time and through endless repetition, cannot but lead to idealizing the condition of victimhood itself. Many of the failures of post-1967 Palestinian politics in particular can be traced back to the intractability of this syndrome in Palestinian political culture.

Consider what happened when Saddam Hussein invaded Kuwait in 1990: Palestinians and many other Arabs saw in his brutal occupation, sacking, and erasure of the "brotherly" Arab state of Kuwait from the map a kind of salvation from victimhood at the hands of "Zionism" and "Imperialism." They opted, in other words, to "link" their future as Arabs to that of the great tyrant. If this was the case in 1990, are we that far away from al-Qaeda and ISIS and all the other abominations that a culture of Arab victimhood has given rise to?

Incidentally, the reduction of politics to the sense of being a victim was becoming a powerful political force in the Middle East as a whole (for example, Kurdish nationalism and Iraqi Shi'a sectarianism post-2003) at the same time as it was becoming one worldwide. We can see variations of it in the phenomenon of identity politics in the West (for example, Black power in the 1970s in the U.S. or rising anti-immigrant sentiment in Europe today). Even in Israel, "Oriental" Jews started to separate themselves from European Jews, looking backward to their "roots" in Morocco, Iraq, or Yemen, to escape their marginalization in modern Israel.

Victimhood in all of these cases can be real or it can be imagined. It can take place in the here and now (Palestinians under Israeli occupation, for instance) or it can be "remembered" from way back in time (Armenians during World War I and Jews during the Nazi Holocaust). Politically speaking, neither form matters nor changes things so long as one's behavior in the here and now is primarily

governed by this simultaneously enabling and toxic sensibility. It is toxic because it rests on the view that responsibility for the future rests on concessions that by right have to be made by the victimizer only. This phenomenon, whatever else it may be, is not politics.

There is a price to be paid for allowing oneself the luxury of sinking into victimhood, whether at the hands of the West, Israel, the world capitalist system, or what nowadays is called globalization. It almost no longer matters who or what you hold responsible. My Iraqi Shi'a friend—who thought that only Jews could have pulled off 9/11—held Saddam Hussein responsible at first for what he deemed to be the victimization of Iraq, and then, after 2003, imperceptibly switched responsibility to the entire community of Iraqi Sunnis. Today, when he is no longer a victim because the U.S. overthrew his victimizer (Saddam Hussein) and empowered his community (the Shi'a), the same person justifies supporting another Ba'athi, Bashar al-Assad, in his war against the Syrian people, calling it an act of Shi'a self-defense. There is no point in reasoning with him. His state of mind, suffused as it is with a sense of his own “eternal” victimhood, is beyond all that. Can the same not be said for many a Sunni today in Iraq and Syria, or a Maronite or Shi'a or Druze in Lebanon, or a Kurd and a Palestinian, wherever they may be in the world?

The “anti-imperialism” and “anti-Zionism” of the so-called Arab street that erupted many times after 1967, be it in the language of Saddam Hussein or Hafez Assad or even that of Osama bin Laden and ISIS, was only possible because of the abdication of responsibility that al-Azm first diagnosed in 1968. It was a relatively new or understandable phenomenon when he wrote his book in the initial flush of defeat and when he was targeting an older generation of Arab radicals, but it is no longer new. Today it is simply the latest and most virulent variation of an idea held by Islamists but nurtured originally by secular, nationalist, and leftist Arab intellectuals like myself in the immediate aftermath of the 1967 Arab-Israeli War.

During my first decade of political activism (the 1970s) that abdication went under a variety of different labels: anti-imperialism, anti-Zionism, Arab socialism, pan-Arabism, and my own particular shibboleth of those years: Arab Socialist Revolution. Whatever else you might care to say about those older labels, at least they took as their point of departure genuine grievances, some of which were more legitimate than others. The most legitimate of those grievances was the injustice caused by the dispossession of millions of Palestinians that accompanied the birth of the state of Israel in 1948 and its later

expansion in 1967. However, in the hands of Arab nationalists, leftist “anti-imperialists,” and social revolutionaries of my generation, the lessons that al-Azm had been trying to teach, were being lost. It took me over ten years even to begin to return to them after I quit revolutionary politics while remaining a man of the left. I turned away from the problems of the whole Arab world to look for the first time only at Iraq, beginning in 1980 to write *Republic of Fear*, a book that took six years to finish because it required so drastic a change of mental orientation.<sup>11</sup>

