

# REASON PAPERS

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## Editorial

In the previous issue of *Reason Papers*, we featured a symposium on reconsidering the ancient ethical tradition of Stoicism: In what ways is Stoicism still relevant and important in today's world? In this issue, we continue that discussion of a modern Stoicism with Christian Coseru's response to Massimo Pigliucci's lead article in that symposium. Coseru raises several concerns about the compatibility of a modern Stoicism with modern science. In particular, Coseru argues that the kind of human agency presupposed by Stoicism, even one stripped of ancient metaphysics, runs against contemporary scientific findings. This, he argues, undermines the claims Stoicism makes about living according to nature. Pigliucci responds by arguing that the modern Stoicism he is arguing for is, *contra* Coseru, well supported by contemporary science. Beyond this dispute about what the science says and means, Pigliucci argues that Stoicism, like all philosophy, must evolve and adapt.

In March 2016, several U.S. servicemen raped a young Iraqi girl and then murdered her and her family. Pfc. Justin Watt, of the same platoon, learned of this horrific atrocity and reported it. Others in the platoon who knew of the atrocity did not report it. Most people would likely say that Watt's reporting was not only praiseworthy, but obligatory. Moreover, those who knew but didn't report, were in some way falling short of their moral obligations. In his article, "The Duty to Report Atrocities," Stephen Kershnar argues against this conventional viewpoint. His counter-intuitive conclusion is that, most of the time, soldiers are not morally obligated to report such atrocities during wartime. The general thrust of his argument is that such an obligation would have to be grounded in the prevention of some further catastrophe. Since, he argues, this would rarely be the case, there is no duty to report.

Shifting from war to sex, Raymond Raad looks at Jason Stotts's *Eros and Ethos: A New Theory of Sexual Ethics*. The book is rooted firmly in the Aristotelian, eudaimonistic tradition, though more specifically based on Ayn Rand's Objectivist ethics. Raad reviews Stotts's discussion of the nature of sexual attraction, sexual arousal, and sexual identity and the role of sex in an overall flourishing human life. Although Raad discusses several misgivings about Stotts's

ambitious project, he highly recommends the book. He praises Stotts's balance of theoretical insight and practical guidance, along with the positivity and openness that the book encourages.

We round out the issue with two book reviews. Given the widespread renewed interest in income and wealth inequality, Dries Glorieux looks to Harry Frankfurt's *On Equality* for insight. Glorieux discusses Frankfurt's critique of the moral anxiety about economic inequality, but he notes several paradoxes and ambiguities that arise in Frankfurt's account.

In *Why Honor Matters*, Tamler Sommers argues for reviving honor culture as a means to reduce many of the social ills we face today. A. C. Spivey's review examines Sommers's arguments, in particular how a revived honor culture might have an impact on the criminal justice system. Spivey finds several theoretical and practical problems in Sommers's account, but argues that the book is still worth reading, at least in part, because of the case it makes for restorative justice.

Thank you for reading *Reason Papers*.

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## Symposium: Stoicism Reconsidered: Part II

### *More or Less* within My Power: Nature, Virtue, and the Modern Stoic

Christian Coseru  
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“Stoicism,” as Massimo Pigliucci informs us in a synoptic overview of its recent resurgence both inside and outside academia, “is back.”<sup>1</sup> After a hiatus roughly corresponding to the triumph and abatement of Christianity in the West, Stoicism has been gaining ground on the heels of a resurgent virtue ethics research program. Professional philosophers, save for neo-Aristotelian virtue ethicists and those few specialists in Hellenistic philosophy, may have had little to do with its upsurge in mainstream culture, but it would be unwise, we are told, to brush it aside as just another intellectual fad. As Pigliucci exhorts in his lead article, philosophers have a duty to “take notice, understand, and insofar as it is possible, contribute to the increasing interest in practical philosophy, of which modern Stoicism is but one manifestation.”<sup>2</sup>

I welcome both the challenge to help broaden interest in practical philosophy within academia and the invitation to consider—or rather, reconsider—what Stoicism has to offer denizens of the global post-industrial West, though I will limit my comments to the latter. Specifically, I want to examine the relation between virtue and power—captured by what I take to be the most salient and fundamental of Stoic principles, namely, that some things are up to us and some are beyond our control—and see what the contemporary embrace of

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<sup>1</sup> Massimo Pigliucci, “Toward the Fifth Stoa: The Return of Virtue Ethics,” *Reason Papers* 40, no. 1 (Summer 2018), pp. 14–30, quotation at p. 14. Also see Massimo Pigliucci, *How to Be a Stoic: Using Ancient Philosophy to Live a Modern Life* (New York: Basic Books, 2017).

<sup>2</sup> Pigliucci, “Toward the Fifth Stoa,” p. 14.

revisionary metaphysics<sup>3</sup> means for the modern Stoic's conception of living according to nature. As Epictetus himself so eloquently puts it, "Some things are within our power, while others are not. Within our power are opinion, motivation, desire, aversion, and, in a word, whatever is of our own doing; not within our power are our body, our property, reputation, office, and, in a word, whatever is not of our own doing."<sup>4</sup> This principle, which Pigliucci labels "the dichotomy of control," reflects a certain ambivalence about power and the human capacity to effect change whatever the goal may be (e.g., overcoming hubris or just cultivating a serene disposition).

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<sup>3</sup> Since Peter F. Strawson first introduced the phrase, "revisionary metaphysics" has been conceived (in opposition to "descriptive metaphysics"), as a project concerned with producing a better structure of the world than "the actual structure of our thought about the world"; see Peter Strawson, *Individuals: An Essay in Descriptive Metaphysics* (London: Methuen, 1959), p. 9. One way to understand revisionary metaphysics, then, is as a project concerned with "what the structure of reality would be if it were accurately mirrored in the conceptual scheme we *ought* to have"; see Uriah Kriegel, "The Epistemological Challenge of Revisionary Metaphysics," *Philosophers' Imprint* 13, no. 12 (June 2013), pp. 1-30, quotation at p. 1. Since studying the world's *real* structure preoccupies most metaphysicians today, it is revisionary rather than descriptive metaphysics that dominates most debates in ontology and cosmology (even as most metaphysicians eschew this nomenclature). Indeed, Frank Jackson's sustained and influential defense of the relevance of conceptual analysis to serious metaphysics (conceived as the task of providing a "comprehensive account of some subject-matter—the mind, the semantic, or, most ambitiously, everything—in terms of a limited number of more or less basic notions") is just one example of how revisionary (or "serious") metaphysics makes explicit what is implicit in a given (scientific) theory of the world; see Frank Jackson, *From Metaphysics to Ethics* (Cambridge, MA: Cambridge University Press, 1998), p. 4. More overt examples of such an undertaking, in this case centered on the metaphysics of personal identity, are found in Carol Rovane's *The Bounds of Agency: An Essay in Revisionary Metaphysics* (Princeton, NJ: Princeton University Press, 1998) and Galen Strawson's *Selves: An Essay in Revisionary Metaphysics* (Oxford: Oxford University Press, 2009), both of which, as their subtitles announce, are conceived as "an essay in revisionary metaphysics."

<sup>4</sup> Epictetus, *Enchiridion*, 1.1, in *Epictetus: Discourses, Fragments, Handbook*, trans. Robin Hard (New York: Oxford University Press, 2014).

Clearly, insofar as we are capable of exercising any kind of agency, whether in thought or deed, the Stoics must be right that some things are going to be under our control (our opinions, judgments, and so on) while others are going to be outside of our control (how others feel and think about us). The question of control, however, depends not simply on the capacity to recognize what is and what is not up to us, but on a deeper metaphysical question about agency. Pigliucci rightly identifies some of the roadblocks a modern Stoic might face when confronting the problem of agency, but, as I will argue, he downplays their importance. We may well be able, as he says, to “retain a meaningful sense of living according to nature”<sup>5</sup> by interpreting the Stoic concept of nature to mean *follow the facts*, and the concept of human nature to mean our *sociality* and *capacity to reason*. In doing so, though, we assume an unproblematic assimilation of (the Stoic conception of) nature to facts about our biology and psychology, in particular of *biological* nature to the findings of evolutionary biology and behavioral genetics and of *moral* nature to the empirical facts and hypotheses of moral psychology.

It seems plausible to assume that, at the most basic level, choice is deeply embedded in mechanisms that regulate our capacity to discriminate and form judgments, and that some causal explanation is in order if we are to make sense of what it means to live according to nature. However, causal explanation is no substitute for understanding what it is about our capacity to choose that makes us *moral* agents,<sup>6</sup> given that what makes an action moral (and thus praiseworthy) is the agent’s autonomy—in particular the autonomy of practical reason<sup>7</sup>—and hence her responsiveness to reasons.<sup>8</sup> As I have argued elsewhere,

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<sup>5</sup> Pigliucci, “Toward the Fifth Stoa,” p. 23.

<sup>6</sup> Choice, unlike the sort of automatic heuristic-based processes that characterize our perceptual engagement with situations and things, is a demanding, time-consuming, and resource-intensive operation that presupposes some measure of deliberation and the weighing of alternative possibilities before action is finally undertaken; cf. Richard Holton, *Willing, Wanting, Waiting* (Oxford: Clarendon Press, 2009), p. 57.

<sup>7</sup> Elizabeth Anderson, “Practical Reason and Incommensurable Goods,” in *Incommensurability, Incompatibility, and Practical Reason*, ed. Ruth Chang (Cambridge, MA: Harvard University Press, 1997), pp. 90-109, quotation at p. 92.

<sup>8</sup> In discussing the varieties of autonomy (e.g., self-control, power in the



moral agency is a type of achievement that comes with learning the norms of ethical conduct. The norms themselves are not traceable to specifically neurobiological mechanisms and processes, although, once learned, they would have their neural correlates when enacted.<sup>9</sup>

Pigliucci is in broad agreement with Lawrence Becker that the Stoic's moral reasoning, which has been reduced to "practical reasoning all-things-considered,"<sup>10</sup> can survive without the teleological physics and biology that put classical Stoicism at odds with the modern scientific consensus. Does this stripped down, bare-bones Stoicism without metaphysical beliefs suffice for canvassing a conception of moral agency robust enough to serve as a guide for living well? How exactly can the modern Stoic face the dilemmas of modern life without appealing to some special-purpose point of view (e.g., law, efficiency, care, prudence)? That is, beyond the broadly shared idea that, as Pigliucci puts it, "we thrive in social groups and . . . are capable of reason,"<sup>11</sup> how do we know when our employ of reason has improved social living and engendered our flourishing? Without belaboring the point, my concern is that the dilemmas of modern life (e.g., life-style choices in the face of climate change, epistemic trust in a science that is not entirely value-free, striving for justice in an unequal world) demand not less but more scrutiny of the Stoic's moral and metaphysical norms. The main issue, as I see it, is whether the modern Stoic can heed Epictetus's warning that attributing "freedom to things

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world, psychological independence, having moral rights, authenticity), Nomy Arpaly thinks that Stoic *ataraxia* is best understood as a kind of "heroic autonomy," since ideally only the Stoic sage would exhibit the capacity to act such that externals or indifferents (*adiaphora*) (e.g., wealth, fame, education) exercise no influence, though some indifferents are preferred (e.g., health) while others are not (e.g., poverty); see Nomy Arpaly, *Unprincipled Virtue: An Inquiry into Moral Agency* (Oxford: Oxford University Press, 2003), p. 124.

<sup>9</sup> Christian Coseru, "Breaking Good: Moral Agency, Neuroethics, and the Spontaneity of Compassion," in *A Mirror Is for Reflection: Understanding Buddhist Ethics*, ed. Jake Davis (New York: Oxford University Press, 2017), pp. 109-30; see esp. p. 111.

<sup>10</sup> Lawrence Becker, *A New Stoicism* (Princeton, NJ: Princeton University Press, 2013), p. 117.

<sup>11</sup> Pigliucci, "Toward the Fifth Stoa," p. 23.

by nature dependent” and taking “what belongs to others for your own”<sup>12</sup> can be a source of distress without acquiescing to social injustice or falling prey to a false consciousness.

The new sciences of human nature where the modern Stoic seeks, and claims to find, ground for action, also tell us, among other things, that human behavioral traits are heritable, that the effects of nurture are smaller than those of our genes, and that much of the variation in human behavior is accountable in terms of neither genetic inheritance nor family rearing conditions.<sup>13</sup> Neither my genetic programming nor my family upbringing is within my power. The evidence from behavioral genetic research also suggests, though, that much of who we are (and are capable of) is determined by our unique experiences.<sup>14</sup> One’s familial and social environments may constrain the range of opinions that one can form, just as one’s genetic inheritance may determine whether or not piano lessons at an early age are going to disclose a musical prodigy. However, it is one’s unique experiences (a lasting childhood friendship, an accident, or a chance encounter with an influential mentor) that in the end push the boundary of what is possible.

If the modern Stoic’s conception of living according to nature is *follow the facts*, then these findings in particular make it harder to hold onto the dichotomy-of-control model. Just as the cultural and social revolutions of the modern era brought forth new forms of human expression, gene replacement therapy may one day alter the extent to which our physical and intellectual abilities are constrained by our biological inheritance. For the modern Stoic, *follow the facts* may mean that nothing is entirely under our control just as nothing is entirely beyond it. Rather, things are *more* or *less* within my power, depending on the range of possibilities that living in accordance with a constantly evolving conception of nature affords.

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<sup>12</sup> Epictetus, *Enchiridion*, 1.3, in *Epictetus: Discourses, Fragments, Handbook*.

<sup>13</sup> Jonathan Flint, Ralph Greenspan, and Kenneth Kendler, *How Genes Influence Behavior* (Oxford: Oxford University Press, 2010), chap. 11.

<sup>14</sup> David Moore, *The Developing Genome: An Introduction to Behavioral Epigenetics* (New York: Oxford University Press, 2015), p. 155f.

What does this mean for the pursuit of virtue? Classical Stoicism holds that one cannot be in between virtue and vice. Like a stick, which must be either straight or crooked, “so a man must be either just or unjust, but not either more just or more unjust, and likewise with the other virtues.”<sup>15</sup> This view had already come under close scrutiny in antiquity, though. As Alexander of Aphrodisias remarks in *On Fate*, “‘If,’ they [the Stoics] say, ‘those things are in our power of which we are also capable of the opposites,’ and it is to such cases that praise and blame and encouragements and discouragements and punishments and rewards are given, being prudent and having the virtues will not be in the power of those who have them, since they are no longer capable of receiving the vices which are opposite to the virtues.”<sup>16</sup> What does this mean for the Stoic conception of virtue as identical with rationality and as a vehicle for the normative propositions of practical reason?

The implication of a conception of virtue as rooted in nature is that vice becomes in some sense unnatural, a product of unreason rather than a natural inclination. If this is the case, then prudence and virtue are no longer within our power since we could not in principle have done otherwise. This picture of human agency, which pitted classical Stoicism against the Greek tragedians, is now also at odds with a great deal of empirical research that regards traditional views of human rationality as flawed.<sup>17</sup> Against the Socratic dictum that “none of the wise men considers that anybody ever willingly errs,”<sup>18</sup> which provides inspiration for the Stoic conception of moral purpose (*prohairesis*), Aeschylus paints an akratic picture of human nature when he has Prometheus declare: “Of my own will, yes, of my own

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<sup>15</sup> Diogenes Laertius, 7.127, in A. A. Long and D. N. Sedley, *The Hellenistic Philosophers, Vol. I* (Cambridge, UK: Cambridge University Press, 1987), p. 380.

<sup>16</sup> Alexander, *On Fate*, 196.24-197.3, in Long and Sedley, *The Hellenistic Philosophers*, p. 381.

<sup>17</sup> Antonio Damasio, *Descartes' Error: Emotion, Reason, and the Human Brain* (New York: Penguin Books, 1994).

<sup>18</sup> Plato, *Protagoras*, 345d, in *Plato: Gorgias, Meno, Protagoras*, ed. Malcolm Schofield, trans. T. Griffith (Cambridge, UK: Cambridge University Press, 2010).

will I erred—I will not deny it.”<sup>19</sup> If critics of the rationalist traditions in Western thought are correct, then moral failure cannot be due to an intellectual error alone. Contrary to Chrysippus’s view that “the impulse of man is reason prescribing action to him,”<sup>20</sup> the passions (anger, shame, dread, etc.) are *upheavals* of thought rather than *rational* movements.

The modern Stoic may reject this Promethean upending of human reason or insist that desires, so long as they are thoughtful (*orexis dianoētikē*) and do not exceed the bounds of reason, are within our power (e.g., I can give up meat and walk to work, and encourage others to do the same without despairing or getting angry when they don’t). Either way, the question of power remains a central concern.

First, power itself is a relational concept. This means that both those things that are said to be under my control (e.g., my opinions) and those that are not (e.g., the weather) are relative to what I am capable of. For example, my opinions reflect ways of seeing and habits of mind that I can reflect on, but also whose underlying mechanisms I don’t fully understand, let alone control. Similarly, while I may not be able to control the weather, my ability to find shelter, build a camp fire, or adjust the thermostat represent ways in which I *can* wrest some measure of control over my immediate environment. Even though there are limits to my physical and intellectual abilities, I can jump higher and sing better if I am in peak shape. This relational view of power, according to Pigliucci, has led interpreters such as Donald Robertson to propose a trichotomy-of-control model,<sup>21</sup> since a great many things are just partially under our control (e.g., exercise and a healthy diet is one way to have some control over one’s body). The better we understand the natural world, the more we are able to control its impact on us: we build dams to control flooding, advance epidemiology to prevent disease outbreaks, and maximize well-being for working people through social welfare programs. Second, the findings of contemporary cognitive science seem to restrict the scope

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<sup>19</sup> Aeschylus, *Prometheus Bound*, trans. Deborah H. Roberts (Indianapolis, IN: Hackett Publishing, 2012), p. 265.