The point is that our first impulse as young diehards of the radical left did not get channeled into thinking about our own countries or building civil societies based on hard-won expansions of freedoms and liberties wrested from our own tyrannical regimes (such as happened in Latin America in the 1980s). And this was our cardinal sin. Here too al-Azm stands apart; at least his Syrian regime had actually fought Israel in 1967 and lost territory to it, so that *Self-Criticism* targeted his own country’s “backwardness” as well as that of the whole system of post-World War II Arab states. The same cannot be said of myself or of the thousands of young men like me from other parts of the Arab world. We let our socialist “Arab Revolution” of the 1970s, now led by the “vanguard” of the Palestinian Resistance organizations, be hijacked by the “Arab Ba’ath Socialist Party,” which claimed to be leading that revolution even as it set about establishing its own “Republic of Fear” at home. Even the Iraqi Communist Party, the oldest truly national political party in Iraq, conceded the leadership of the revolution it had first called for in the 1930s to the Iraqi Ba’ath, entering a Ba’athi-led government in the mid-1970s only to be decimated because of it. Variations on this story can be told for other Arab countries.

Elsewhere, democratic and liberal politics in the shape of a fight for civil liberties was taking root—in the countries of Latin America in the 1980s and in Africa and other parts of the world in the 1990s. Such was not the case in the Arab world where we were still nurturing grievances and could only look toward epic battles yet to be fought with outsiders. As we looked away from our own autocracies, we were replicating in our politics what al-Azm criticized about the politicians and intellectuals he criticized in the run-up to 1967.

Our failure created a vacuum which was increasingly filled by wilder versions of a conspiratorial view of history, a view no longer

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<sup>11</sup> Kanan Makiya, *Republic of Fear: The Politics of Modern Iraq*, updated ed. (Berkeley, CA: University of California Press, 1998).



equipped intellectually to do anything but blame others for the ills of one's own world. The dangerous unstated corollary of this "politics of defeat," was the notion that Arabs had little agency to change the terribly unjust way that the world works. Thus, the culture began to see itself as consigned to a Sisyphean "struggle" against absolute or Satanic injustice, the perfect conditions for the birth of millenarian and nihilist organizations like al-Qaeda and ISIS. Lost was a sense of ourselves as authentic political actors with the capacity for imagining concrete and gradual gains in the political arena. A region that potentially had it all—intellectual talent, financial resources, territorial spread, and geographical variety—was now bereft of a culture that could offer its citizens agency and therefore true citizenship.

Between Israel's stunning victory in the Six Day War of 1967 and the Arab Spring of 2011, this complex morphed into the prime driver of politics, pushing into second place the struggle one must have with oneself, with one's own inadequacies, and one's own home-grown tyrants. Upon this foundation murderous *mukhabarati* states<sup>12</sup> like Saddam Hussein's Iraq and the Assad's Syria legitimated themselves, and the political realm was conceded to previously marginal transnational millenarian zealots.

In the Arab Mashriq the inherent unreasonableness of a "politics of defeat" has fueled the full-scale conflagrations of today. Our post-1967 world had been defeated over and over again since that original watershed moment. It was torn apart by wars and self-inflicted violence, which in tiny Lebanon alone killed or maimed half a million people and made refugees of one in every three Lebanese between 1975 and 1989. Here was the dress rehearsal for what took place in Iraq in the wake of its 1991 *intifada*, and what has been going on in Syria for at least five years. The eight-year long Iran-Iraq War killed more people than all of the Arab-Israeli wars, Palestinian *intifadas*, and Israeli incursions into Gaza and Lebanon put together. Its effect on the countries that waged it was no less than that of World War I on, say, France or Germany. The situation is always getting worse; it never stabilizes. If what is left of the Arab world today is a basket case of collapsing economies and mass unemployment underpinned by either anarchy or ever more repressive and unstable regimes, my point is that toxic ways of thinking about politics made it so.

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<sup>12</sup> "*Mukhabarat*" is the Arabic word for "intelligence," as in "intelligence agency." A *mukhabarati* state is a state whose intelligence services constitute its most powerful and prominent bureaucracy.

Our failures were driven initially by intellectuals—people like myself and of my generation: writers, professors, journalists, public intellectuals and activists, and upper-echelon civil servants—people who, with a few exceptions, failed to examine and take on their region’s most paranoid fantasies. If anything, we buttressed them by becoming propagandists for political parties and armed struggle organizations, and by refusing in general to break out of destructive nationalist or “culturally specific” religious and nationalist identity paradigms. Instead, my generation consistently acted as “rejectionist” critics, who when they would take on their own regimes did so in order to excoriate them for being insufficiently anti-Zionist or anti-imperialist. Lost in all of this was the difficult work needed to create from within a modern, rights-based, and above all “self-critical” political order.

In the absence of that alternative focus, in the thick of all that endlessly self-pitying rhetoric, is it any wonder that our self-defeated Arab world would produce despairing young middle-class individuals who gravitated toward apocalyptically violent forms of political expression aimed at smiting a now wholly demonized Other? Muhammad Atta and Ziad Jarrah, who flew planes into the World Trade Center towers, paid the price that previous generations shaped by the great *hazima* of 1967, above all mine, were unwilling (or fortunate enough, depending on your point of view, not to have) to pay.