<sup>20</sup> Plutarch, *On Stoic Self-Contradictions*, 1037f, in Long and Sedley, *The Hellenistic Philosophers*, p. 317.

<sup>21</sup> Donald Robertson, *Stoicism and the Art of Happiness* (New York: McGraw-Hill, 2013).

of human agency, and thus to limit the range of things that are, on Epictetus's view, "up to us."

What should the neo-Stoic view of eudaimonia be, given our growing understanding of the various factors that inform and influence our value judgments? Pigliucci thinks we can easily avoid the first problem by restricting the scope of human agency to, and thus grounding eudaimonia on, those things only "which we completely control," while "the rest should be accepted with equanimity."<sup>22</sup> As for the second problem, he points to works such as Seneca's *De Ira* to make the case that the Stoics were well aware of the vast undercurrent of "instinctive reactions and automatic thoughts over which we have no control."<sup>23</sup> He thinks the Stoics may have gotten their psychology broadly right and cites such evidence-based approaches to psychotherapy as Cognitive Behavioral Therapy<sup>24</sup> to bolster the claim that our best approach to a broad range of affective and cognitive states reflects broadly Stoic principles.

Of course, as framed, the dichotomy-of-control model reflects a moral rather than metaphysical concern: the issue is not whether agency and power are constitutive aspects of *my* nature, but whether I can live in a way that conforms to how nature *actually is*. As Zeno urges, for the Stoic, "the goal was to live in agreement with nature, which is to live according to virtue."<sup>25</sup> Why live in such a way? Because nature leads to virtue.

Leaving virtue aside for a moment, just what it means to live in agreement with nature is a vexing question for the Stoic. Chrysippus thinks that it is a matter of living "according to experience of the things which happen by nature." Diogenes takes it to mean that one should be

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<sup>22</sup> Pigliucci, "Toward the Fifth Stoa," p. 24.

<sup>23</sup> Ibid., p. 26.

<sup>24</sup> Appealing to Cognitive Behavioral Therapy (CBT) to make the case for the viability of Stoic psychological principles assumes that CBT is indeed as effective as its advocates have claimed. For a different view that calls into question the efficacy of CBT-based therapies, or at the very least their superiority over other therapies, see T. Baardseth et al., "Cognitive-Behavioral Therapy versus Other Therapies: Redux," *Clinical Psychology Review* 33 (2013), pp. 395-405.

<sup>25</sup> Zeno, *Lives of Philosophers*, 7.87, in *Hellenistic Philosophy: Introductory Readings*, ed. and trans. Brad Inwood and Lloyd Gerson (Indianapolis, IN, Hackett, 1997), p. 113.

“reasonable in the selection and rejection of natural things,” Archedemus glosses it as “to live completing all the appropriate acts,” and Antipater notes that it is best understood as “invariably and unswervingly to do everything in one’s power for the attainment of the principal natural things.”<sup>26</sup> All of this is just another way of saying that, as Seneca puts it, what is best in us is our reason, “which when right and perfect makes the full sum of human happiness.”<sup>27</sup> Only when such reason is perfected can it truly be said that we have attained that which is within our power: the perfect reason that the Stoic calls virtue.

However, as should be clear by now, our conception of nature in general—and human nature in particular—has evolved to the point that “living according to nature” is too vague and confusing an injunction to provide a useful guide to daily life. The new sciences of human nature may tell us what comes to us naturally given current understanding of the function of chromosomes and neurotransmitters, but they cannot tell us why we find it reasonable to care for things seemingly beyond our control, such as the health of the environment, far-away political conflicts, or the welfare of seniors. Nor can it tell us why we often embrace ways of being and living that sacrifice short-term comfort for long-term gains (e.g., serving in the military, joining the Peace Corps, volunteering for Mars One). Most importantly, it cannot tell us why so much of life’s accomplishments comes out of frustrating natural drives and instincts that have seemingly no specific genetic basis or evolutionary logic. As Louis Menand put it some time ago in a review of Steven Picker’s *The Blank Slate*, “To say that music is the product of a gene for ‘art-making,’ naturally selected to impress potential mates . . . is to say absolutely nothing about what makes any particular piece of music significant to human beings. No doubt Wagner wished to impress potential mates; who does not? It is a long way from there to ‘Parsifal.’”<sup>28</sup>

Leaving aside for now the problematic aspect of moving from a conception of “natural” as normal or regular—“regular” in a way that retains enough of what Pigliucci regards as the Stoic directive to “keep

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<sup>26</sup> Stobaeus, *Anthology*, 2.75.11-76.8, in *Hellenistic Philosophy*, p. 211.

<sup>27</sup> Seneca, *Letters*, 76.9-10, in *The Hellenistic Philosophers*, p. 395.

<sup>28</sup> Louis Menand, “What Comes Naturally: Does Evolution Explain Who We Are?” *The New Yorker* (November 25, 2002), accessed online at: <https://www.newyorker.com/magazine/2002/11/25/what-comes-naturally-2>.

in harmony with the Logos”<sup>29</sup>—to that of “natural” in the sense of right or proper, the Stoic cannot plausibly argue that we naturally evolve to act both in a self-interested manner and that our intentions to act this way are rationally motivated.<sup>30</sup> The starting point for Stoic ethics may have been the concept of “familiarization” (*oikeiôsis*), which captures the sense of self-preservation and sociability that is indispensable to living well. It should be obvious that this capacity to be at home in the world, which for the Stoic is not merely a function of survival and sociability, but a guiding principle of reasoned agency, cannot be easily reconciled, if at all, with the disenchanting picture of the world advanced by modern science.

What, then, does our scientifically informed understanding of human nature mean for this Stoic principle that power must figure in our conception of what is natural? On the one hand, the advent of cognitive enhancers seems to have expanded, however problematically, the scope of human freedom, resulting in improved memory, sustained creativity, and enhanced performance. On the other hand, discoveries in the brain and behavioral sciences seem to limit the scope of human freedom. More to the point, can the Stoic conception of what is within our power be adapted to fit our scientifically informed view of nature in general and of human nature in particular? I think that it can, but not without some costs, which may leave the modern Stoic on too shaky a ground for comfort. Given the extent to which the Stoic way of life flows from a certain conception of what is real, a revision of the latter is bound to affect the former, which, in turn, calls into question whether human nature is indeed such that we are predisposed to grasp “the moral point of view”<sup>31</sup> or accept with equanimity those things that are seemingly beyond our control. Pigliucci is right to claim that the dichotomy-of-control model underscores the Stoic view that “our eudaimonia should depend only on things which we completely control, and that the rest should be accepted with equanimity.”<sup>32</sup> What we can completely control nowadays, however, is no longer merely a

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<sup>29</sup> Pigliucci, “Toward the Fifth Stoa,” p. 23.

<sup>30</sup> A. A. Long, *Epicurus: A Stoic and Socratic Guide to Life* (Oxford: Oxford University Press, 2002), pp. 183-84.

<sup>31</sup> Julia Annas, *The Morality of Happiness* (Oxford: Oxford University Press, 1993), p. 170.

<sup>32</sup> Pigliucci, “Toward the Fifth Stoa,” p. 24.

function of how we reason and what we assent to. It is also a function of what we have and will continue to achieve in terms of altering our embodied condition and enhancing our intellectual capacities.



## What Is and Is Not in Our Power: A Response to Christian Coseru

Massimo Pigliucci  
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### 1. Introduction

The ancient Stoics were known for putting forth a number of “paradoxes,” so much so that Cicero wrote a whole treatise to explore them, aptly entitled *Paradoxa Stoicorum*.<sup>1</sup> Of course, the term “paradox,” in that context, did not have anything to do with logical contradictions, but rather with *para doxan*, that is, uncommon opinions. Certainly, two of the most uncommon opinions put forth by the Stoics are that we should live “according to nature” and that things in general can neatly be divided into those that are “up to us” and those that are “not up to us.” In my previous article for this two-part symposium,<sup>2</sup> I proposed that these are two cardinal pillars of both ancient and modern Stoicism.

The first notion is famously summarized by Diogenes Laertius:

This is why Zeno was the first (in his treatise *On the Nature of Man*) to designate as the end “life in agreement with nature” (or living agreeably to nature), which is the same as a virtuous life, virtue being the goal towards which nature guides us. So too Cleanthes in his treatise *On Pleasure*, as also Posidonius, and Hecato in his work *On Ends*. Again, living virtuously is

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<sup>1</sup> Cicero, *Paradoxa Stoicorum ad M. Brutum*, ed. J. G. Baiter and C. L. Kayser, accessed online at:  
<http://www.perseus.tufts.edu/hopper/text?doc=Perseus:abo:phi.0474.047:1>.

<sup>2</sup> Massimo Pigliucci, “Toward the Fifth Stoa: The Return of Virtue Ethics,” *Reason Papers* 40, no. 1 (Summer 2018), pp.14-30.

equivalent to living in accordance with experience of the actual course of nature, as Chrysippus says in the first book of his *De finibus*; for our individual natures are parts of the nature of the whole universe.<sup>3</sup>

The second notion memorably opens Epictetus's *Enchiridion*:

Remember, then, that if you attribute freedom to things by nature dependent and take what belongs to others for your own, you will be hindered, you will lament, you will be disturbed, you will find fault both with gods and men. But if you take for your own only that which is your own and view what belongs to others just as it really is, then no one will ever compel you, no one will restrict you; you will find fault with no one, you will accuse no one, you will do nothing against your will; no one will hurt you, you will not have an enemy, nor will you suffer any harm.<sup>4</sup>

In his response to my earlier article, Christian Coseru questions the notion that these two principles of ancient Stoicism are defensible today. He argues that therefore other crucial notions of Stoic philosophy—from our conception of agency to the nature of virtue—also ought to be discarded or seriously curtailed.<sup>5</sup> I believe, however, that Coseru's objections miss the mark. In part, this is because of some common misunderstandings of what Stoics actually say, and in part, because modern science—from evolutionary biology to neuroscience—not only, *contra* Coseru's opinion, does not invalidate the broad Stoic view of humans and human agency, but in fact confirms it to an extent more than sufficient to retain intact the core of Stoic philosophy.

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<sup>3</sup> Diogenes Laertius, *Lives of the Eminent Philosophers*, VII.87, accessed online at: [https://en.m.wikisource.org/wiki/Lives\\_of\\_the\\_Eminent\\_Philosophers](https://en.m.wikisource.org/wiki/Lives_of_the_Eminent_Philosophers).

<sup>4</sup> Epictetus, *Enchiridion*, 1.3.

<sup>5</sup> Christian Coseru, "More or Less within My Power: Nature, Virtue, and the Modern Stoic," *Reason Papers* 40, no. 2 (Winter 2018), pp. 8-17.

## 2. Living According to Nature and Modern Human Biology

Let me start with the notion that we should “live according to nature.” The ancient Stoics understood this in the context of a providential universe, not in the Christian sense of the word, but instead as part of their view of the cosmos as a living organism endowed with the capacity for reason, the Logos. As Epictetus puts it, quoting Chrysippus:

If I in fact knew that illness had been decreed for me at this moment by destiny, I would welcome even that; for the foot, too, if it had understanding, would be eager to get spattered with mud.<sup>6</sup>

Modern Stoics, however, are not pantheists, which is why Lawrence Becker, in his *A New Stoicism*, rephrased the principle as “follow the facts.”<sup>7</sup> The Stoic, under this interpretation, has an attitude of empirically informed rationalism and so acts on our most comprehensive understanding of the nature of the universe and of human nature. In practice, however, both the ancient and the modern versions boil down to applying reason to improve social living, because “the facts” of evolutionary biology tell us that two of the fundamental characteristics of human nature are precisely that we are capable of reason (to an extraordinarily larger extent than any other species on the planet) and that we are irreducibly social (meaning that we thrive only when embedded in a social network, though we can, if need be, survive as individuals).

Coseru, however, objects that

by interpreting the Stoic concept of nature to mean *follow the facts*, and the concept of human nature to mean our *sociality* and *capacity to reason* . . . . we assume an unproblematic assimilation of (the Stoic conception of) nature to facts about our biology and psychology, in particular of *biological* nature to the findings of evolutionary biology and behavioral genetics

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<sup>6</sup> Epictetus, *Discourses*, II.6.9-10.

<sup>7</sup> Lawrence Becker, *A New Stoicism* (Princeton, NJ: Princeton University Press, 2017).

and of *moral* nature to the empirical facts and hypotheses of moral psychology.<sup>8</sup>

Indeed, we do. However, we are never told in any detail by Coseru why this is supposed to be problematic. Kevin Laland, for instance, in his superlative *Darwin's Unfinished Symphony*, one of the most comprehensive recent books on human nature and bio-cultural evolution, sketches an image of *Homo sapiens* with which modern Stoics find themselves at home.<sup>9</sup> Laland clearly shows how the human capacity for language and intelligence, coupled with our prosociality, have characterized the evolution and differentiation of our species (and a number of others, now extinct, closely related to us) from other primate lineages. No specific moral injunctions follow from this observation, nor would a virtue ethical approach like Stoicism require them, but the general nature of our biology and morality, as described by evolutionary biology, behavioral genetics, and moral psychology, are, in fact, congruent with the Stoic picture of the world. Stoics are “following the facts” in this sense, just like Becker argued on the basis of a larger survey of the pertinent modern scientific literature.

Coseru continues:

moral agency is a type of achievement that comes with learning the norms of ethical conduct. The norms themselves are not traceable to specifically neurobiological mechanisms and processes, although, once learned, they would have their neural correlates when enacted.<sup>10</sup>

This is true, but I honestly fail to see why it represents a problem for Stoicism. Yes, we refine our moral agency by learning norms of ethical conduct, but we do start—according to modern scientific literature—with an innate sense of prosociality and even a sense of fairness without which no such learning of norms could possibly take place.<sup>11</sup>

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<sup>8</sup> Coseru, “*More or Less within My Power*,” p. 10.

<sup>9</sup> Kevin Laland, *Darwin's Unfinished Symphony: How Culture Made the Human Mind* (Princeton, NJ: Princeton University Press, 2018).

<sup>10</sup> Coseru, “*More or Less within My Power*,” p. 11.

<sup>11</sup> Franz de Waal, *Primates and Philosophers: How Morality Evolved* (Princeton, NJ: Princeton University Press, 2009); Robert Wright, *The Moral*

The existence of specific neural correlates for our behavior, however, is not relevant to the discussion at hand. Of course, *any* human behavior will have a neural correlate, since we don't do anything without our brain circuitry being involved. However, nothing in Stoic philosophy hinges on the specifics of such neural circuitry.

That said, and to reiterate the high degree of compatibility between Stoicism and modern science, the ancient concept of a "ruling faculty" (*hêgemonikon*, as Marcus Aurelius calls it) finds close parallels in the biology of the frontal lobes. The frontal lobes are areas of the brain that are particularly developed in both humans and other great apes (but, interestingly, not so in lesser apes and monkeys). They are the largest of the four lobes of the mammalian brain, and experimental research has associated them with the following functions: reward, attention, short-term memory tasks, planning, and motivation.<sup>12</sup> They also allow us to project the future consequences of our intended actions, to choose between what seem to us as good or bad actions, to override and suppress socially unacceptable responses, and to assess similarities and differences between things and events.

Coseru asks: "[B]eyond the broadly shared idea that, as Pigliucci puts it, 'we thrive in social groups and . . . are capable of reason' . . . how do we know when our employ of reason has improved social living and engendered our flourishing?"<sup>13</sup> I am more than a bit puzzled by this sort of question. I take it that many advances in the human condition, from the material ones (sanitation, food production, airplanes, computers) to the moral ones (abolition of slavery, expansion of women's rights, gay rights) are the result of people applying their reasoning faculty to the solution of practical or moral problems. I doubt that Coseru is arguing that there is too much reason in the world, or that a society in thrall to irrational emotions would somehow be better. Notice also that "reason," for the Stoics, has an

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*Animal: Why We Are the Way We Are: The New Science of Evolutionary Psychology* (New York: Vintage, 1995).

<sup>12</sup> K. Semendeferi, A. Lu, N. Schenker, and H. Damasio, "Humans and Great Apes Share a Large Frontal Cortex," *Nature Neuroscience* 5, no. 3 (2002), pp. 272–76; D. Y. Kimberg and M. J. Farah, "A Unified Account of Cognitive Impairments Following Frontal Lobe Damage: The Role of Working Memory in Complex, Organized Behavior," *Journal of Experimental Psychology* 122, no. 4 (1993), pp. 411–28.

<sup>13</sup> Coseru, "More or Less within My Power," p. 11.

inherently moral component. They are not talking about simple logic, but rather about what is reasonable to do for biological beings like us to survive and thrive. As Seneca famously states: “Virtue is nothing else than right reason.”<sup>14</sup>

Coseru says:

The new sciences of human nature where the modern Stoic seeks, and claims to find, grounds for action, also tell us, among other things, that human behavioral traits are heritable, that the effects of nurture are smaller than those of our genes, and that much of the variation in human behavior is accountable in terms of neither genetic inheritance nor family rearing conditions. Neither my genetic programming nor my family upbringing is within my power. The evidence from behavioral genetic research also suggests, though, that much of who we are (and are capable of) is determined by our unique experiences.<sup>15</sup>

There is a confusion of different issues here, and Coseru, in part, gets the science wrong. To begin with, it is not at all clear just how genetics and environment interact to yield cognitive human traits. Also, the concept of heritability is misleading, since it is a statistical construct designed to yield estimates of correlations between different sources of variation under highly controlled conditions. It tells us next to nothing about the complex causal web underlying human intelligence.<sup>16</sup> That said, of course both genetics and early environmental causes influence subsequent behavior. However, this does not represent a problem for Stoicism in particular: any account of human moral agency has to deal with it. Moreover, even the ancient Stoics were clear that externals like one’s family and upbringing are not under our control. While they obviously did not have a concept of genetic inheritance, they grasped that people come into the world in all sorts and shapes and with all sorts of tendencies.

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<sup>14</sup> Seneca, *Letters to Lucilius*, LXVI.32.

<sup>15</sup> Coseru, “*More or Less within My Power*,” p. 12.

<sup>16</sup> Massimo Pigliucci, *Phenotypic Plasticity: Beyond Nature and Nurture* (Baltimore, MD: Johns Hopkins University Press, 2001).

As for the importance of our unique experiences, yes, very much so, but that's the whole point of Stoic training: to equip us to deal as best as we can with the variety of experiences that continuously influence and shape us. Indeed, the Stoics were materialists and determinists. Chrysippus famously explained their notion of agency by invoking the image of a rolling cylinder: If we push a cylinder and it starts to roll, intuitively we want to say that it is the external push that caused the movement. In fact, though, it is a combination of external and internal causes: it is in the nature of cylinders, but not, say, of cubes, to roll when pushed. The analogy is with the complexity of the causal web that underpins every human judgment and action: parts of the web are external, part internal, and the internal parts—our own behavioral propensities—can in turn be altered and improved through time. Again, short of denying human agency altogether, Coseru is not raising issues that are specific to Stoicism. If one is a Christian or a Buddhist, one still has to deal with the same facts from behavioral genetics and moral psychology, and yet somehow retain that degree of autonomous judgment that makes us human.

Coseru adds:

The implication of a conception of virtue as rooted in nature is that vice becomes in some sense unnatural, a product of unreason rather than a natural inclination. If this is the case, then prudence and virtue are no longer within our power since we could not in principle have done otherwise. This picture of human agency, which pitted classical Stoicism against the Greek tragedians, is now also at odds with a great deal of empirical research that regards traditional views of human rationality as flawed.<sup>17</sup>

This betrays a misunderstanding of the Stoic position. Vice is not unnatural; it is just unreasonable. Seneca clearly states in *De Ira* that anger is a natural response to certain situations. However, he also warns us that it is destructive, which is why we should train ourselves to counter it. “Living according to nature” is not a simplistic appeal to nature, an elementary logical fallacy that would hardly be congruent with the fact that the Stoics were preeminent logicians. The notion that “we could not in principle have done otherwise” is irrelevant in this

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<sup>17</sup> Coseru, “*More or Less within My Power*,” p. 13.

context, since the Stoics were compatibilists in terms of free will, a position, again, congruent with their materialism and determinism.

It is also not clear why Coseru thinks that the picture of human agency inherent in Stoicism is at odds with modern empirical research. Just to take one example, neuroscientist Joseph LeDoux's analysis of emotions relies on precisely the same concept of emotions as defined by a significant cognitive component that Seneca articulated and Epictetus deployed when counseling his students.<sup>18</sup>

According to LeDoux, there is a crucial distinction between an emotion in the neuroscientific sense of a particular nonconscious process underpinned by specific neural correlates, on the one hand, and the psychological, conscious state of experiencing an emotion, on the other hand. This, I maintain, is pretty much the Stoic distinction between "impressions" (which are unavoidable) and "assent" (which is the result of our conscious judgment), as explained by Margaret Graver.<sup>19</sup>

To be more specific, LeDoux points out that when neuroscientists talk about, say, fear (which is the major focus of his book), they refer to the evolved, presumably adaptive, nonconscious neural system that allows us to detect threats and to react to them. The classical fight-or-flight response is an obvious example, and the neural machinery that makes it possible is located in the amygdala. The amygdala does, of course, create the basis for the conscious feeling of the emotion we call fear. It is important, though, not to confuse the two (as, according to LeDoux, even a number of neuroscientists tend to do). Emotions are better understood as cognitively assembled conscious feelings, which means that they are the result of an active, conscious, construction of the human mind—just like Stoics maintain. It is because of this cognitive assembly of emotions that it makes sense to take seriously Epictetus's advice:

So make a practice at once of saying to every strong impression: "An impression is all you are, not the source of the impression." Then test and assess it with your criteria, but one

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<sup>18</sup> Joseph LeDoux, *Anxious: Using the Brain to Understand and Treat Fear and Anxiety* (New York: Viking, 2015).

<sup>19</sup> Margaret Graver, *Stoicism and Emotion* (Chicago, IL: University of Chicago Press, 2009).



primarily: ask, “Is this something that is, or is not, in my control?”<sup>20</sup>

### 3. The Dichotomy of Control and What Is and Is Not in Our Power

Coseru’s second major issue with Stoicism concerns the dichotomy of control. Like many, he thinks that a dichotomy is too strict (after all, aren’t there things we can influence, though only partially?) and that it is not in sync, again, with modern research in cognitive science (which has uncovered that much of our thinking takes place below the conscious level). He is incorrect on both points.

Coseru says:

[M]y opinions reflect ways of seeing and habits of mind that I can reflect on, but also whose underlying mechanisms I don’t fully understand, let alone control. Similarly, while I may not be able to control the weather, my ability to find shelter, build a campfire, or adjust the thermostat represent ways in which I *can* wrest some measure of control over my immediate environment.<sup>21</sup>

There are two entirely separate points here, misleadingly connected by the “similarly” in between. First, Coseru acknowledges that we have a capacity to reflect on our values, judgments, and habits. He immediately adds, though, that we are unaware of the underlying (presumably, neurological) mechanisms. This reference to neurological mechanisms is a bit of a distraction. I may not be aware, for instance, of the physiological mechanisms underlying my breathing, and yet I can control it. Even better, I don’t need to know anything about how muscles and connected neurons work in order to be able to raise my arm.

The question is thus whether we can alter our judgments and opinions by way of sustained critical reflection or not, independently of which neuro-biological mechanisms make such alteration possible. The answer to that question is clearly, “Yes.” Not all the time, and not necessarily in a single sitting, but the existence (and empirical success) of cognitive behavioral therapy—which is based on Stoic principles—

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<sup>20</sup> Epictetus, *Enchiridion*, 1.5.

<sup>21</sup> Coseru, “*More or Less within My Power*,” p. 14.

clearly shows that of course we can alter our thoughts and feelings about things.<sup>22</sup>

The basic notion is that feelings (or, more properly, emotions) have a cognitive component, as discussed in the previous section. We can address and alter that component by way of critical reflection on whatever issue happens to be at hand (a reflection that may be aided by others, including a therapist). This then leads to behavioral changes that are initially deliberate and that gradually become second nature. The behavioral changes, constantly reinforced by reflection at the cognitive level, eventually lead to the alteration of the emotion itself. In this way, people can and do learn to overcome phobias, depression, and addictions (again, not one hundred percent of the time; this is science, not magic). The Stoic approach applies the same techniques not just to pathologies or extreme behaviors, but to everything of importance that affects the moral dimension of our lives.

While it is fashionable, in this context, to bring up Daniel Kahneman and Amos Tversky's concept of "thinking fast and slow," these researchers have not shown that we are incapable of altering our thoughts in a deliberate fashion or that all of our thinking is subconscious, but rather that the human brain constantly functions in one of two modes: one fast and subconscious, the other slow and deliberate.<sup>23</sup> This is probably adaptive: we wouldn't want to have to think carefully about everything that we do. There isn't enough time nor brain resources to do so and still live our lives (or, in some cases, simply survive). The distinguishing characteristic of the human species is precisely that we can, if need be, and if time and resources allow it, slow down and consider more carefully what we are doing, why, and how. If we deny this, it isn't just Stoicism that runs into a problem, but our understanding of any complex human activity, including writing philosophical papers.

It is the second part in the above quotation that is most revealing, though, as Coseru falls into a classic misunderstanding of the dichotomy of control. Do we really want to defend the notion that the ancient Stoics, let alone modern ones, don't know that seeking shelter from bad weather is an effective way to avoid or minimize its

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<sup>22</sup> Judith S. Beck, *Cognitive Behavior Therapy: Basics and Beyond*, 2<sup>nd</sup> ed., (New York: The Guilford Press, 2011).

<sup>23</sup> Daniel Kahneman, *Thinking, Fast and Slow* (New York: Farrar, Straus and Giroux, 2011).

consequences? Surely, Epictetus was aware of such basic precautions of ordinary human life. Why, then, did he so blatantly ignore them?

The dichotomy of control is universally read as making a distinction between things we *completely* control and those we don't *completely* control. Clearly, the weather falls squarely under the latter, even if we are equipped with umbrellas, thermostats, and so forth. (Incidentally, the availability of such devices is also not under our complete control, as anyone who found himself in the middle of a sudden thunderstorm with no umbrella vendor in sight can readily testify.)

It is important to understand the reason why the Stoics make such a sharp distinction. It is perhaps best explained, again, by Epictetus:

If you have the right idea about what really belongs to you and what does not, you will never be subject to force or hindrance, you will never blame or criticize anyone, and everything you do will be done willingly.<sup>24</sup>

That is, if we focus on what we completely control, then our eudaimonia is, in an important sense, entirely up to us. Nobody can force us to change our judgments, not even by pointing a gun to our head. If we find ourselves in such a predicament, we may prudently *pretend* that we changed our mind, but we haven't. We have simply decided that to insist on putting forth our opinion when our life is threatened by violence may not be the best course of action.

To attempt to undermine Stoicism by suggesting that we should think in terms of a trichotomy (what we control, what we influence, and what we don't control) misses the point by a wide mark. Still, one could marshal the evidence that our judgments are affected by cognitive biases of which we are not aware or influenced by factors such as our ideological commitments, other people's opinions, and even corporate advertisement.

This is all true, of course, but "influenced" doesn't mean determined. Ultimately, the buck stops with us. I may be led by others' opinions to think that racism is a good thing, but if I "assent," as the Stoics say, to such a notion, *I* am the racist. The Stoics were aware, and refreshingly forgiving, of the fact that people arrive at incorrect conclusions about how to act in the world. Importantly, though, people

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<sup>24</sup> Epictetus, *Enchiridion*, 1.3.

can always be corrected, because we always have the potential to change our mind and do the right thing:

Consider that you also do many things wrong, and that you are a man like others; and even if you do abstain from certain faults, still you have the disposition to commit them, though either through cowardice, or concern about reputation, or some such mean motive, you abstain from such faults.

If you are able, correct by teaching those who do wrong; but if you cannot, remember that indulgence is given to you for this purpose.<sup>25</sup>

Even cognitive biases, as strong and subtle as they may be, are certainly not an insuperable obstacle. Christian Miller provides evidence, for instance, that the negative consequences of the bystander effect can be overcome by knowledge of the effect combined with self-reflection.<sup>26</sup> The “bystander effect” refers to situations where someone is in distress but we tend not to act if there are other inactive people around us, likely because we don’t want to misread the situation and embarrass ourselves. One study discussed by Miller shows that people help in only 27% of the cases when the bystander effect is at play. However, if they are educated beforehand about the effect and if they pay attention to the situations they are in, the helpful response jumps to 67%.<sup>27</sup> Teach those who do wrong, indeed.

It may well be that, as Coseru says, “the findings of contemporary cognitive science seem . . . to limit the range of things that are . . . ‘up to us,’”<sup>28</sup> but my reading of the relevant scientific literature is that they don’t restrict it in ways that undermine Stoicism. Unless, again, one simply gives up on the notion of human agency altogether, which does not seem to be what Coseru is suggesting. Of course, a full discussion of human agency, moral responsibility, and so

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<sup>25</sup> Marcus Aurelius, *Meditations*, XI.18 and IX.11.

<sup>26</sup> Christian Miller, *The Character Gap: How Good Are We?* (New York: Oxford University Press, 2017), chap. 9.

<sup>27</sup> *Ibid.*, p. 211.

<sup>28</sup> Coseru, “*More or Less within My Power*,” pp. 14-15.

forth, is well beyond the scope of the current article, but I think—with Wilfrid Sellars—that talk of values and prescriptive judgments is both unavoidable in a human society and uneliminable by any kind of scientific advance. For example, see his concept of philosophizing as the development of a “stereoscopic vision,” taking on simultaneously the scientific and manifest images of the world.<sup>29</sup>

#### 4. Final Thoughts: Stoicism Evolving

Coseru raises a number of other points in his critique, for instance, that the “new sciences of human nature . . . cannot tell us why we find it reasonable to care for things seemingly beyond our control, such as the health of the environment, far-away political conflicts, or the welfare of seniors.”<sup>30</sup> He seems to think that this is a problem for Stoicism, without considering that Stoic virtue cannot be exercised on its own, outside of specific contexts. Stoics care about the sort of things Coseru lists because we think that we should be concerned with the welfare of others, and indeed of the entire human cosmopolis. The environment, conflicts nearby or far away, and the welfare of seniors (and the rights of women, minorities, and so forth) are very much to the point.

We are told:

The starting point for Stoic ethics may have been the concept of “familiarization” (*oikeiôsis*), which captures the sense of self-preservation and sociability that is indispensable to living well. It should be obvious that this capacity to be at home in the world, which for the Stoic is not merely a function of survival and sociability, but a guiding principle of reasoned agency, cannot be easily reconciled, if at all, with the disenchanting picture of the world advanced by modern science.<sup>31</sup>

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<sup>29</sup> Wilfrid Sellars, “Philosophy and the Scientific Image of Man,” in *Frontiers of Science and Philosophy*, ed. Robert Colodny (Pittsburgh, PA: University of Pittsburgh Press, 1962), pp. 35-78.

<sup>30</sup> Coseru, “*More or Less* within My Power,” p. 16.

<sup>31</sup> *Ibid.*, p. 17.

But why not, exactly? Here, Coseru not only does not advance any argument, limiting himself to stating his opinion as if it were factual, but plainly contradicts himself. Just a few paragraphs earlier he attempted to convince his readers that it is a limitation of Stoic philosophy that it, allegedly, has no tools to trigger concern for a variety of moral issues. He now identifies that tool, the process of *oikeiōsis*, but dismisses it as somehow incompatible with the “disenchanted” view of the world that emerges from science. Which is it? And why is the scientific image of the world disenchanted anyway? It isn’t the business of science to tell us about values, which squarely belong to the manifest image. We are perfectly free to accept scientific findings (“follow the facts”) and still think that we have a duty to improve the human cosmopolis. We are just going to exercise that duty without a woolly eyed view of things.

Ultimately, however, Coseru has a point, and it is an important one. Stoicism originated in the fourth century B.C.E., and quite a bit has happened both in philosophy and especially in science since then. It is necessary for the philosophy to evolve accordingly, adjusting things, or even rejecting some notions, in order to stay current and useful. That was precisely Becker’s project in *A New Stoicism*; it was also the motivation that led me to write my initial article, which, after all, was entitled “Toward the Fifth Stoa,” not “Let’s Go Back to the First Stoa.”

This kind of project, it turns out, was an integral part of Stoicism from the beginning. Chrysippus, the third head of the Stoa, disagreed on a number of points with Cleanthes, the second head. Posidonius, from the middle Stoa, developed a reputation for eclecticism when compared to his predecessors. Most importantly, the Stoics themselves have explicitly embraced the spirit in which this exchange between myself, Christian Coseru, and Brian Johnson<sup>32</sup> has been conducted:

Will I not walk in the footsteps of my predecessors? I will indeed use the ancient road—but if I find another route that is more direct and has fewer ups and downs, I will stake out that one. Those who advanced these doctrines before us are not our

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<sup>32</sup> Brian Johnson, “Can the Modern Stoic Grieve?” *Reason Papers* 40, no. 1 (Summer 2018), pp. 31-36.

masters but our guides. The truth lies open to all; it has not yet been taken over. Much is left also for those yet to come.<sup>33</sup>

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<sup>33</sup> Seneca, *Letters to Lucilius*, XXXIII.11.