Review Essay: Timur Kuran's *The Long Divergence:  
How Islamic Law Held Back the Middle East*<sup>1</sup>

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**1. Introduction**

This book examines an important question: Why did the Ottomans fall behind Europe? For posing this question, Timur Kuran is to be thanked. There are often deeper historical forces working behind those that come to our notice, and scholars who engage in revealing these forces perform a vital service. Sometimes those who raise such riveting questions also claim to have found answers, if not, *the* answer. Having long argued that Christianity is the backbone of European economic growth, I am partial both to the question raised and to the nature of the answer offered. However, I cannot join the many readers who feel that Kuran has succeeded in clarifying this important issue. This review will attempt to explain why. I will ignore the problems involved in framing such a large historical question and go directly to questions arising from the text as written.

Kuran's message appears early on: "The Middle East fell behind the West because it was late in adopting key institutions of the modern economy. These include laws, regulations, and organizational forms that enabled economic activities now taken for granted. . . . In a nutshell, that is the thesis of this book" (p. 5). This position is elaborated on in Chapters 1-8. In those chapters, Kuran argues that Islam did inhibit economic development and retard the material prosperity of the Middle East because adherence to Islamic law prevented adaptive change. Chapters 9-13 deal with aspects of Ottoman economic life, which are of independent economic interest, but have little to contribute to the principal thesis on the economic

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<sup>1</sup> Timur Kuran, *The Long Divergence: How Islamic Law Held Back the Middle East* (Princeton, NJ: Princeton University Press, 2011). References to this book appear in the text with page numbers in parentheses.

effects of Islamic law. The conclusion returns somewhat hysterically to the harmful effects of Islam on economic development, repeating claims made earlier in an attempt to give them logical form.

The theme of the second half of the book, which deals with the superior economic condition of non-Muslims under the Ottomans, is a distraction. If we are to explain the affluence of minorities in the last century of the Ottoman Empire, it suffices to note the preference of the Europeans, already decisively dominant by the late-eighteenth century, for Jews and Christians as their primary contacts in Ottoman areas. Without some quantitative measure of this preference, all the rest of Kuran's argument is probably window dressing.<sup>2</sup> Thus, in what follows, I will focus on Chapters 1-8.

Ignoring Chapters 9-13, or over 100 pages of text, requires some elaboration. Consider Kuran's treatment of a relevant issue: the role of collective action in European economic success (p. 270). Why were Muslim merchants unable to discern their collective economic interest, and does this failure derive from the fact that they were Muslim? This is an interesting sociological question, at the heart of problems dealing with the interplay between politics and economics. One cannot, in explaining European dominance, minimize the importance of Europeans' capacity to act in unison when their collective interests were involved. For example, J. H. Boeke, perhaps the originator of the concept of "dual economy" for analyzing problems of economic development, notes the contrasting attitudes to individual and collective action between East and West as a profound divide in mindset.<sup>3</sup> Kuran provides us with three models of collective action used by the Europeans—State help (Venice and Genoa), State Charter (English East India Company), and the Hanseatic League mode of inter-city cooperation—and wonders why the Ottomans could not find some way to engage in such collective action (Chapter 13). Instead of providing documents, edicts, sermons, and so on to show us that the Ottomans either did not realize the need for collective action

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<sup>2</sup> Kuran justifies the latter third of the book by pointing out that in 1844 Christians and Jews were at least 45% of the Ottoman Empire (p. 21). However, as all subsequent references are to the major urban centers, particularly in Western Turkey, and not to Bulgaria or Moldavia, this seems a misleading figure.

<sup>3</sup> J. H. Boeke, *Economics and Economic Policy of Dual Societies* (New York: Institute of Pacific Relations, 1953).

or, after realizing it, were incapable of organizing such action, we are treated to some paragraphs of game-theory jargon, followed by this conclusion:

The challenge is to ensure the cooperation of individual merchants. In a period of collective retaliation the host society's reservation prices are especially high, as are any given trader's gains from breaking ranks. Therefore, rulers can weaken the embargo through selective incentives. The merchant guild arose precisely because multilateral enforcement readily broke down in the absence of a coordinated response. (p. 271)

Are the claims in this quotation true? I do not know. I am sure that covering specific facts with abstract language does not help me to understand a deep problem. It is indicative of Kuran's frame of mind that he presents it as a decisive summation.