## Article

### The Duty to Report Atrocities

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#### 1. Introduction

Is a member of the military morally required to report fellow members who commit wartime atrocities such as murder, torture, rape, and assault? The Blackhearts Case, involving Pfc. Justin Watt, brings out this issue.<sup>1</sup> While serving in the Iraq War, Watt became aware that fellow members of his platoon on March 12, 2006 raped a fourteen-year-old and then killed her, her parents, and her younger sister. They then burned the fourteen-year-old's body. He heard about the atrocity from Sergeant Tony Yribe, who chose not to turn in the members of platoon who committed the atrocity. Watt turned them in. As a result, four members of his platoon (who had been his good friends) received harsh punishments. Specialist James Barker and Private First Class Jess Spielman are serving ninety-year prison sentences. Specialist Paul Cortez is serving a 100-year prison sentence. All three are eligible for parole. Private First Class Steven Green was given five consecutive life sentences without the possibility of parole. While imprisoned, he committed suicide. Yribe was originally charged with dereliction of duty for making false statements and for his role in covering up the rape and murders. He was granted immunity for his testimony and was given an other-than-honorable discharge from the U.S. Army. The issue this article addresses is a significant one to the extent that U.S. military personnel commit such atrocities, even if they are not always so monstrous, and fellow members of the armed services have to decide whether to turn in their fellow troops.

There is a different issue as to the soldiers' responsibility for the atrocity. This is relevant if the existence or stringency of duty to

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<sup>1</sup> This account comes largely from Jim Frederick, *Blackhearts: One Platoon's Descent into Madness in Iraq's Triangle of Death* (New York: Broadway Paperbacks, 2010). It also comes in part from conversations with Watt.



report atrocities is affected by the moral responsibility of the perpetrators. In the above case, for long periods of time the platoon members were subject to extremely stressful conditions with few breaks. On some psychological theories, situations can make good people do horrible things. For example, this has been applied to one of the main players in Abu Ghraib.<sup>2</sup> Also, one of the soldiers had a mental disorder when he joined the army. Steven Green, who shot all four victims, was diagnosed with a pre-existing antisocial personality disorder for which he was discharged from the army. People with this diagnosis are colloquially referred to as psychopaths or sociopaths. To join the army, he had to be granted a moral waiver for his prior convictions. The army was granting such waivers at a much higher rate because of recruitment shortages.<sup>3</sup>

My view is that a soldier's responsibility for the atrocity is irrelevant to whether others have a duty to report it, although it might be relevant to the punishment the wrongdoer merits. Were there a duty to report the atrocity, the wrongdoer's fellow soldiers would owe it to the victim. Analogous to a civilian victim who is brutalized by an individual who is insane or has diminished capacity, the victim's claim would likely have some connection to the value of having the brutality properly investigated, even if the wrongdoer were eventually found not responsible for what he did. Were there such a duty and were it to depend on the moral responsibility of the wrongdoer for the atrocity, it is unclear whether soldiers in the field are the best judges of whether their brothers-in-arms are morally responsible for their actions. Such a situation would be morally complex because the duty would likely depend on facts that fellow soldiers are in a poor position to judge. While they would have first-hand knowledge of the pressures on the wrongdoer, they would likely have some bias toward him. In addition, such judgments might require expertise that soldiers lack because most

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<sup>2</sup> See Philip Zimbardo, *The Lucifer Effect: Understanding How Good People Turn Evil* (New York: Random House, 2008).

<sup>3</sup> See Frederick, *Blackhearts*. See also, "Mahmudiyah Rape and Killings," *Wikipedia*, accessed online at: [https://en.wikipedia.org/wiki/Mahmudiyah\\_rape\\_and\\_killings](https://en.wikipedia.org/wiki/Mahmudiyah_rape_and_killings); and "The Massacre of Mahmudiya—The Rape and Murder of Abeer Qassim Hamsa," *The War Profiteers—War Crimes, Kidnapping & Torture*, accessed online at: [http://www.expose-the-war-profiteers.org/DOD/iraq\\_II/mahmudiaya.htm#Background](http://www.expose-the-war-profiteers.org/DOD/iraq_II/mahmudiaya.htm#Background).

are not psychology-related specialists. We would then need a theory to explain what to do in the context of such moral uncertainty. I am unsure what to say about cases of moral uncertainty, so I will here sidestep this issue.

In this article, I address whether there is a duty to report fellow members of the military for wartime atrocities. Most people I speak to assert that members of the military should obviously inform an authority in these circumstances. I argue to the contrary. In particular, I try to establish the following two theses.

**Thesis #1: Threshold.** If reporting does not prevent a catastrophe, then a soldier does not have a strong duty to report fellow soldiers who commit atrocities.<sup>4</sup>

The threshold is also met if the reporting brings about an incredibly large benefit. For ease of exposition, I'll focus on the prevention of a catastrophe.

**Thesis #2: Threshold Not Met.** In the case of Justin Watt, there was no strong duty to report fellow soldiers who committed atrocities.

The duty here is a *prima facie* moral duty. A *prima facie* duty is one that can be overridden or undermined. For simplicity, I will use "duty" to mean "*prima facie* moral duty," except when otherwise specified. A *prima facie* duty is weak if it is overridden by duties of ordinary moral stringency. Examples of duties of ordinary moral stringency are the duties to refrain from using force, fraud, or theft as well as the duty to refrain from lying or cruelty. A duty is strong if it is not weak.<sup>5</sup> In

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<sup>4</sup> Strictly speaking, the threshold is a consequentialist threshold that involves the bringing about of a large enough benefit or the avoidance of a large enough cost to outweigh the deontological (that is, principle-based) moral consideration. In the text, I try to avoid unnecessarily technical terminology, such as "consequentialism," "deontology," and so on.

<sup>5</sup> Nothing rests on whether a *prima facie* duty is an epistemic or metaphysical property. For the epistemic account, see W. D. Ross, *The Right and the Good* (Indianapolis, IN: Hackett Publishing Company, 1988). For the metaphysical account, see John Searle, "Prima Facie Obligations," in *Practical Reasoning*, ed. Joseph Raz (New York: Oxford University Press, 1978), pp. 81-90. Depending on the account, ordinary stringency might refer to the normative force that such a duty always has (or by itself leads us to believe that it has

particular, this thesis focuses on a strong duty. Strong duties prohibit someone from performing significantly wrong acts. Examples include cruelty, force, fraud, theft, and lying, when doing so brings about seriously bad consequences.

It is helpful to clarify these notions. A strong duty is a duty that cannot be overridden by permissions or duties of ordinary moral stringency. The purpose of having such a concept is to make it clear that these are very stringent duties that are rarely overridden. On this account, significantly wrong acts, such as unjustified use of force, fraud, or theft, are significantly wrong because of the strong duties opposing them. This account is meant to capture ordinary intuitions that there are strong non-consequentialist duties against acts of unjustified violence. The notion that there are consequentialist reasons that can override stringent non-consequentialist duties also captures our ordinary intuitions. For example, even if it is wrong to torture a child in order to save five lives, it might be permissible to do so to save two million lives. This theory (“threshold deontology”) tracks the way we intuitively think about morality under extreme conditions.

An atrocity is an extremely cruel or terrible act. In this context, I am interested in atrocities committed by soldiers. A catastrophe is an event causing great suffering. The sort of events I am interested in are large-scale events (e.g., disasters, calamities, or cataclysms) that cause death, serious suffering, or harm to many people. More specifically, the sort of event I have in mind is one the prevention of which is weighty enough to warrant pushing a fat man in front of a trolley or killing a healthy person and redistributing his organs.

## **2. Background Intuitions**

It is helpful at this point to see why people might disagree with my thesis and instead believe that there is a strong duty to report an atrocity. One reason to think that there is a strong duty to report wartime atrocities comes from the powerful intuitions suggesting there is such a duty and from the law. Consider first some powerful intuitions in relation to the Blackhearts Case:

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such force) or usually has. The relevant range of cases might refer to actual or possible cases. For a parallel discussion of the strength of claims, see Judith Jarvis Thomson, “Killing, Letting Die, and the Trolley Problem” in *Rights, Restitution, and Risk*, ed. William Parent (Cambridge, MA: Harvard University Press, 1986), pp. 78-93. Because nothing rests on these issues, I sidestep them here.

On March 12, 2006, the soldiers (from the 502<sup>nd</sup> Infantry Regiment) at the checkpoint had been illegally drinking alcohol and discussing plans to rape Abeer. Five soldiers of the six-man unit responsible for the checkpoint left their posts for the Qasim farmhouse. . . . Of the five, four of the soldiers directly participated in the crimes, while Private First Class Howard acted as lookout, but did not otherwise participate. In broad daylight, they walked to the house (not wearing their uniforms) and separated [14-year-old Iraqi girl Abeer Qassim Hamza al-Janabi] and her family into two different rooms. Green then murdered her parents and younger sister, while two other soldiers raped Abeer. Green then emerged from the room saying, "I just killed them, all are dead." He, who later said the crime was "awesome," then raped Abeer and shot her in the head. After the rape the lower part of Abeer's body, from her stomach down to her feet, was set on fire.<sup>6</sup>

There is an intuitive sense that this crime calls out for justice and that, as a result, any person who is even minimally decent would report the rapists and murderers. They would do so because of what they had done to Abeer and not merely because they might do similar things in the future. One reason this might be true is because of what it means to be virtuous, honorable, or decent. Evidence for the commonality of this intuition can be seen in the fact that in December 2012, a room of officers gave PFC Justin Watt, the person who reported the assailants, a standing ovation when he was introduced to them at a conference at the U.S. Army Command and General Staff, Leavenworth, Kansas. Presumably, they gave him the ovation for being an outstanding person or soldier or for doing the right thing when it was difficult to do so.

A second reason is that international law requires commanders to report war crimes and U.S. law requires all members of the U.S. military to do so. The strong duty might come about because the law requires it or, perhaps, an important law requires it. Alternatively, one might think that the consent, fairness, or consequentialist justification for the law is strong either in general or in this context. There seems to be additional intuitive reasons to think that there is a strong duty to report an atrocity. Here is a summary of these purported justifications for a strong duty to report an atrocity:

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<sup>6</sup> See "Mahmudiyah Rape and Killings."

<b>There is a strong duty to report an atrocity when:</b>
A soldier should prevent future atrocities.
He promised to report such atrocities.
Justice requires him to report them.
A virtuous person would report them.
Friendship does not create moral options.

### 3. Law

In civilian law, there is no duty to turn in other members of the military. Misprison of felony is an offense that consists of the failure to report knowledge of a felony to appropriate authorities, though under U.S. federal law it requires active concealment of a known felony rather than merely failing to report it.<sup>7</sup> At least some states have criminalized the misprisonment of felony.<sup>8</sup> Where states have passed these laws, they are difficult to reconcile with the widespread refusal of the criminal law to impose liability on Bad Samaritans—that is, those who fail to provide reasonable assistance to those in need.<sup>9</sup>

A duty to rescue is a tort in which a party can be held liable for failing to rescue another party in peril. In Anglo-American countries, there is no general duty to come to the rescue of another.<sup>10</sup> There is an exception when the person in peril is caused to be there by someone who caused the hazardous situation, even when the creator of the hazard might not have been negligent.<sup>11</sup> The same is true for those who

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<sup>7</sup> See *United States v. Johnson*, 546 F.2d 1225 (5<sup>th</sup> Cir. 1977), esp. p. 1227.

<sup>8</sup> See, e.g., Ohio ORC 2921.22 (failure to report a crime or knowledge of a death or burn injury).

<sup>9</sup> See Douglas Husak, *Overcriminalization: The Limits of the Criminal Law* (New York: Oxford University Press, 2008); and Sandra Guerra Thompson, “The White-Collar Police Force: ‘Duty to Report’ Statutes in Criminal Law Theory,” *William & Mary Bill of Rights Journal* 11 (2002), pp. 3-65.

<sup>10</sup> See Thane Rosenbaum, *The Myth of Moral Justice* (New York: HarperCollins, 2004). For example, consider *Yania v. Bigan*, 155 A. 2d 343 (Penn. 1959).

<sup>11</sup> See Michael Bayles, *Ethical Issues in the Law of Tort* (New York: Springer-Verlag, 1983).

have a special relationship to the endangered person, for example, parents, spouses, and emergency workers.<sup>12</sup>

In some jurisdictions, unless a caretaker relationship (e.g., parent-child or doctor-patient) exists prior to the illness or injury or the “Good Samaritan” is responsible for the existence of the illness or injury, no person is required to give aid of any sort to the victim. Good Samaritan statutes in Minnesota and Vermont do require stranger-laypersons at the scene of an emergency to provide reasonable assistance to a person in need. Failure to do these things is lightly punished. In Minnesota, the violation of the statute is a petty misdemeanor. In Vermont, it may result in a fine of up to \$100.

Conceptually, reporting a wartime atrocity is neither a rescue nor a paradigmatic case of being a Good Samaritan. It is not an instance of rescue because reporting an atrocity is not an instance of saving someone from a dangerous or upsetting situation (e.g., the victim might be dead). It is not an instance of being a Good Samaritan because a person might not be helping others, particularly strangers, when they are in trouble.

In contrast to civilian law, military law requires reporting war crimes. This requirement is not explicitly in the Uniform Code of Military Justice (UCMJ).<sup>13</sup> The UCMJ is the code that covers members of the U.S. military. Under the Law of War, commanders are legally responsible for reporting war crimes.<sup>14</sup> A similar rule applies to other members of the military under Department of Defense Directive.<sup>15</sup> This

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<sup>12</sup> See *Aba Sheikh v. Choe* 128 P.3d 574 (Wash. 2006), citing *Restatement (Second) of Torts*, secs. 315 and 319; and Rosenbaum, *The Myth of Moral Justice*.

<sup>13</sup> Failure to report fellow soldiers is not Misprison of Serious Offense (Article 134), Obstructing Justice (Article 134), or Accessory After the Fact (Article 78). As with civil law, prosecution focuses on concealing an offense. See M. Tully, “Ask the Lawyer: Concealing a Troop’s Wrongdoing Can Bring Trouble,” *Army Times*, March 6, 2011, accessed online at: [http://www.armytimes.com/community/ask\\_lawyer/offduty-ask-the-lawyer-concealing-wrongdoing](http://www.armytimes.com/community/ask_lawyer/offduty-ask-the-lawyer-concealing-wrongdoing). In some cases, wrongdoing must be reported. For example, sailors must report non-privileged information about drug offenses by fellow sailors. See Tully, “Ask the Lawyer,” citing Article 92 and OPNAV Instruction 5350.4C.

<sup>14</sup> See Law of War, sec. 501: Responsibility for Acts of Subordinates.

<sup>15</sup> See Department of Defense, Department of Defense Directive, February 22,

is part of the more general requirement that members of the military comply with the law of war during all armed conflicts.<sup>16</sup> Offenders can be charged with Dereliction of Duty.<sup>17</sup>

#### 4. Arguments

##### *a. Argument for Thesis #1*

My argument for Thesis #1 takes the form of a modus tollens:

(P1) If soldiers have a strong duty to report fellow soldiers who commit atrocities, then the duty is based on its bringing about the best results or on a moral principle.

(P2) If the strong duty to report fellow soldiers who commit atrocities is based on its bringing about the best results, then reporting prevents a catastrophe.

(P3) If the strong duty to report fellow soldiers who commit atrocities is based on a moral principle, then it is a strong duty and the duty correlates with either a human right or another right.

(P4) There is no strong duty based on a moral principle to report fellow soldiers who commit atrocities that correlates with a human right or another right.

(C1) Hence, if soldiers have a strong duty to report fellow soldiers who commit atrocities, then reporting prevents a catastrophe. [(P1) - (P4)]

Premise (P1) is trivially true. The background idea is that whether an act is right or wrong depends on one of two features: whether it brings about the best results or whether it satisfies a moral principle. Moral

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2011, esp. Number 2311.01E, sec. 4.5. As with civil law, prosecution tends to focus on concealing an offense. See Tully, "Ask the Lawyer."

<sup>16</sup> See Department of Defense, Department of Defense Directive, February 22, 2011, esp. Number 2311.01E, sec. 4.1.

<sup>17</sup> See UCMJ Article 92.

principles focus on things such as justice, rights, fairness, exploitation, equality, and so on. These considerations differ from the issue of whether an act brings about the best results. An act that is just, respects people's rights, is fair, etc. might also bring about the best results, but different features explain whether it does both of these things. For some moral theories, the "best results" simply are that, for example, justice is served, rights are respected, fairness is maintained, etc. This is not how I am using this notion. By "best results," I mean that an act's consequences are optimal, that is, they are better than any other set of consequences available to the agent.

Premise (P2) rests on the following assumptions:

**Assumption #1: Threshold Morality.** What makes an action right or wrong is ordinarily a matter of whether it satisfies the relevant moral principle, except when it can prevent a catastrophe.

Threshold morality asserts that except when a catastrophe can be prevented, the right is a function of the relevant moral principle. The prevention of a catastrophe on this account overrides moral-principle-based constraints and permissions. The idea is that under normal conditions, justice-related or moral-right-related reasons have priority over other moral considerations, act as side-constraints on them, trump them, or constitute reasons that preempt reasons related to the other considerations.<sup>18</sup> This is independent of whether there can be a moral right to do wrong actions.<sup>19</sup>

**Assumption #2: Threshold Morality to Catastrophe Threshold.** If threshold morality is true, then if there is a

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<sup>18</sup> For lexical priority, see John Rawls, *A Theory of Justice* (Cambridge, MA: Belknap Press: 1971). For side-constraints, see Robert Nozick, *Anarchy, State, and Utopia* (New York: Basis Books, 1974). For trumps, see Ronald Dworkin, "Is There a Right to Pornography?" *Oxford Journal of Legal Studies* 1 (1981), pp. 177-212. For reasons with peremptory force, see Joseph Raz, *The Morality of Freedom* (New York: Oxford University Press, 1986).