As Kuran's presentation raises more questions than it answers, he would have done well to state his framework as a way to approach a series of unanswered questions, rather than suggesting that he has answered more than he in fact has.<sup>4</sup> Criticism can be directed at Kuran's historical knowledge, which I am not competent to do. As Kuran himself tells us in the Preface, "Some historians, *including ones whose historical works proved indispensable to the research reported here*, may find the generalizations unsettling. I ask them to recognize that this book's purpose is different from that of most history books" (p. x, emphasis added). That is a separate inquiry for the relevant historians. My criticism will largely be internal, directed at the logic of those facts that Kuran does present. I will first summarize Chapters 1-8 and then criticize the logic of Kuran's argument. This will be followed by questions about those historical events that Kuran mentions but does not include in his explanation of Ottoman failure, as well as the presentation of a few facts that Kuran does not mention at all. While Kuran refers to Islamic law in general, his argument does not treat the Moghuls, the Fatimids, or the Safavids, so it is permissible to use

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<sup>4</sup> A number of scholars, such as S. M. Ghazanfar, have been trying to expound the richness of earlier Muslim economists, while others, such as S. M. Ebrahim, Monzer Khaf, and Abbas Mirakhor, have been exploring the potential of Islamic Finance. Unfortunately, none finds a place in Kuran's references.

“Ottoman” and “Middle Eastern” interchangeably in this context. I will frequently use “Muslim law” instead of “Islamic law,” because Muslim law is unambiguously the law that Muslims felt they were subject to, while Islamic law implies that the law in question is theologically binding—a difficult proposition to prove in many cases.

## 2. Kuran as Judge

Unfortunately, one has to begin with some irritating side issues. As these deal with Kuran’s personal attitudes, most reviewers have avoided discussing them at any length. This may be a mistake. Bias does not destroy or even negate scholarship, *provided* the bias is recognized. Why would one be interested in a subject if one did not have some attraction or revulsion toward it in the first place? Even if one began one’s research out of curiosity, how often does this continue unless we find a moral interest in continuing with the study? One would hope that a book about religious law, claiming to be an academic examination, would be able to make an argument without smirking. If Kuran himself is not prejudiced, he must be employing a ghostwriter who is.

Consider Kuran’s presentation of the Hajj (the primary pilgrimage of Islam) as “the backdrop for a trade fair” (p. 46). Later, he calls the Hajj a “pagan ritual” (p. 62). The Ka’aba in Mecca (the site of the Hajj) is believed by Muslims to be a building consecrated by Abraham to God. It is because the spot was holy that pilgrims traveled to Mecca. The crowds that arrived attracted traders. Eventually, the fairs at Mecca may have attracted as many as the pilgrimage itself. The Hajj was not the “backdrop,” but just the opposite. Indeed, the trade that occurred at Mecca was explicitly referred to in the Quran and provides the first known example of the “Invisible Hand.”<sup>5</sup> Why Kuran would fail even to state the Muslim view before writing so confidently in a contrary vein remains a question.

The slipshod manner in which such topics are discussed is illustrated again by Kuran’s reference to punishment for practicing *riba* (often translated as “interest”): “Islam does not prescribe a punishment on earth for dealing in interest” (p. 148). What then is one to make of the Quranic verse which tells people to give up *riba* or face war?<sup>6</sup> Perhaps Kuran will take the position that war is conflict, not

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<sup>5</sup> Salim Rashid, “Sura Quraysh,” *American Journal of Islamic Social Science* 5, no. 1 (1988), pp. 129-34.

<sup>6</sup> Quran, 2:278.

punishment. However, he does not do so here. This controversial claim about no punishment for *riba* thus does not sit well with a stance he takes early in the book. When answering critics who say that criticizing the Islamic economic system will fan the flames of anti-Islamic prejudice, Kuran maintains: “The prevalence of anti-Islamic prejudice is no reason to limit balanced and dispassionate thinking about Islamic history” (p. xi). This is a good point. The problem here is the implied presumption that it is Kuran who has the balanced and dispassionate mind. If Kuran did not wish to attack, he could simply have avoided all of the above sentences. They are unnecessary to his main theme.

### **3. Kuran’s Argument Summarized**

Kuran is clear about his message: “The Middle East fell behind the West because it was late in adopting key institutions of the modern economy” (p. 5). The institutions that Kuran considers critical are the formation of large capitalist associations, such as joint-stock companies, the recognition of companies as legal entities, and the concomitant introduction of impersonal exchange. Muslim law impeded the formation of such essential features of a modern economy by its inability to consider the corporation as a legal person. These large concentrations were further inhibited by Muslim inheritance laws, which spread the wealth of the deceased. When concentrations did occur, as in the *waqf* (trust), these were inimical to progress since the founders’ wishes bound all future generations. Muslim law was the backbone of each of the above problems, so it is Muslim law that one has to point to when assigning blame. In what follows, I try to follow Kuran’s order as far as possible, but have occasionally altered the sequence for clarity.