<sup>19</sup> For a notion that there can in general be a right to do wrong and not just in the context of overriding moral principles, see Jeremy Waldron, "A Right to Do Wrong," *Ethics* 92 (1981), pp. 21-39.



moral duty not based on a moral principle, then it is based on the prevention of a catastrophe.

Premise (P3) rests on an account of non-consequentialism. The account is that a moral principle just is a non-consequentialist moral consideration and that, under non-consequentialism, an act is wrong just in case the agent infringes a duty he owes someone.

Premise (P4) rests on the following assumptions:

**Assumption #3: Duty to Claim.** If there is a moral-principle-based duty, then there is a correlative claim.

One person has a claim against a second just in case the second owes the first a duty. The idea here is that moral-principle-based duties are owed to others. That is, there are no open-ended duties, that is, duties not owed to anyone. Because imperfect duties are open-ended, this assumption requires that we reject that there are such duties.

This rejection rests on the intuitive oddity of someone having a non-consequentialist duty that is not owed to anyone and that might be filled in different ways. Even if there are imperfect duties, the intuition that there is a duty to report an atrocity is that it is a perfect duty. This can be seen in that it requires a particular act, failing to do it wrongs someone, and so on. Also, assuming that open-ended duties exist (e.g., a duty of charity), reporting an atrocity would merely be one way to satisfy the duty. A member of the military could, instead, feed the starving, give money to the poor, minister to the dying, or build houses for the homeless. Assuming that reporting an atrocity is an act of charity, it is not the only way to act charitably. As a result, there would be no strong duty based on a moral principle to report fellow soldiers who commit atrocities rather than to do something else for the starving, poor, or sick.

**Assumption #4: No Correlative Claim.** No one has a correlative claim.

In the case of murder, such as the Justin Watt case above, the victim no longer exists. One might think that it is impossible to owe a duty at a time to an individual who does not exist at that time. The idea is that these duties are relations that hold at specific times and between specific individuals.

One might reject this assumption because he holds that individuals exist even after they die. This might be true because a person is a body and bodies can persist even after they are no longer alive. A concern with this is that at some point in time the body will so degrade as to no longer exist. On another account, a person is an immaterial soul and a soul can persist after death and thus be owed duties.

One might also reject this notion because non-consequentialist duties do not require that both individuals exist at the time the duty is to be satisfied. Rather, the duty is created and stays in place even if the individual to whom it is owed ceases to exist. This allows for duties to dead people. However, if such duties (and the correlative claims) are justified by interests or autonomy and if dead people no longer have interests or are autonomous, then dead people cannot be owed duties.

The notion that dead people are owed duties aligns with widespread intuitions, such as the following: people have a duty to keep promises made to loved ones on their deathbed, the living should follow the terms of a will (and not just because the law requires it), and it wrongs the dead to desecrate their bodies. Here we should adopt the following notion: If duties can be owed to dead people, then there can be a correlative claim in dead people. Let us stay neutral about whether the living owe duties to the dead (that is, whether the latter have claims against the former).

Another objection is that some duties based on moral principle do not correlate with a claim. That is, there are some moral-principle-based duties that are not owed to anyone. The objector continues that this can be seen when we consider the retributive duty. This is the duty to punish those who deserve it. The objector continues that this duty is based on a moral principle, but it is not owed to anyone. The objector argues that we know the duty is not owed to someone (specifically, not to the person who deserves punishment, his victim, or a third party) because no one is in a position to waive it.

A problem with this objection is that it is odd for there to be moral-principle-based duties owed to no one. Some feature of the individual toward whom others act explains the relevant moral principle and associated duty.<sup>20</sup> What explains why there are

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<sup>20</sup> This is also true for theories that explain moral-principle-based duties in terms of a feature of the agent. Such a theory still needs to explain why he should treat some objects (e.g., people) different from other objects (e.g., rocks).

restrictions on what an agent may do to an individual is that the individual is autonomous, rational, has interests, or has some other relevant feature. This same feature explains not only why a restriction exists, but also why an individual with that feature has a claim that constitutes (or, perhaps, merely correlates with) the restriction. It is mysterious how such a feature can explain why there is such a duty, but not why it is owed to the individual who has the feature.

Another problem with the objection is that the objector's example of a moral-principle-based duty not owed to anyone is unconvincing. Even if there is a retributive duty to punish culpable wrongdoers, and I do not think there is, it is likely owed to the victim.<sup>21</sup> The notion that it is owed to the victim explains why in the state of nature it intuitively seems that a victim may punish the wrongdoer, authorize another to do so, or waive her claim to punishment (perhaps in return for compensation). The state then gains a legal right to punish because it has or may exercise individuals' claims to punishment. The state may do so because individuals transfer to the state their claim to punishment or give permission for the state to act on their behalf. This is similar to other principal-agent contracts. They do this by whatever legitimates the state. This might be actual consent, hypothetical consent, duty of fair play, gratitude, or something else, depending on what turns out to be the correct theory of state legitimacy. This transfer might create a state monopoly in the right to punish and might account for why the victim loses her right to waive punishment.

Above I argue that there are some moral-principle-based duties that are not owed to anyone. An objector might argue that there is a good reason for thinking that one ought to report atrocities, namely, that in the future, perpetrators of such harms are threats to others. This, the objector continues, is especially true in the case of harm from willful, deliberate, and premeditated rape, murder, and battery. The objector might continue that the duty is owed to the rest of us who now have unreported monsters in our midst. Thus, the duty is owed to all people who are endangered.<sup>22</sup>

The duty to prevent future violence through helping to incapacitate, deter, or reform bad guys is an imperfect duty or a

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<sup>21</sup> I defend the notion that retributive duties are owed to the victims of culpable wrongdoing; see Stephen Kershnar, *Desert, Retribution, and Torture* (Lanham, MD: Maryland University Press, 2001).

<sup>22</sup> I owe this objection to an anonymous referee.

consequentialist duty. It is an imperfect duty because potential victims do not have a natural right against a potential helper nor a right derived from it, for example, via promise. In the vast majority of cases, they do not stand in a special relation to the potential helper, for example, they are not the family members of the member of the U.S. military. As argued above, it is unclear whether imperfect duties exist. If they do, and I doubt it, there are other ways they can be satisfied.

Also, as assumed above, consequentialist duties become all-things-considered duties only when necessary to prevent a catastrophe. A catastrophe involves the loss of a significant number of lives or an equivalent amount of suffering. The significant number explains why we don't have a duty to cut up a healthy patient to save five people who need organs, push a fat man in front of a trolley to prevent five other people from being crushed by it, and so on. It also explains why we are free to pursue our projects (e.g., spending money on an expensive private school education for our children) rather than spending it on saving the lives of starving people (e.g., by giving it to Oxfam).

The main argument for the second assumption is that there is no ground for the correlative claim. There is no natural claim owed to the victim. A claim is natural if it is owed in virtue of an individual's being a person, autonomous, a human being, sentient, or something along these lines. In ordinary English, a natural claim, or something like it, owed to a human being is often referred to as a "human right."

If there is a natural non-consequentialist duty to report atrocities, then it is owed to someone. That is, someone has a correlative claim against the soldier, but no one has such a claim. In virtue of being a person, autonomous, etc., an individual does not have a claim against a second individual that the second act to bring about punishment of someone who victimized the first. This is because refraining to do so is a refusal to benefit. People do not have a general right to be benefitted by others. By analogy, if one person knows that a second person is being harmed by a third party's breach of contract, the first's refraining from reporting it does not infringe on the second's claim. This is true even if the injustice harms the second.

I also assume here that there is no duty to rescue. In any case, reporting an atrocity is not a rescue unless it prevents future attacks. Even if there were a duty to rescue, it would be an imperfect duty. Members of the military could thus satisfy it by rescuing others beside the wartime-atrocity victims. Arguably, they do so regularly by disabling or killing aggressors.

There are four reasons to reject a duty to rescue. First, if there were such a duty, then it intuitively seems that it would be owed to people no matter how far away they are. Thus, the duty would be equally strong with regard to donating money to Sudanese children as it would be to save a child drowning in front of me in a shallow puddle. Such a strong duty to people halfway across the world is counterintuitive.

Above I argue that if there were such a duty, then it would be owed to people no matter how far away and that the duty would be equally stringent regardless of distance. This is because, intuitively, distance simpliciter is morally irrelevant in the same way that race, ethnicity, sex, and time simpliciter are morally irrelevant. For example, it is as wrong and bad to shoot someone who, due to his distance away, will be hit a minute later as it is to shoot someone who will be hit a second later. Similarly, it is as wrong and bad to shoot someone a kilometer away as it is to shoot someone a meter away. Time and distance are also irrelevant to the morality of refraining to provide help. Again, the absence of a right to be benefitted by people who are very far away applies equally to nearby people. Similarly, the absence of a right to save people from starvation a mile away applies equally to nearby people who need saving.

Second, were there such a duty, then there would be a principled threshold as to how much one is required to give to Sudanese children and there is no such threshold. Third, if there were such a duty, then a group would have a claim against the potential rescuer. Given that the group has no connection to the rescuer and does not own her body or labor, they do not have such a claim.

If members of the military do not owe such a duty to the victim, then the same reasons support the notion that they do not owe such a duty to the victim's family. The reasoning here is the same. The duty is not owed to the American government. Were soldiers to wrong someone by not reporting, it intuitively seems to be the victim or her family. I assume here that there is no strong moral duty to obey orders. Even if there were such a strong duty, it would account for whom we think is wronged by the failure to report. The intuition is that if anyone is wronged, it is the victim or her family. This intuition does not fit with the notion that the duty is owed to the American people. Similar reasoning applies to the notion that the duty is owed to God.

An objector might claim that this reasoning seems to sidestep another justification for the duty to report. Members of the military are expected to behave a certain way. Specifically, they are expected to

uphold honorable practices and virtues. The issue is not specific orders and commands. Rather, the issue focuses on norms and expectations for those who are representatives of the government and the people. After all, members of the military are acting as agents for these groups. Committing atrocities violates these expectations. A duty to report might be based on a similar duty to uphold certain norms in one's self and unit. Such a duty is distinct from duties owed to the victim or the victim's family.<sup>23</sup>

The problem with this objection is that the wrongness in failing to report an atrocity (e.g., a rape-murder) intuitively seems to wrong the victim, not American citizens. This intuition can be seen in that if the citizens were to waive their claim to have the atrocity reported, it would still intuitively seem almost (if not) as wrong. Another way to see this is that this would make the duty to report an atrocity as distinct from human rights in the sense that the duty would not itself correlate with a human right. Proponents of this duty likely do not have this view of it.

A second problem with this objection is that American citizens might, and probably do, want members of the military to treat brothers-in-arms as if they were real brothers. Insofar as they think that brothers do not have a duty to report each other, they do not think that members of the military have such a duty. Consider, for example, a society in which a man has to fear that his brother will turn him in for a crime. Such a society intuitively seems distasteful to me and others with whom I have talked.

Here is a chart summarizing the analysis thus far:

Candidate Claim-Holder	Claim?	Reason
Victim	No	No personhood-based claim because 1. Punishing wrongdoer is a benefit (not harm). 2. No personhood-based right to benefit.
Victim's Family	No	Same as above.
American Government	No	Were someone wronged, it would be the victim or her family.
American People	No	Same as above.

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<sup>23</sup> I owe this objection to Shawn Klein.

In the context of non-natural claims (i.e., rights that are not human rights), the analysis is similar. If there is a non-natural moral-principle-based duty to report atrocities, then it is owed to someone. That is, someone has a correlative claim against the member of the military. Again, there is an issue of whether an atrocity-murder victim exists after death and, if she does not, whether she can still be owed duties. Let us set aside these issues and canvass possible grounds for the non-natural duty.

The non-natural duty is not promise-based. Members of the military need not, and usually do not, make promises to civilians, including potential victims. This is an empirical claim.

The non-natural duty is not fairness-based. Members of the military are not always part of a cooperative project involving potential civilian victims in war zones. On the duty-of-fair-play theory, a fairness-duty rests on cooperation in a joint project.<sup>24</sup> One might think that the justificatory work of such projects flows from a promise to support it rather than mere participation in it and acceptance of its benefits. That is, this theory is merely a covert promise-based justification. Also, a potential victim can, and often is, unconnected to such a project. For instance, she might be opposed to the military's project and might even have acted or voted to disrupt it.

The non-natural duty is not harm-based. Harm by itself does not ground a claim. Consider, for example, the non-compensable nature of economic harm that happens when one store outperforms another, thereby causing the second to go out of business.

The most plausible versions of non-consequentialism, including ones that focus on harms, presuppose rights. Consider the harm principle. The harm principle states that, other things being equal, it is worse to harm someone than not to harm her. This theory presupposes rights. Here a right is a claim. One person has a claim against a second just in case the second owes the first a duty. This is because rights set the boundaries of the agent's legitimate interest.

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<sup>24</sup> See H. L. A. Hart, "Are There Any Natural Rights?" *Philosophical Review* 64 (1955), pp. 185-91; H. L. A. Hart, "Legal and Moral Obligation," in *Essays in Moral Philosophy*, ed. A. Melden (Seattle, WA: University of Washington Press, 1958); and John Rawls, "Legal Obligation and the Duty of Fair Play," in *Law and Philosophy*, ed. Sidney Hook (New York: New York University Press, 1964), pp. 3-18.

On the harm principle, not all harms are wrongs. A harm wrongs someone, other things being equal, only if it sets back a legitimate interest. Again, a person has a legitimate interest in something only if he has a moral right to it. For example, a property owner who locks up his belongings so that a thief cannot steal them does not harm the thief in a wrong-making way even if the former sets back the latter's interest by preventing him from gaining those goods. This is because the thief does not have a legitimate interest in them. Similarly, at Wimbledon, when the best tennis player in the world beats the second best and thereby sets back the second's interest in winning the tournament, the first does not harm the second in a wrong-making way because the second did not have a legitimate interest (one capable of making its setback wrong) in winning the tournament.

In addition, refraining from reporting the atrocity is a refusal to benefit, not a harming. This is because the omission, at least in this context, does not set back the atrocity-victim's interest. It merely avoids preventing others from setting it back. Whether this is due to a difference between causing and not causing (in my view, the relevant distinction), doing and allowing, intending and merely foreseeing, or including another in one's project or not is not an issue we have to decide here. The refraining passes muster on any of these tests of a harming versus refusing to benefit.

The non-natural duty is not based on desert. The victim does not have a claim against the member of the military based on desert. First, it is not clear that desert by itself can ground a claim. People can, and often do, deserve something (e.g., to be happy) without having a corresponding claim against another and vice versa. One reason for this is desert is a property of the good rather than the right.<sup>25</sup>

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<sup>25</sup> For the notion that desert is a property of the good, see Fred Feldman, *Utilitarianism, Hedonism, and Desert: Essays in Moral Philosophy* (Cambridge, MA: Cambridge University Press, 2012); Fred Feldman, "Adjusting Utility for Justice: A Consequentialist Reply to the Objection from Justice," *Philosophy and Phenomenological Research* 55 (1995), pp. 567-85; Shelly Kagan, *The Geometry of Desert* (New York: Oxford University Press, 2012); Thomas Hurka, "The Common Structure of Virtue and Desert," *Ethics* 112 (2001), pp. 6-31; Thomas Hurka, *Virtue, Value, and Vice* (New York: Oxford University Press, 2001); and Neil Feit and Stephen Kershnar, "Explaining the Geometry of Desert," *Public Affairs Quarterly* 18 (2004), pp. 273-98.



Also, on some accounts, virtue grounds desert.<sup>26</sup> On one theory, it is the sole ground of it.<sup>27</sup> Virtue is at most indirectly related to atrocity. It is possible that a victim is vicious and the war criminal virtuous. This is particularly true where the situation, rather than stable personality traits, explains the war criminal's action.<sup>28</sup> If this is correct, then again desert will not fit a pattern that would allow it to ground a claim to report war crimes.

Also, virtue does not ground duties. The fact that an act is virtuous (e.g., giving money to Oxfam) does not make it morally required. Similarly, the fact that an act is vicious (e.g., spending money on and enjoying degrading pornography) does not make it wrong. This is because virtue is a property of what one thinks (specifically, one's attitudes) and what one thinks is distinct from what one does to others.<sup>29</sup> It is true that what a person thinks often affects how he treats other people, but this causal connection is not enough to show that what a person thinks is what makes his action right or wrong. Along these lines, one person's right (or claim) against a second focuses on

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<sup>26</sup> For the notion that virtue grounds desert, see Hurka, "The Common Structure of Virtue and Desert"; Hurka, *Virtue, Value, and Vice*; and Stephen Kershnar, *Desert and Virtue: A Theory of Intrinsic Value* (Lanham, MD: Lexington Books, 2010).

<sup>27</sup> See Kershnar, *Desert and Virtue: A Theory of Intrinsic Value*.

<sup>28</sup> For the classic experiment illustrating situationism, the notion that the situation at least in part explains what someone does, consider obedience to authority; see Stanley Milgram, "Behavioral Study of Obedience," *Journal of Abnormal and Social Psychology* 67 (1963), pp. 371-78. For Milgram's more in-depth discussion of the effect, see Stanley Milgram, *Obedience to Authority: An Experimental View* (New York: Harper Collins, 1974). The effect holds across different cultures. See Thomas Blass, "Understanding Behavior in the Milgram Obedience Experience: The Role of Personality, Situations, and Their Interactions," *Journal of Personality and Social Psychology* 60 (1991), pp. 398-413. For a discussion of the prison experiment and its application to Iraq, see Zimbardo, *The Lucifer Effect: Understanding How Good People Turn Evil*.