Kuran rejects as explanatory those psychological interpretations based on attitudes such as fatalism and conservatism, by noting that conservatism and fatalism exist even today: “By themselves, universal and permanent social traits cannot explain variations across societies” (p. 10). Furthermore, the explanation is inadequate because it ignores the facts that Islamic law was adaptive and dynamic in the eighth and ninth centuries and that Muslim empires were more prosperous than Western ones until the sixteenth century. Such “psychological” explanations are the methodological enemy for Kuran, for if they are admitted, then his emphasis upon law and institutions is undermined. Kuran recognizes that no one factor is determining, but if we take locomotives and stock markets as concrete illustrations of European superiority, then locomotives can be imported

but stock markets cannot. Hence, it is justified for him to focus on organizational changes (pp. 15-16). Forms of government are also organizations, and transplanting good governance is just as difficult, but Kuran feels that there are, nonetheless, three reasons for focusing on private organizations:

- (1) Historians have already focused upon the State.
- (2) The State was flexible, but private organizations were not.
- (3) Private organizations determine the State's capabilities.

He thus argues, "The heart of the agenda is to examine the dynamics of private economic organization in the premodern Middle East" (p. 24).

The intuition that Islam in general and Islamic law in particular, was the source of backwardness has "a basis in fact." Three reasons are given to justify the intuition (p. 25):

- (1) Certain key institutions derive from holy law.
- (2) Religion is very important for individual identity.
- (3) Governments upheld Islamic institutions.

In case one is tempted to think that these private organizations deal with second-order effects which can be ignored, Kuran responds that second-order effects "are often more significant" for economic development than are first-order effects. He considers it a fallacy that a "major phenomenon . . . must have major causes." Since small differences can have a major impact, "we must look for social mechanisms that made certain factors self-amplifying, triggered chain reactions, and fostered rigidities" (p. 32).

Islam initially favored commerce: "Early Muslim jurists gave various preexisting commercial rules an Islamic identity by recasting them as moral principles deriving from the Quran. They also undertook successive refinements, usually to accommodate the needs of merchants" (p. 49). Early Islam was thus ready to adapt to mercantile needs, but this adaptability changed over time and later caused stagnation. On the other hand, key Western institutions possessed dynamic virtues and were "self-undermining and ultimately self-transforming" (p. 36). The jargon would have us say that Muslims found a stable equilibrium which became inappropriate, but Europe devised an unstable one which always outperformed all rivals. There are those who consider such language "clarifying."



The main features of Muslim law that hurt the economy were partnerships, inheritance, credit (*riba*), and trusts (*waqf*). Let us turn to each in turn.

**a. Partnerships**

Kuran notes how three of the four major schools of Muslim law allowed partnerships with non-Muslims, then points out that this did not make Middle Eastern commerce “impersonal” because people chose partners from their networks (p. 50). Muslim partnerships were simple and temporary, and they were dissolved at the death of any partner (p. 59). If the original enterprise was to continue, the partnership would have to be reconstituted (p. 64). Muslim partnerships could be terminated unilaterally and were automatically terminated by death; hence, partnerships were quite risky. Investors used many merchants to diversify their risk. Kuran sounds aghast to find that “[s]cholars describe contracts found in records . . . with reference to legal treatises of a millennium earlier” (p. 67). The data show that commercial occupations did not change over centuries in the Middle East, suggesting stagnation, and that not even one large unit of financial mobilization by natives was to be found (pp. 68 and 71). The West, by contrast, was dynamic because of its private sector, and its large, overseas trading companies were important to this dynamism.

**b. Inheritance and enterprise size**

Not only were Muslim companies smaller, but Muslim inheritance laws contributed to wealth fragmentation because they divided the wealth between all heirs (p. 81). Furthermore, as prospective shares changed with births and deaths, this uncertainty reduced enterprise (p. 81). Any heir could demand a share of every asset, which added to transaction costs (pp. 88-89). Fragmenting of wealth not only made for smaller estates, but it also implied “less experimentation involving partnerships.” The small size of Muslim enterprises meant that they had no need for accounting (p. 92). By contrast, the serial commenda of Europe gave a long-run identity to their enterprises (p. 90). Until the eighteenth century, the European market was not as important as the Asian one for the Ottomans, but Kuran wonders why the Ottomans did not pursue marginal gains in Europe? Kuran refers to K. N. Chaudhuri’s view that merchants lacked political power and to Mehmet Genc that helping merchants was alien to Ottoman thought.<sup>7</sup>

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<sup>7</sup> See K. N. Chaudhuri, *Trade and Civilization in the Indian Ocean*