<sup>29</sup> I am assuming here that individual attitudes or the lack of them can be virtuous or vicious. For arguments for this position, see Thomas Hurka, "Virtuous Acts, Virtuous Dispositions," *Analysis* 66 (2006), pp. 69-76; and Kershnar, *Desert and Virtue: A Theory of Intrinsic Value*.

what the second does (or does not do) to the first, rather than how the second thinks of the first.

Here is a chart summarizing these arguments:

Purported Ground	Claim grounded by	Problem
Promise	Promise	No such promise was made.
Fairness	Cooperative project that is just and mutually beneficial	<ol style="list-style-type: none"> <li>1. Such a project by itself does not ground a claim.</li> <li>2. No such project.</li> </ol>
Harm	Harm or unjust harm	<ol style="list-style-type: none"> <li>1. Harm by itself does not ground a claim.</li> <li>2. No harm, rather refusal to benefit.</li> </ol>
Desert	Desert-ground (virtue- or action-based)	<ol style="list-style-type: none"> <li>1. Desert by itself does not ground a claim.</li> <li>2. Virtue grounds desert and it is indirectly related to atrocity.</li> </ol>
Virtue	Virtue	Claims focus on what people do to others, not how they think about them.

***b. Argument for Thesis #2***

Thesis #2 states that in the case of Justin Watt, there was no strong duty to report fellow soldiers who committed atrocities. Here is the argument for it:

(C1) Hence, if soldiers have a strong duty to report fellow soldiers who commit atrocities, then reporting prevents a catastrophe. [(P1) - (P4)]

(P5) In Justin Watt's situation, reporting did not prevent a catastrophe.

(C2) Hence, in the case of Justin Watt, there was no strong duty to report fellow soldiers who committed atrocities. [(C1), (P5)]

An objector might state that (P5) is dubious. He might deny that we know that this is true. In the Watt case, the four war criminals were given harsh prison sentences. This, the objector continues, could have prevented them from doing similar or worse things.

The reason that we know this is that a catastrophe (at least in the sense that it is being used here) involves the death of many innocent people or the equivalent amount of suffering or harm. The idea is that only such a loss overrides the non-consequentialist duties that ordinarily prohibit or permit various actions. If the net gain of four lives does not permit killing a healthy person and distributing his organs to save five or even ten people who need organs, the consequentialist override must be quite strong. It is unlikely that the four would have killed so many innocent people. This is because they feared being caught, they likely would have been out of Iraq before they were in many more situations in which they were motivated to commit further murders, and they did not seem interested in mass slaughter by itself.

Premise (P5) rests on intuitions such as those brought out by the following cases:

**Case #1: Brothers.** Al's brother commits an atrocity. Al decides not to turn him in to prevent a just multi-decade punishment.

My notion here rests on my and others' intuition that Al's action is not wrong. This rests on an argument from analogy based on the notion that, in some cases, fellow soldiers are morally similar to brothers.

A similar moral notion likely underlies the spousal-privilege doctrine in law. This prevents the state from making one spouse disclose confidential communications with the other or from testifying against the other. Some states apply this to both criminal and civil law.

Consider, also, the following case:

**Case #2: Punishment.** Captain Baker is the only one who can punish several of his enlisted men for raping a twenty-year-old prostitute because he is the commanding officer in a lawless territory. If he does not act to punish them now, he will be unable to do so in the future because the witnesses will refuse to cooperate and will likely move elsewhere (the brothel is located in the newest war zone). Also, the evidence will likely disappear. He omits to punish them because doing so will

jeopardize the mission (he needs every soldier) and because he is close to his men.

If Baker did not act wrongly when he refrains from punishing the men, then Watt does not act wrongly when he refrained from reporting them. In Watt's case, his refraining from bringing about the punishment via failure to report is more indirect than in Baker's case. Also, Watt is less responsible because another could still report the crime (e.g., Sergeant Yribe). This is not so with regard to punishment.

One objection to the Brothers case is that many do not have the same intuitions as me. To take a real-life example, the objector notes, consider the Unabomber's brother who turned him in. The objector claims that many people consider this a duty. The objector continues that had the brother not turned him in, we might have understood his failure and even regarded it as excusable, given the emotional bond between brothers. Still, we would have regarded his failure to do so as wrong. I do not have the intuition that refraining from turning in one's brother is wrong. Others I speak to also lack it. Still, some people report having it. What explains the intuition in the Unabomber case is in part that Ted Kaczynski would likely continue to attack innocent people and in part because he was mentally ill in some sense and needed treatment. Were he done attacking and not mentally ill, it is unclear to me whether these intuitions would remain. These intuitions are strengthened by the notion that the best-results reason for turning in the Unabomber is weak if he were done attacking people. Here, I am assuming that refraining from turning him in does not significantly undermine society's ability to deter third parties from engaging in similar crimes.

Another objector might concede that a person does not have a duty to turn in his brother for an atrocity, but argue that soldiers are not like brothers. They are not like brothers, she asserts, because they lack blood ties, a long, intertwined history, or interlocking interests. An interlocking interest occurs when how well one person's life goes depends on how another's life goes.<sup>30</sup> As a result, the objector continues, there's a significant difference of degree (if not kind) between brothers and soldiers. Even if they were brother-like, she

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<sup>30</sup> There is reason to doubt whether interlocking interests exist or are even possible. It is implausible that one person's life goes better merely because her beloved's life goes well if the former is unaware of it. This is true whether one holds a hedonist, desire-fulfillment, or objective-list theory of self-interest.

continues, soldiers also relate to each other as occupants of a role, namely, that of a soldier, with the various additional duties and permissions that involves. Brothers are likely best understood in terms of people who love each other in a non-romantic way. This explains why people can love adopted brothers. This love does not require blood ties, a long, intertwined history, or interlocking interests. Such features might ordinarily cause and accompany love, but they are not necessary, whether in theory or practice. This is why one can love a recently adopted child. Role-based explanations of the purported duty fail because people who think there is such a duty do not think it depends on whether someone is a member of the military.

An objector might argue that the duty under question is the duty of the soldier to report. Hence, he concludes, it depends on the soldier being a member of the military. Even if, he notes, those who think there is a duty think it extends beyond soldiers, that doesn't mean the duty of a soldier *qua* soldier fails.<sup>31</sup>

The problem with this is that if the duty is the same in content and strength regardless of whether the person in question is a soldier, then it is likely not justified by a soldier's role. The notion that the duty is soldier-specific is odd. As argued above, if one brother is not required to report another's wrongdoing or crime and if soldiers in a combat unit are like brothers, then there is no such duty. Even if there were such a duty, it is implausible that it applies only to soldiers or applies differently to soldiers from how it applies to police officers, judges, members of Congress, physicians, and so on.

In addition, given how infrequently atrocities were reported in the past and how difficult it is to get soldiers to do so now, there is little reason to believe that such a duty is part of the role. A proponent of such a duty might claim that this doesn't follow. He might argue that there could be other reasons explaining why soldiers are so reluctant to report atrocities even in the face of the recognition of the duty to do so. Consider, for example, fear of being a rat, reprisals, guilt about not having prevented the atrocity, unit survival, and concerns about the unit's or military's morale or image.<sup>32</sup> Perhaps this is correct. Still, it is an odd notion that in the last century people in a particular type of job have had a strong moral duty to do something and not only have almost never done it, but also, as far as I can tell, have not felt

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<sup>31</sup> I owe this objection to Shawn Klein.

<sup>32</sup> I owe this objection to Shawn Klein.

that bad about not having done it. Insofar as such a duty and the stringency were intuitively clear, it is plausible that we would have seen different attitudes and actions in the past regarding reporting atrocities.

Yet another objector might claim that a crucial feature of punishment is that the captain's punishing his men will jeopardize the mission. The objector notes that this need not be a feature of other reporting cases and was not a feature in Watt's case. Yet if it is taken out, he continues, the captain's only reason for not punishing the men is that he is close to them. This is not, he concludes, a good reason to let an atrocity go unpunished. Again, we have a conflict of intuitions. Also, if the captain is a brother as well as a captain to some of his men (e.g., his three younger brothers serve in his company), then the case is a stronger variant on the Brother case. If he does not have brothers in his company, then the objector has to explain why the ties between a captain and his men cannot be similar to that between brothers or, perhaps, between a father and his sons, even if it is not quite as strong. It is unclear what the explanation would look like.

### *c. Objections*

Most objections to my argument focus on premise (P4): There is no strong duty based on a moral principle to report fellow soldiers who commit atrocities that correlates with a human right or another right. They attempt to show that there is a moral-principle-based duty to report fellow members of the military who perform wartime atrocities.

One Kantian objection is that a member of the military should report the atrocity as a way of respecting the victim's personhood, that is, to treat her as an end. One person treats a second as an end just in case he respects the second's moral autonomy. He respects her moral autonomy just in case he does not block her projects or, perhaps, rational projects.

The problem with this objection is that the member who fails to report the atrocity does not block either the victim's projects or her rational projects. True, he does not promote them, but this refusal to promote them is a refusal to benefit rather than a harming. This is not a failure to respect her moral autonomy. In fact, our focusing on our own matters often uses time and resources that could be used to promote others' projects. This is particularly true with regard to the impoverished Third World.

A second objection is that a member of the military should report the atrocity because it is virtuous to do so. Not doing so is a vicious act, reflects a vicious character, makes one more vicious than he otherwise would be, or has some other connection to vice. Even if the refusal were vicious, this would not show that it is wrong. One can do an act that is wrong and virtuous because it is done for a good reason. For example, consider the following case:

**Case #3: Friendly Fire.** Specialist Smith sees what looks to him to be an enemy soldier (the suspicious guy is of Middle Eastern descent) in Smith's camp. The latter is out of uniform and pointing a powerful M249 light machine gun dangerously near members of Smith's platoon. In fact, the person is Ahmad Bahar, a newly arrived soldier of Middle Eastern descent who has just arrived from Detroit to join Smith's badly undermanned unit. The supply sergeant told the newly arrived soldier to change out of his uniform and practice loading, unloading, and aiming the weapon as he will be required to carry and use it in the days ahead. Smith shoots and kills Bahar. He does so because he loves his brothers-in-arms and fears for their lives.

Smith acts wrongly, but virtuously. It is also possible to do a right action for a vicious reason. Some theorists have a different theory of virtue. On their account, the soldier may have acted based on a good, well-meaning reason, but that's not sufficient to claim that it is virtuous. If this is correct, then the hypothetical can be changed to Smith having the relevant dispositions in addition to acting on a good, well-meaning reason. In such a case, he would be virtuous but do the wrong thing.

In any case, refusing to turn in one's fellow soldiers is not always vicious. On one account of vice, it need not involve love of evil or hatred of the good.<sup>33</sup> On a second account, it need not involve an act on the basis of an attitude or emotion that conflicts with the Aristotelian golden mean or an act based on an inappropriate reason.<sup>34</sup>

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<sup>33</sup> For this account of virtuous acts and attitudes, see Hurka, *Virtue, Value, and Vice*; Hurka, "The Common Structure of Virtue and Desert"; and Hurka, "Virtuous Acts, Virtuous Dispositions."

<sup>34</sup> The idea for this account of virtue comes from Aristotle, *Nicomachean Ethics*, 2<sup>nd</sup> ed., trans. Terence Irwin (Indianapolis, IN: Hackett Publishing Co.,

A third objection is that a member of the military should report the atrocity because the universalization version of Immanuel Kant's Categorical Imperative requires it. Alternatively, the objection might be that the Golden Rule requires the atrocity to be reported. There is a concern over whether this version of the Categorical Imperative is the correct test for a right action, especially if not supplemented by the requirement that persons be treated as ends-in-themselves. Even if this is not the case, refraining from reporting fellow members is universalizable. Consider the following maxim: "If a member of the military knows that his fellow soldiers and close friends performed a wartime atrocity, his failure to report them would result in their getting away with it, and they won't do it again, then he does not report them." This maxim can be universalized. By analogy, consider this family-related maxim: "If a mother knows that her son committed an atrocity, her failure to report him would result in his getting away with it, and he will not do it again, then she does not report him." This maxim can also be universalized.

A proponent of this objection might respond as follows:

I think the use and understanding of Kant's categorical imperative is slightly mistaken, because the maxims constructed by this author contain so many hypotheticals that they would not fit the form of the categorical imperative, as it is perceived and used by Kant. One may of course argue with Kant that this is a weakness of the way in which he formulates the imperative, but I do think that most Kantians would find this a most specious way of using it, and that must be noted.<sup>35</sup>

Perhaps the above response misinterprets the notion of a maxim as it relates to the universalization version of the Categorical Imperative; when properly interpreted, the failure to report an atrocity cannot be universalized. I am not sure, though, how else to interpret the notion of a maxim other than as a specification of an action in a particular situation. Perhaps this is a place where my argument fails, but I don't think so.

Let me explain why. First, the universalization of the Categorical Imperative is designed to ensure that the rule by which one

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<sup>35</sup> This objection comes from an anonymous reviewer.



acts is such that everyone could act that way. This in turn is justified by the equal intrinsic value of people. The equal value prevents an agent from acting according to rules that could not be acted on by others. This justification allows for maxims (descriptions of situation-action pairings) that have a nested structure. Second, Kant himself uses a nested hypothetical in illustrating how the universalization version of the Categorical Imperative is supposed to work.<sup>36</sup> Thus, the above categorical imperative is consistent with both the justification of the Categorical Imperative and how its author conceived of it.

A fourth objection is that the member of the military ought to condemn the atrocity. Turning the perpetrators in is a way to do this. Condemnation shows that neither he nor his group endorses the activity.<sup>37</sup> This is particularly true for someone like Watt who joined the military in order to be part of the 101<sup>st</sup> Airborne Division, both identifying with and taking pride in it.<sup>38</sup>

One problem with this is that the duty to condemn is mysterious in general: To whom is it owed? It becomes even more so among those who are free of blame. The second problem is that turning in fellow members is not necessary for condemnation. Innocent members of the unit could publicly condemn such acts, similar to what they would do were the perpetrators from another unit, and such condemnation would be legitimate.

A variant of the fourth objection is that that the members are collectively responsible for the atrocity because they allowed the conditions to develop that led to the atrocity. Turning in the perpetrators is an appropriate way for the unit to respond to an evil for which it is responsible. The unit might be the regiment, company, platoon, or squad. If one rejects collective responsibility, and I do, then this objection does not get off the ground. Even if one accepts collective responsibility, one takes responsibility by severely punishing a few people and letting everyone else go. Other responses might

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<sup>36</sup> See Immanuel Kant, *Grounding for the Metaphysics of Morals*, trans. James Ellington (Indianapolis, IN: Hackett Publishing Company, 1981). In particular, consider his discussion on p. 30 (sec. 422) of a person deciding whether to commit suicide.

<sup>37</sup> I owe this objection to Andrew Cullison.

<sup>38</sup> See Justin Watt, personal communication, Leavenworth, Kansas, December 3, 2012.

involve trying to make sure it does not happen again, helping out victims' families, and punishing every member of the unit. By analogy, even if a mother and father are partly responsible for their son's atrocity because they drank too much, fought too much, and were periodically absent from the home, it is not clear that they should take responsibility by turning in their son rather than choosing something that more directly relates to what they did.

A fifth objection is that the member owes it to his country to report the atrocity. The atrocity harms the United States' ability to achieve its war-related goals. This was certainly true in Watt's case. One problem with this objection is that it makes the duty to report owed to one's country rather than to the victims. For those who think there is such a duty, this doesn't seem right. In addition, it is counterintuitive that were Pfc. Watt to refrain from reporting the atrocity, he has wronged U.S. citizens rather than the victims, the victims' surviving family members, or his military unit.

A second problem is that even if one has a duty to help his country's war effort, the innocent members who learn of the atrocity might, and often are, doing plenty to promote the war effort. When they are already going above and beyond the call of duty, it is not clear that they incur still other duties. This is especially true when the further duties relate to things entirely outside their control and for which they are not the least bit responsible.

A sixth objection is that the best rule mandates such reporting.<sup>39</sup> The idea here is that the best-rule theory asserts that a right action is one that is consistent with the best rule. The best rule is one that brings about the best results. This differs from the theory of rightness present in the first main argument above because the focus is on the *rule* that brings about the best results rather than the *act* that brings about the best results. The two differ in that an act might be wrong under the former, but not the latter. For example, lying might be

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<sup>39</sup> I owe this objection to Richard Schoonhoven. For a classic statement of it, see Richard Brandt, *Ethical Theory* (Englewood Cliffs, NJ: Prentice Hall, 1959); J. O. Urmson, "The Interpretation of the Moral Philosophy of J. S. Mill," *Philosophical Quarterly* 10 (1953), pp. 144-52; and Stephen Toulmin, *The Place of Reason in Ethics* (Cambridge, UK: Cambridge University Press, 1950). For more recent accounts, see Brad Hooker, *Ideal Code, Real World: A Rule-Consequentialist Theory of Morality* (Oxford: Oxford University Press, 2000); and Tim Mulgan, *The Demands of Consequentialism* (Oxford: Oxford University Press, 2001).

prohibited by the best rule while still bringing about the best results in a particular situation.

The best-rule theory thus asserts that persons have a duty to act in accord with rules that brings about the best results. The rule is one that is part of a set of rules that if a population in general conformed to them or accepted them, then doing so would bring about better results than were they to conform to any other set of rules. The theory here is a theory about what makes an act right, not about the best rule-of-thumb to bring about the best results.<sup>40</sup>

One problem with this is that this permits overriding a moral principle rather than offering a moral-principle-based requirement. A second problem arises if one rejects the best-rule theory. Critics have argued that such a theory collapses into one that focuses on whether an act brings about the best results or is irrational in that it prevents an individual from doing an act that he knows will bring about the best results.<sup>41</sup> The theory also has to provide a way to frame the rules and a principled level of rule-conformity or -acceptance. It is unclear whether it has the resources to do so. There is also an issue as to whether rule-consequentialism can handle conflicts of rules.<sup>42</sup>

Even if the best-rule theory survives these criticisms, it is unclear whether the best rule requires one to report on those close to him when they do wrong. If this were widely done, it might wreak havoc on many people's willingness to be involved in honest and open relationships. The rule might be narrowed to reporting wartime atrocities, but this would need justification. If such a narrowing is justified, perhaps it might be narrowed still further in cases in which the atrocity is committed by those very close to the potential reporter, the victims are dead, and there is little chance of further atrocities. In such a case, it is unclear whether such a rule would bring about the best results.

A proponent of this objection might respond as follows:

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<sup>40</sup> See J. J. Smart, "Extreme and Restricted Utilitarianism," *The Philosophical Quarterly* 6 (1956), pp. 344-54.

<sup>41</sup> See *ibid.*

<sup>42</sup> See Ben Eggleston, "Conflicts of Rules in Hooker's Rule-Consequentialism," *Canadian Journal of Philosophy* 37 (1997), pp. 329-50.

If it is established as a general rule that war crimes are normally not to be reported by fellow soldiers, then the incentive to avoid such war crimes in order to avoid being reported would fall sharply. In essence, the lesson to soldiers would be that we protect each other whatever happens. The fact that we look after each other within a unit, and that we ensure that the rule of law is upheld, is part of what creates common standards and common goals. This is useful *as a rule* (cf. rule utilitarianism). The parallels to mothers or siblings who would be morally excused for not turning in their children or close family members leads one down a slippery-slope to communal shielding of atrocities that at least to me seems morally questionable.<sup>43</sup>

The problem with this interpretation of the best-rule theory is that the same considerations that make it unclear whether people should report their family members' crimes to authorities also arise with regard to brothers-in-arms. Societies such as those in the Soviet Bloc that encouraged and required family members and neighbors to report on one another produced an allegedly isolating-and-distrustful environment. I do not know how we might assess whether these effects would be larger or smaller than the one the proponent mentions above, but the fact that civilian law does not require people to inform on one another and sharply protects a spouse from having to testify against his or her spouse is some evidence, albeit weak, that the best rule does not require such reporting. In any case, as argued above, there is good reason to doubt the best-rule theory.

An objector might argue that the Soviet Bloc example is problematic. Arguing that a duty to report in that context created a bad living environment ignores the fact that Soviet Bloc countries had a deeply unjust political system. Of course, she continues, there would be no moral duty to report violations of unjust laws in such contexts, but this is irrelevant to the case at hand.

The problem with this objection is that the issue is the best rule under rule-utilitarianism. The rule at issue is one that most, or perhaps all, people could accept or to which they could conform. This applies to just and unjust political systems as well as to a wide array of relationships between people. Thus, the above example is not

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<sup>43</sup> This objection comes from an anonymous reviewer.

problematic in that this is one of the systems to which it must apply, especially since it was a system that included a lot of people.

A seventh objection is that a duty to report is basic common sense:

[T]here is a basic common-sense argument that most people would make for there being a duty to report, which is not clearly enough spelled out by the author, I find. This would be the duty (even if it is a *prima facie* duty)—to oneself, to one's military organization, to the profession, and to society at large—to take a clear stand against atrocities and blatant rule-breaking. Arguably, a generally recognized moral permission not to report even horrific acts such as the one reported here, weakens that duty. This is admittedly a mixture of [result-focused and moral-principle-focused] reasoning, but I think it is one that most people, upon reflection, would come back to.<sup>44</sup>

The problem with this objection is that when the two aspects of it are examined, neither succeeds. In general, there is no strong duty, whether *prima facie* or *ultima facie*, to take a stand against atrocities and wrongdoing. For example, a Nebraska farmer does not act in a wrong manner if she fails to take a stand against atrocities in the Congo.

The notion that the duty is owed to oneself, military organization, profession, and society is problematic because it intuitively seems that the victim is the person wronged by a failure to report, if anyone is. The other parties are wronged only insofar as the soldier who fails to report the atrocity fails to live up to his promise to obey the military's rules. The wrongness of not reporting would then be explained in terms of the failure to follow orders, which fails to capture the intuitively strong, distinct, and oath-independent nature of the wrongdoing.

An objector might respond that this objection is more about failure to follow the expected norms, not merely orders. This, he continues, brings back some of the intuitively strong nature of wrongdoing. There was a serious, horrible wrong done. To do nothing about it or actively keep it hidden (absent some overriding reason not to do something), he notes, seems intuitively wrong. The problem with this claim is that this again raises the failure to report as intuitively

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<sup>44</sup> This objection comes from an anonymous reviewer.

wronging the victim or her family and yet the duty backing the norm (or, perhaps, order) is owed to oneself, the military organization, profession, or society. Also, as argued above, the purported intuition does not seem to apply to one brother reporting on another.

It is worth noting here that it is false to think that every instance of failing to report an atrocity will produce a catastrophe. In at least some cases, a failure to report might aid a just war effort and avoid cycles of tit-for-tat atrocities. In the cases where reporting prevents a catastrophe, the moral threshold is reached and there is a strong duty to report the atrocity.

An eighth objection arises from views such as Mark Osiel's, which defends an approach to obeying orders that emphasizes virtue ethics.<sup>45</sup> On one interpretation of his work, he does so instrumentally. That is, an emphasis on virtue ethics is justified because it makes military law more effective at preventing wartime atrocities. A different approach might focus on virtue ethics as the basis for ethics and, thus, directly support reporting of wartime atrocities. The problem with such an approach is that virtue ethics do not directly tell people what they ought to do. Virtues such as beneficence, courage, loyalty, or generosity do not tell people whether they should turn in their brothers for committing crimes. Even if an individual virtue were to tell a person what he ought to do, possible conflict between virtues (e.g., loyalty and beneficence in reporting atrocities) means that act-related principles are still needed.

An instrumental virtue-based theory does not support a strong duty always to turn in those who commit wartime atrocities for a couple of reasons. First, in some cases, turning them in makes the world a worse place (e.g., the perpetrator is disabled and unable to commit further atrocities). Second, there are competing goods (e.g., unit loyalty and love between brothers-in-arms) that are likely weakened by a willingness of members of the military to inform on each other. This is particularly true given that the likely virtue is one that supports informing on any crime committed by members of one's unit rather than focusing just on wartime atrocities.

Some theorists, such as Aryeh Neier, argue that justice demands prosecution, and presumably reporting, of war crimes.<sup>46</sup>

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<sup>45</sup> See Mark Osiel, *Obeying Orders: Atrocity, Military Discipline & the Law of War* (New Brunswick, NJ: Transaction Publishers, 1999).

<sup>46</sup> See Aryeh Neier, *War Crimes: Brutality, Genocide, Terror, and the Struggle for Justice* (New York: Times Books, 1998).

Other theorists, such as Gerry Simpson, tie the criminalization of wartime atrocities to a series of moral and political considerations, including the value of law, role of politics, individual responsibility, and so on.<sup>47</sup> The problem with such arguments is that if the above arguments succeed, then justice, individual responsibility, or collective guilt do not establish a strong positive moral duty to report wartime atrocities. Neier and Simpson do not argue, but merely assume, that they do. The problem with the law-based argument for reporting atrocities is that because obeying the law is justified by promises (I will just assume this here) and there is only one promise to obey the law, the promise-based duty to obey different laws is the same no matter how serious the activity required or prohibited by the law.<sup>48</sup> Because the promise-based duty to obey some laws (e.g., jaywalking) is weak, the promise-based duty to obey all other laws is as well. There might be strong moral reasons to obey the law (e.g., murder), but they are not promise-based. These other moral reasons return us to the above arguments.

## 5. Conclusion

I argued that if soldiers have a strong duty to report fellow soldiers who commit atrocities, then reporting prevents a catastrophe. The conclusion is based on the notion that if soldiers have a strong duty to report fellow soldiers, then the duty is either based on its bringing about the best results or based on a moral principle. If it is the former, then reporting prevents a catastrophe. If it is the latter, then the duty correlates with either a human right or another right. There is no such correlative duty. I then concluded that Justin Watt did not have a strong duty to report his fellow soldiers. I argued that his reporting did not prevent a catastrophe. This argument rests on an analogy between his case and two other cases when the threshold is not met. These arguments do not show that reporting is wrong. They do not show that military law shouldn't require reporting. They merely establish that in some cases, such as Watt's, there is no moral duty to report. Given the

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<sup>47</sup> See Gerry Simpson, *Law, War, & Crime: War Crimes, Trials and the Reinvention of International Law* (Oxford: Polity, 2008).

<sup>48</sup> For an in-depth defense of this notion, see Stephen Kershnar, *Gratitude Toward Veterans: A Philosophical Explanation of Why Americans Should Not Be Very Grateful to Veterans* (Lanham, MD: Lexington Books, 2014).

horrific nature of the 101<sup>st</sup>'s atrocities, if reporting is not required in Watt's case, it is likely not required in many cases that members of the military face during wartime.<sup>49</sup>

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<sup>49</sup> I am grateful for the extremely helpful comments and criticisms of Maj. Chris Case, Maj. Danny Cazier, Randy Dipert, Neil Feit, David Hershenov, Eric Kershner, LTC Chris Mayer, Lewis Powell, George Schedler, Richard Schoonhoven, Ken Shockley, the philosophy department and department of law at the United States Military Academy at West Point, and the department of philosophy at the University of Buffalo. I am also very grateful to Pfc. Justin Watt for his help and for getting me interested in the topic.



**Review Essay:**

Jason Stotts's *Eros and Ethos: A New Theory of Sexual Ethics*

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In *Eros and Ethos*, Jason Stotts sets out for a more ambitious goal than its subtitle, *A New Theory of Sexual Ethics*, would imply.<sup>1</sup> He discusses sexual ethics within a eudaimonist, specifically Objectivist, framework. As if that's not enough, along the way he also discusses the structure of values, emotions, sentiments, erotic love, and romantic relationships, making advances in each of these areas. Overall, this book amounts to a contribution to the Objectivist ethics and eudaimonist ethics more generally.

Other than Ayn Rand's essays on the subject, relatively little work has been done on sexual ethics in the Objectivist literature. Nathaniel Branden touched on the subject briefly in his book *The Psychology of Romantic Love*.<sup>2</sup> Otherwise, whatever little was done focused primarily on the limited question of the permissiveness or not of homosexuality.<sup>3</sup> Although that work was substantial in developing and emphasizing the importance of an attitude of openness and permissiveness regarding sexuality, it did not reach much further into sexuality in general. *Eros and Ethos* addresses a wider range of

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<sup>1</sup> Jason Stotts, *Eros and Ethos: A New Theory of Sexual Ethics* (Ontario, Canada: Erosophia Enterprises, 2018).

<sup>2</sup> Nathaniel Branden, *The Psychology of Romantic Love: Romantic Love in an Anti-Romantic Age* (New York: Penguin Group, 1980).

<sup>3</sup> Chris Matthew Sciabarra, *Ayn Rand, Homosexuality, and Human Liberation* (Stow, OH: Leap Publishing, 2003).

issues—from the nature of sexual attraction and sexual arousal to sexual identity and the role of sex in an overall human life—and Stotts promises even more in two future volumes.

Chapter 1 opens with a general discussion of eudaimonistic ethics that would be familiar to those who are versed in Aristotelianism or Objectivism. Stotts introduces the reader to the general framework and how it differs from other ethical systems. He explains that it is an ethic oriented toward living well in a way that is meaningful and not psychologically conflicted. He further explains that it is an ethic composed of principles that have to be understood and applied by each individual in the context of his own life. This is done by using practical wisdom (*phronesis*) rather than a system of easy-to-follow rules, and exercising virtues, which are “ongoing choices that we must make to be a certain kind of person and live a certain kind of life” (p. 17). All of this is oriented toward attaining happiness, which he describes as “a way of being engaged with our life and the experience of it going well” (p. 18).

Stotts explains that this system of ethics has, at its foundation, the biological requirements of human life. In an answer to a common Objectivist dilemma of whether ethics is supported by the needs of survival or flourishing, he offers words that should be etched in the soul of every Objectivist: “for a eudaimonist, to live and to live well is the same thing: living organisms are either flourishing or they are declining. . . . An animal that is ‘merely alive’ is an animal nearly dead” (p. 14). He focuses further on the fact that biology does not compel us to live, but that each of us must make that choice. He reminds us that “eudaimonism is a conditional system of principles, which come into play only if we choose to live” (p. 15).

Yet Stotts’s discussion of the choice to live itself is disappointing. He repeatedly emphasizes that it must be a free choice and that all normativity depends upon it, leaving the impression that it is effectively a subjective choice and that all objectivity in ethics begins after that choice. Later in the book, he says specifically that the choice is subjective: “while life cannot be an objective value . . . we can still choose to subjectively value our lives” (p. 115). Unfortunately, he does not engage with other scholars on this question. For example, David Kelley and Darryl Wright each attempt to save this choice from subjectivity without falling into intrinsicism.<sup>4</sup>

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<sup>4</sup> David Kelley, “Choosing Life,” *The Atlas Society* (June 22, 2010), available online at: <https://atlassociety.org/commentary/commentary-blog/3705-choosing-life>; Darryl Wright, “Reasoning about Ends: Life as a Value in Ayn

Stotts then moves on to an in-depth analysis of the structure of values. He explains that values must be organized around a central purpose in one's life.<sup>5</sup> He then classifies values as core or peripheral, depending on how close or far they are from one's identity and central purpose, and as universal, constitutional, or personal, depending on how universally or particularly they apply (pp. 27-30). Stotts explains how universal values are achieved by virtues, providing a general explanation of how central Objectivist virtues achieve universal values: the virtue of rationality achieves the value of reason, productiveness achieves purposiveness, pride achieves self-esteem, honesty achieves truth, integrity achieves unity of self, independence achieves responsibility, psychological independence achieves reality-focus, and authenticity achieves meaning. The last two pairs are his innovations and are unconvincing as separate virtues, since they amount to slight variants of other virtues—psychological independence is an important aspect of rationality and independence, and authenticity is productiveness by a different name. Despite my quibbles, the overall discussion in Chapter 1 is a clearly written and valuable introduction to the subject matter.

Having set down this foundation, Stotts offers in Chapter 2 an in-depth analysis of emotions and sentiments. He presents a cognitive theory of emotions in three phases: identification, evaluation, and response. The process begins when one identifies something external or internal to one's self. He claims that identification can be conscious or subconscious, but it must be conceptual: "simple perception or imagination of an entity, action, or state of existence that does not involve identification cannot serve as the object for an emotion" (p. 64). Even in the case of simple fear for an unknown reason, he insists that what one identifies as the object of emotion is one's lack of

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Rand's Ethics," in *Metaethics, Egoism and Virtue: Studies in Ayn Rand's Normative Theory*, ed. Allan Gotthelf and James Lennox (Pittsburgh, PA: Pittsburgh University Press, 2011), pp. 3-32.

<sup>5</sup> This is a claim originally made by Ayn Rand; see Alvin Toffler, "Playboy Interview: Ayn Rand," *Playboy* (March 1964), pp. 35-43, reprinted as a pamphlet by The Objectivist, Inc. (HMH Publishing Co., Inc., 1964), p. 6. It has been challenged by other Objectivists, namely, David Kelley and William Thomas, in their unpublished book manuscript *The Logical Structure of Objectivism*, accessed online at: <https://atlassociety.org/sites/default/files/LSO%20Binder.pdf>, pp. 166-70. Stotts neither mentions nor responds to this work.

knowledge. An implication, here, is that pre-conceptual beings, such as infants, cannot experience emotions in the mature sense of the term. He might say, instead, that they experience automatic affective states that fall into a different category from adult emotions.

Moving onto the next phase, Stotts claims that evaluation is a matter of automatic “subconscious correspondence” between the identified object and what he dubs as one’s “evaluative framework” (p. 68). This evaluative framework is a result of internalized beliefs, values, and “anti-values,” which form a network. This process at once accounts for the speed of emotional response and for the potential for conflicting emotions. It is fast because the evaluative framework is already developed. Conflicting emotions are caused by one’s evaluative framework containing contradictions or an insufficiently established hierarchy of values.

Last comes the response phase. Stotts parts ways with many psychologists in that he draws a distinction between emotional responses and affective states (p. 72). While the latter are physiological states of the body (e.g., the tension in nervousness), emotions are the already formed evaluations themselves that are held in mind over time. He clarifies this distinction with an example: When one says or thinks that he loves his wife, he may or may not experience the affective state of love at the time, but he does hold the evaluation in awareness. Stotts thus defines emotions as “a form of automatic evaluative awareness that orient us to their objects and are experienced as a cognitive conviction and often with attendant affect” (p. 73). Stotts then places emotions into a broader category—sentiments—which also includes a range of similar phenomena, including moods, existential moods, and existential orientation (pp. 74-85). Moods are responses to one’s general state of existence at a period of time. Existential moods are responses to overall direction and satisfaction with one’s life. Existential orientation is one’s response to one’s broadest evaluations, including one’s view of the nature of the world as well as the nature of oneself and others in the world.

This theory of emotions and sentiments has the advantage of allowing them to lay dormant without disappearing. One can still be in love with or angry at someone who wronged him long ago, without feeling the affect at all times. However, like many other sections in the book, this part suffers from a lack of engagement with other literature on the subject. There have been many empirical and conceptual advances in theories of emotions in psychology during the twentieth century. One competing account is the appraisal theory of emotions.

Appraisal theory researchers have found that emotions are a result of multiple steps of cognitive evaluation, rather than just one. The first step is the one that Stotts identifies, where an object is related to one's values. Other evaluative steps include assessments of the *cause* of the object (e.g., man-made versus metaphysical, intentional or accidental) and one's ability to deal with the object.<sup>6</sup> Stotts recognizes that there is such complexity in the case of existential orientation, but not in his discussion of other sentiments like emotions, moods, and existential moods. Furthermore, appraisal theory researchers have developed more complex models of emotional *response*. Rather than separating emotional response from affect, they consider emotional response to have multiple components, including cognitive evaluations, affective states, and others that Stotts does not consider, such as motivational elements.<sup>7</sup>

Stotts then moves on to two excellent chapters that discuss the context of passionate sex. Chapter 3 covers erotic love and Chapter 4 covers erotic relationships—two experiences that obviously go hand in hand. He begins by appropriately identifying and rejecting several models of love that are widely—though often implicitly and partially—held: Platonic love, soul-mates, desperate longing, causeless love, and physicalism. In their place, he offers a rich and mature model of love that involves mutual intimacy and an internalization of the values of another human being so that he becomes analogous to “another self” (p. 104). Drawing in part on Aristotle's concept of mirroring, Stotts explains that love involves knowing and responding to another person deeply and in his entirety, including “the full range of what makes the person unique” and, especially, his “chosen self” (p. 105)—that is, his values and how they come together to form his character. He then provides us with a discussion of several specific characteristics of love: reciprocity, commitment, passion (i.e., caring deeply), exaltation, profound and selfish joy, shared history, intimacy (self-revelation), shared identity, and irreplaceability. These features will be familiar to anyone in a deeply loving relationship, but it is challenging to tease

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<sup>6</sup> K. R. Scherer, A. Shorr, and T. Johnstone, eds., *Appraisal Processes in Emotion: Theory, Methods, Research* (Canary, NC: Oxford University Press, 2001).

<sup>7</sup> Agnes Moors, Phoebe C. Ellsworth, Klaus R. Scherer, and Nico H. Frijda, “Appraisal Theories of Emotion: State of the Art and Future Development,” *Emotion Review* 5, no. 2 (April 2013), pp. 119-24.

apart and identify them conceptually. Stotts makes it clear that “without any of them, erotic love loses the qualities that make it special” (p. 111). He also explains that this kind of love requires self-love as well, which in turn requires both self-awareness and valuing oneself (pp. 114-16).

The discussion of erotic relationships also includes several characteristics. Some, such as caring, respect, mutual enjoyment, and erotic love, are relatively straightforward. Others may be less obvious to some readers, but Stotts offers convincing arguments for them. One of these features is equivalence: partners in a relationship should be morally and intellectually equivalent so that they can understand each other, continue to value each other, and benefits can flow in both directions (pp. 119-20). Another is sexual compatibility, which implies, among other things, that “pre-marital sex is morally obligatory” (p. 120), so that one does not commit to a partner with whom one would have pervasive sexual difficulties. Two others, mirroring and psychological visibility, involve being able to see the other accurately, echo each other’s qualities, see the benefits of one’s influence on the other, and be seen in a way that matches our view of ourselves. Lastly, he discusses one of the central difficulties of romantic relationships: balancing dependence on another individual for a portion of our happiness with one’s own independence as an individual (pp. 121-23 and 126-27).

This theory of erotic love and relationships is far more sophisticated than the models that Stotts rejects, and he identifies most of the central features involved in these experiences. There is, however, one feature of relationships that is conspicuously absent from his account: the importance of creating and pursuing *shared* values. A deep and committed relationship, especially one that leads to marriage, typically involves taking on new values together. Couples build a home by buying or renting a place for themselves and set it up according to their values and tastes; they build a family by having children; they take on new hobbies and experiences; they build traditions, such as rituals around important days of the year. Stotts writes extensively about *sharing* experiences, *sharing* values, *mutual incorporation* of the other’s already formed values, but he does not at all discuss building new values that are unique to the relationship and that were not held by either of the individuals prior to the relationship.

Furthermore, as was the case in prior chapters, these sections suffer from too little engagement with other literature. The simplistic models of love he rejects, although prevalent, are not the only ones that

exist. Psychological studies of love and romantic relationships have substantially advanced during the past few decades. John Gottman, for example, did extensive empirical studies leading to his “sound relationship house theory.”<sup>8</sup> Others from the Positive Psychology movement have developed what has come to be known as the “self-expansion model of love,” or “Aristotelian Love.”<sup>9</sup> Stotts even ignores work on romantic relationships by those closely aligned with Objectivism. As mentioned above, in 1980, Nathaniel Branden published a book-length treatment of romantic love, approaching it with a eudaimonist, Objectivist framework.<sup>10</sup> Branden’s book also goes into the role of sex in a relationship and comes to some of the same principles and conclusions as Stotts does. Does Stotts agree or disagree with his claims? Who knows, for he doesn’t even mention Branden’s work.

Nonetheless, having set down these foundations, Jason Stotts moves on in Chapter 5 to the topic of sex, covering sexual attraction and sexual fantasies. He begins by rejecting the claim that sexual attraction is primarily physical, arguing instead that it is experienced toward the whole person, and that it emanates from one’s whole integrated self as well. Although he recognizes that sexual attraction can occur between strangers, he emphasizes that this “initial sexual attraction is either dampened or heightened by our response to their character” (p. 144) as we get to know that person over time. Even the initial sexual attraction is not entirely physical; it is also a response to what Stotts calls a person’s “style” (p. 143), which is an outward expression of a person’s fundamental attitude toward life. A person’s style manifests in his every expression and action, so it plays some role in all sexual attraction, whether between strangers or lovers. One is sexually attracted to the totality of a person’s physical appearance, style, and character as an integrated whole.

While that is the *object* of attraction, Stotts explains that the *source* of attraction is, in large part, our values and character. He does this by identifying sexual attraction as an emotion; like other emotions,

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<sup>8</sup> John Gottman, *Principia Amoris: A New Science of Love* (Abingdon, UK: Routledge, 2015).

<sup>9</sup> Jennifer M. Tomlinson, *The Positive Psychology of Romantic Love* (New York: Oxford University Press, 2013).

<sup>10</sup> Nathaniel Branden. *The Psychology of Romantic Love*.

it comes from one's evaluative framework. He also offers several hypothetical examples of how individuals with different characters are likely to find different individuals attractive: "Sexual attraction . . . involves *our* full person as well . . . our bodies and minds, existential orientation, values and beliefs, style, and character" (p. 156).

Stotts is right to reject simplistic physicalist models of sexual attraction. His discussion brings sexual attraction to life, so to speak. He shows how sexual attraction involves individuals in their full complexity. Yet even this discussion is incomplete and suffers from two serious drawbacks. First, he underestimates the role of biology. He leaves out nearly the whole issue of physical attractiveness, because he thinks that values and life experience account for most of attraction. Values and life experience account for why people are attracted to youth or to particular physical characteristics and why they regard some people as more beautiful than others. For example, he says that many people are "fixated on youth as the paradigm of sexual attraction [because] this is when we first develop our sexual attractions and this paradigm is prevalent in our culture" (p. 150). He largely dismisses sexual types because people "package together certain values . . . and certain physical characteristics" (p. 152). In other words, if a man likes blonde women, it's likely because he once found a happy, blonde woman and this became his model of a good woman. This may in part be true, but it is too simplistic for a book of this depth. Studies have repeatedly found certain physical characteristics and age ranges to be widely sexually attractive, and some of these characteristics correlate with reproductive abilities.<sup>11</sup> Thus, biological variation likely plays at least some role, just as it partially explains why people are more attracted to men or to women, a point which he acknowledges later in the book (in Chapter 6).

Regarding sexual types in particular, other factors are likely involved as well, including one's particular sexual preferences and choice of sexual fantasies. For example, a person who frequently fantasizes about playing a submissive sexual role may become more sexually attracted to individuals with larger stature and who are more assertive in their style. Stotts does offer a fruitful analysis of fantasy,

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<sup>11</sup> Jan Antfolk, "Age Limits: Men's and Women's Youngest and Oldest Considered and Actual Sex Partners," *Evolutionary Psychology* (January-March 2017), pp. 1-9; Douglas T. Kenrick and Richard C. Keefe, "Age Preferences in Mates Reflect Sex Differences in Human Reproductive Strategies," *Behavioral and Brain Sciences* 15 (1992), pp. 75-133.



explaining that it can include four types of activities: envisioning sexual activities we would like to try, testing whether an activity would be exciting, reliving past sexual experiences, and transitioning into a sexually excited state (erotic shift) (pp. 157-59). He further explains that, ethically, individuals should allow themselves nearly complete freedom with their sexual fantasy lives and avoid stifling or impairing themselves. However, he does not connect this activity to values and sexual types.

The second drawback in his discussion of sexual attraction is the complete absence of any discussion, or even mention, of the sexes and any potential differences between them. Nor does he discuss masculinity and femininity and their relationship to sexual attraction. Although men and women share many similarities, both popular stereotypes and science indicate that they experience sexuality differently, at least on average. Furthermore, people generally are attracted to one sex or the other, but not both. A substantial aspect of this trend is that people tend to find masculinity or femininity attractive, but not both. Masculinity and femininity receive some attention in the next chapter, but the issue is kept separate from its role in sexual attraction.

In Chapter 6, Stotts offers an intriguing discussion of sexual identity, which he defines broadly as “that rich confluence of things about us that creates a robust account of our identity as sexual beings” (p. 200). It includes our experiences of ourselves as sexual beings as well as what we like to do sexually, with whom we like to do it, why we do it, and how we understand ourselves doing it. He divides this account into several components, discussing three of them at length: sexual orientation, societal sex role, and erousia. As he does in prior chapters, he begins by rejecting simplistic accounts in favor of more holistic ones. Here, he rejects the idea that a person is by nature homosexual, heterosexual, or bisexual, which he regards as too fixed and intrinsic (pp. 163-68). This may seem odd to many readers, who might regard such categorization by nature real. Stotts’s alternative is that sexual orientation is a *disposition* to have sex with individuals of a particular sex *and* in particular ways. A disposition is less fixed, which recognizes that “sexuality is dynamic” (p. 169) and that people can sometimes act outside of their general preferences. This also recognizes that sexual orientation has to do with both sexual attraction and sexual actions, and includes preferences other than the sex of the person we desire.

“Erouisia”—another aspect of sexual identity—is a term that Stotts has created to refer to our conscious experience of being sexual. It arises when we are conscious of ourselves and self-reflective while being sexually aroused or when we see ourselves through a partner while being sexually aroused (pp. 188-89). Such a state brings forward what he calls our “erotic framework,” the entire set of our specifically sexual values and beliefs (pp. 190-93). This erotic framework forms the basis of all aspects of our sexual identity. It develops over a lifetime, beginning with our first experiences with masturbation or sex-play, and includes our conceptualizations of our experiences, messages we get from others about what is permissible or shameful, and ideas we get from our culture.

The third aspect of sexual identity is the “societal sex role.” Unfortunately, this is a somewhat disappointing section in an otherwise enlightening chapter. Stotts introduces the societal sex role as an alternative to gender, which he says has come to mean something *intrinsic* about a person rather than just a social expression of physical sex. So far so good. It’s not clear that this requires giving up on the word “gender”—and doing so is likely to be controversial—but it is appropriate to point out and move away from notions that imply intrinsicism. He further distinguishes the societal sex role (man versus woman) from the corresponding virtues (masculine versus feminine). The bulk of this section, however, is about how these societal sex roles are taught through one’s culture and the *zeitgeist*. Essentially, he thinks that this is done through negative messages and experiences, including “rules, shame, and disgust” (p. 179), but primarily through shame. Messages about appropriate societal sex role behaviors are all around us, including in popular culture, and are absorbed passively by each of us. To the extent that we comply, we are doing well, but to the extent we do not, we face “ostracism and violence” (p. 180). Women are thus initially taught to be docile by seeing such behavior modeled and then by being put down or called various pejorative names, such as “bossy,” whenever they act contrary to their socially expected behaviors. Stotts calls this behavior “shamenorming,” which is the deliberate use of shame to achieve conformity to social standards (p. 183).

What roles do societies shame into their members? According to Stotts, in the United States, the societal sex role for men consists of being assertive, strong, quiet, and emotionless. For women, it consists of being docile, petite, nurturing, and emotional.<sup>12</sup> How do certain roles

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<sup>12</sup> It’s not clear how he arrives at these descriptors or whether they are valid. I, for one, have never met an emotionless man or even one who frequently

attain this status? Stotts indicates that they are, effectively, socially constructed (although he doesn't use this phrase). He illustrates this with the example of baby clothing colors: prior to World War I, pink was for boys and blue for girls, while prior to that it was white for both (p. 178). The implication is that these constructions are arbitrary. There is almost no mention of biology in this entire section. Biology then comes back, in attenuated form, somewhat later in the chapter. He says that these societal sex roles are, in part, based on his new concept of *erousia*, claiming that "an individual's experience of himself as male and of his male erotic being is the kernel upon which masculinity is built" (p. 193). The same is true for women. To put this in simpler terms, a male human comes to feel that he is a man and masculine through his experience of being sexually aroused; he builds his masculinity upon this. Society, in turn, builds its notions of masculinity upon that, combined with a somewhat random assortment of other behaviors that it packages together.

This whole description of societal sex roles sounds like it came from a postmodern playbook, with its emphasis on social construction, negative messaging, and insufficient attention to biology. This is difficult to square with daily experience or empirical evidence. Just consider whether you feel like you are living, or ever lived, in a world that shamed you into an arbitrary collection of behaviors and ideas that you now consider your masculinity or femininity. Not just a few ideas here and there, but *in toto*. The reality is that societal sex role, like all morality, *could* operate through shaming, but it doesn't have to be that way, nor is it necessarily that way most of the time. Morality can and should be aspirational, something which Stotts recognizes elsewhere in the book.<sup>13</sup>

Furthermore, it is unlikely that societal sex roles are simply socially constructed or that they arise out of sexual arousal. Children share behaviors and interests with other children of the same sex long before they begin to experience sexual arousal. A more likely cause of such behaviors, and foundation for societal sex roles, is the difference in interests and physical and personality characteristics between the

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tries to be emotionless. What I do often see are men attempting to be temperate and, in some cases, Stoic about negative feelings in particular.

<sup>13</sup> To his credit, Stotts does mention briefly that societal sex role virtues are ideals that people can aspire to, but he does not see this as a major factor, and quickly returns to discussing shamenorming.

sexes. Studies have begun to validate sex differences that parents have known for centuries. For example, boys, on average, like rough-and-tumble play more than girls do, are more interested in sports, and prefer trucks to dolls as kids, while girls have more empathy and interest in other people and prefer dolls as kids.<sup>14</sup> These differences are large, appear early in life, and are stable over time.<sup>15</sup> One study that used sophisticated eye tracking of infants found that the preference of boys for trucks and girls for dolls, is present at 3-8 months of age (or perhaps even earlier).<sup>16</sup> These differences are also likely in part mediated by sex hormones. Young girls with a condition called congenital adrenal hyperplasia that exposes them to higher amounts of male sex hormones, become more interested in male-typed toys—and this effect grows with the quantity of male hormones that these girls are exposed to.

Here's a sketch of an alternative model of how societal sex roles come about and are perpetuated. Children make friends predominantly with others of the same sex, in part because of similar interests and in part due to cultural expectations. In these friend groups, the shared characteristics and interests are likely to be accentuated, whereas the unshared ones are discouraged. In other words, boys spending time together will tend to play sports rather than follow the interests of the outlier who likes dolls. Over time, boys will individually aspire to be good at sports, because that is what their friends and other inspirational figures of the same sex do. Each individual will naturally develop those interests and characteristics that are both naturally present and permissible in his or her sex groupings. A boy who does not like sports may still find that, say, there's no stigma against intellectual pursuits and will pursue that rather than sports. It is here that shaming likely plays its biggest role—not as a

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<sup>14</sup> David P Schmitt, "The Truth About Sex Differences," *Psychology Today* (November 7, 2017), accessed online at: <https://www.psychologytoday.com/us/articles/201711/the-truth-about-sex-differences>.

<sup>15</sup> Brenda K. Todd, Rico A. Fischer, Steven Di Costa, et al., "Sex Differences in Children's Toy Preferences: A Systematic Review, Meta-