**c. *Waqf as corporation/trust***

Muslim law could have incorporated the corporation using Roman precedent and its own principles, but did not (pp. 104-09 and 125). Instead, the focus was on the *waqf*, which differs from the corporation in that it was usually founded by an individual, the founder entailed its function, and it could have distinct rules of operation (p. 128). There are four differences between the *waqf* and the corporation: (i) profit orientation, (ii) shares were non-transferable, (iii) no clear separation between property or *waqf*, and (iv) caretaker legal status. Qadis (Muslim judges) derived rents from administering the *waqf*, so they prevented profits from arising (p. 132). Curiously, tax farms did use corporate organizational forms (p. 113). Multiple *waqfs* were not allowed to pool their resources, hence limiting large enterprise even further. It was “undeniable” that the West depended upon larger, more complex organizations; even though European corporations had only 5.2% of total wealth in 1717, it was the institutional experiment that counted. This illustrates the point made earlier about how the impact of the second-order effect exceeds that of the first-order effect (pp. 120-21). Kuran notes that property rights were weak, but does not develop this much further (p. 127).

**d. *Credit***

Kuran doubts whether the ban on *riba* was significant, as the ban was circumvented (p. 148). Admittedly, there were some costs in evading the *riba* ban, since legal stratagems had to be used to do so. More significant than the monetary loss was the absence of open discussion about monetary matters (p. 150). The refusal of Muslim financiers to give interest or invest deposits deprived Muslims of an important organization. The lack of organizational permanence would force dissolution of a bank upon the death of an owner (pp. 155-56).<sup>8</sup> The cash *waqf* was an alternative, but the *waqf* interest rate (which Kuran does not explain) was often fixed and cash *waqfs* could not merge to supply credit on a larger scale.

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(Cambridge, UK: Cambridge University Press, 1985); and Mehmet Genc, *State and Economy in the Ottoman Empire* (Istanbul: Otuken Nesriyat, 2000).

<sup>8</sup> Kuran also notes that contemporary European corporations were fairly small and had only five to seven members on average (p. 157).

When one considers the joint effect of various Islamic laws, it is clear that the overall effect was inimical to economic growth. Large corporate bodies could not form because of the lack of corporate status and anonymous participation. Without banks, the credit needed for enterprise to grow was wanting. Even if a merchant were successful, inheritance laws would decrease the fortune considerably. If a large endowment was thought of, it went to the relatively unproductive *waqf*. It is no surprise that the Middle East fell behind.

#### 4. Implausible Methodology

The question now is: How plausible is Kuran's account, both in terms of his method and his narrative? Suppose I accepted his thesis and somehow acquired the authority to modify Muslim law. What clues could I gather from a close reading of *The Long Divergence*? After making allowances for the nature of the problem, would I be able to extract lessons? Of course, there is the option of a wholesale rejection of Muslim commercial law, but this would require Kuran to claim that demolition is the only constructive act, which is something he avoids. I find the book to be slapdash, marred by incomplete arguments, faulty logic, and a failure of "institutional imagination" or the ability to immerse oneself in a subject sufficiently so as to be able to look at its problems "from the inside," so to speak. I begin with general methodological questions, then with scholarly lacunae, then faulty logic, then failures of interpretation (both of European and Ottoman history), and end by posing the questions which Kuran should have addressed.

There is one problem with all such accounts, which may be illustrated by Kuran's account of Ebussuud, chief judicial officer of the Ottomans, who showed flexibility in modifying laws when approaching problems. Kuran admits this flexibility, yet concludes that Ebussud did not "alter the substance of the law in ways that laid the foundation for revolutionary change" (p. 9). This judgment is a foregone conclusion. We already know the answer—the Ottomans lost—so it is simple to make all changes that did happen, "inessential." In order to avoid a facile narrative, the historian faces the special burden of making us feel the seriousness with which problems were felt and the potential of the solutions that were proposed. This requires more time and detail than Kuran was prepared to give.<sup>9</sup> Kuran tells us that second-order effects "are often more significant" in economic development than are first-order ones—a rather significant and even

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<sup>9</sup> A unique feature of Ottoman life, the *Imaret*, finds no mention.

profound claim. If taken seriously, could we extend the logic to claim that some third-order causes dominate some first-order ones and perhaps a very few fourth-order causes dominate a very few first-order ones, so that we can now produce locomotives by changing the path of a butterfly? Before this nonsense takes hold, the original proposition has to be argued in detail, not asserted confidently with evidence as vague as Kuran's.

Kuran gives his arguments force by referring to trite generalities. For example, he reminds us of the need to separate local from global optimality—an inarguable but ultimately vacuous claim (pp. 39-41). As this is a historical question spanning centuries and not a nonlinear programming problem of inventory control, the reference to global optimality presumes that someone has the global view—and who is this? It may sound less profound, but it is more accurate to say something like, “From our vantage point, the solutions adopted in the early centuries of Islam, which seem well-adapted in their day, became a brake on the progress of trade and technology.”

### **5. Psychologism**

The more specific difficulties with Kuran's account can be illustrated by the way in which he dismisses psychological explanations based on a people's mindset. Kuran notes that conservatism and fatalism exist even today, hence these traits cannot be explanatory: “By themselves, universal and permanent social traits cannot explain variations across societies” (p. 10). This is a permanent blind spot for Kuran. The extent of fatalism matters. Kuran does not look at degrees of variation—one does not have to have numbers to use the words “few,” “some,” “many,” or “most”—and hence cannot provide shading for the images he claims to provide. Consider an important proposition which he uses repeatedly: Even though groups *could* have organized in the Ottoman Empire to modify or alter Muslim law, “[y]et, until recently, no such reforms took place” (pp. 8-9 and 164-66). But *why* not? Is this not a question of central importance? How did *their* minds function, if they passed by readily visible improvements? Kuran cannot present the issue thus because his method is based on an opposition to “mindset” as the primary explanation.

## **6. Lack of Magnitudes and Institutional Detail**

Kuran tells us that many Muslim laws could be circumvented at some cost, and infers that they “discouraged some potentially profitable partnerships” (p. 60). This is logic, not economic history. What we want are some numbers on magnitudes, which are not provided. Kuran continually insinuates magnitudes where he does not have evidence. For example, “Scholars describe contracts found in records . . . with reference to legal treatises of a millennium earlier” (p. 67). Are we talking about some, many, most, or all contracts? It makes a difference. It is easy to accept that the legal stratagems to avoid *riba* had costs—but how much? Was it a nuisance or did it really lessen trade? We are also told that Muslim investors used many merchants to diversify risk. This sounds sensible, but Kuran’s argument also requires the aggregate capital of a merchant not to be large, which need not follow if each merchant had many investors. Again, if individual Muslim merchants had less capital than their European counterparts, was this compensated by having more Muslim merchants, so that the aggregate capital used by the Ottomans was larger?

The same attention to detail is wanting when Kuran tells us that Muslim partnerships were risky because they could be terminated unilaterally and were automatically terminated by death. What happened if a partner died while the caravan was in India? How was the “immediate” termination effected? We are left guessing. Kuran tells us that heirs could demand a share of every asset, but was that in money or in kind? How was this law different in Europe? When obvious questions are neither asked nor answered, one has to wonder.

## **7. Does Kuran Probe the “European Facts” He Notes?**

A number of claims about Europe made in passing by Kuran make one ask for more. For instance, he claims, “Regions that started to modernize defensively, and largely by imitation, have tended to remain organizational laggards” (p. 33). If this is true, why not illustrate it with a few examples drawn from some of the more prominent cases of defensive modernization—the U.S.? Germany? Japan? A page later he seems to think that mercantilism really was “rule by merchants” (p. 34). How did the merchants express their interest? Was it the importers, exporters, traders, agriculturists, bankers, or manufacturers who prevailed—or did they all have identical interests? When Kuran tells us that some European financiers were enormously rich, he also tells us that one famous example, the Fuggers, grew by marriage. This is hardly impersonal exchange and

there was no barrier for the Ottomans to replicate *this* mechanism. In Europe death would lead to an immediate reconstitution of the firm. Why could the Ottomans not copy this mechanism?

Perhaps the most important unexamined claim of Kuran's about the Europeans pertains to the Portuguese. He tells us that they began trade by force. What if this were true in general? What if force accounted for most European contact with non-Europeans and this explained the European superiority in trade? The proposition should at least get a glancing consideration. When Tipu Sultan of Mysore decided to adopt superior European martial methods from the French, this alarmed the English so much that Thomas Munro dropped all of his work in Bengal and raced south to prevent Tipu from succeeding. Munro and the British succeeded, but perhaps this event tells us something significant about the "inability" of natives to adapt.

### **8. Are Kuran's Assumptions about European Growth Well-Founded?**

That large corporations and impersonal exchange, financed by banks, provided the motor for European prosperity is a basic point in Kuran's argument. However, he admits that these corporations owned only 6% of European wealth, so how could they be the basic economic cause of European superiority? If one says that "when backed by European arms, these corporations were decisive," that alters the argument. As for financing, it is doubtful whether banks were really that necessary for the Industrial Revolution.

Here is the account of an eminent economic historian:

*Ploughback of the high profits to be earned in the new sectors enabled successful firms to expand their physical scale of production as rapidly as they wished without recourse to sources of finance outside their immediate circle of family, friends, and close business colleagues. We shall call this resolution of the anomaly the "Postan-Pollard story." Postan (1935) began the tale by arguing that although eighteenth century Britain was the "richest land in Christendom" there was no capital market to direct excess savings to the enterprises with excess investment demands. Pollard (1964) completed the story by demonstrating that even with the coming of the factory system fixed capital was a relatively small share of a firm's total*

assets. Only cotton-spinning mills by the 1830s had fixed capital as a major component of their assets and even for them the share was only a bit more than half.<sup>10</sup>

If the grand problematic is to explain why the Ottoman's failed to industrialize, surely Kuran should have checked his facts about the prevalence of capital markets and the indispensability of fixed capital to industrialization.

### **9. Fallacious Economic Reasoning**

Kuran is convinced that primogeniture helped capital accumulation, but it is hardly obvious that having one child inherit the entire fortune encourages accumulation. What if the fop or the fool inherited? Capital dissipation would ensue. This is such a complex question that Kuran's confident pronouncements make one wonder about his seriousness. We need to guess how many children would there be and how they would relate to each other. There are many famous examples of European family firms; if the family is kept together, surely Ottoman family firms could also exist (p. 136). Nor do we know the distribution of enterprise, intelligence, and energy between the children. Was there not more chance of stimulating competition in the economy if wealth was diffused, which is what Muslim inheritance laws ensured? Or does Kuran think that the virtues of size in Europe trump those obtained from competition among Ottomans?

If all children get a share, then the shares will change with births and death—this is arithmetic. Kuran goes on to argue that uncertainty about one's own share reduces enterprise. How did he get to this conclusion? Births and deaths have opposite effects upon shares, but how do we know which predominates? Furthermore, do we know whether individuals become more entrepreneurial when anticipating wealth or fearing poverty? Fragmenting makes for smaller estates and

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<sup>10</sup> Larry Neal, "The Finance of Business During the Industrial Revolution," in Roderick Floud and Deirdre McCloskey, eds., *The Economic History of Great Britain Since 1700*, 2nd ed., vol. I (Cambridge, MA: Cambridge University Press, 1994), pp. 151-81 (emphases added). Neal further tells me there is also relevant literature on the challenges with setting up stock markets, but I think the point has been made.

“it will also have less experimentation involving partnerships” (pp. 88-89). This is not at all clear, since smaller estates may mean that there are many more merchants needing a partner, hence more potential “experimentation.” In any case, it is the numbers dealing with each potential effect that will enable us to know the overall effect and settle the matter. Without these, Kuran is simply flailing.

#### **10. Inability to Visualize Alternatives**

Kuran makes a very significant remark, the basis of which is unfortunately not documented, that in the Ottoman economy the State was more flexible than was private enterprise (pp. 15-16).<sup>11</sup> In a famous essay, Alexander Gerschenkron argues against the presumption that there were “prerequisites” for industrialization, since most “prerequisites” could be substituted for.<sup>12</sup> Was he right? In East Asian economies, the State has led, or at least directed, the process. Why could there not be an Ottoman precursor?

#### **11. Conclusion**

Since law is basic to Kuran’s argument that the Ottoman economy was weakened by its adherence to Muslim law, two questions are of primary importance. First, could Ottoman laws have been modified using their own internal logic? If so, this would require some legal tinkering, but one can imagine an imaginative *wazir* or *mufti* taking the leap. For example, why could the *waqf* not be modeled along the lines of the great American foundations of the twentieth century, such as those of Ford or Rockefeller, or more recently, of Bill Gates?

Second, and of far greater reach and importance for Muslims, could different laws have been derived from the founding principles of Muslim law? This would require some “openness” in the statement of Islamic legal principles as well as some elasticity in the early precedents. Kuran finds exactly such material, but their significance passes him by: “Early Muslim jurists gave various preexisting commercial rules an Islamic identity by recasting them as moral

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<sup>11</sup> Kuran does not consider the logical possibility that the private institutions did not change because they were already efficient ones.

<sup>12</sup> Alexander Gerschenkron, “Reflection on the Concept of ‘Prerequisites’ of Modern Industrialization,” in his *Economic Backwardness in Historical Perspective* (New York: Frederick A. Praeger, 1962), pp. 31-51.



principles deriving from the Qur'an. They also undertook successive refinements, usually to accommodate the needs of merchants" (p. 49). These are words of enormous import. Early Islamic law was thus really pre-Islamic law with a gloss. How easy would it have been to change Ottoman law if only this was established? Why were the Ottomans not more inquisitive about the basis of their faith? Are we back to "mindset" again? Furthermore, it seems that even the law that was used was pliable and readily adapted to mercantile needs. If these words are to be taken seriously, then Kuran should have been solving a different problem: Why did the stress of European contact not encourage the Ottomans to look deeper within? Answering this question, however, would require a more understanding attitude than Kuran displays.<sup>13</sup>

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<sup>13</sup> I am deeply grateful to Larry Neal for help with European economic history.



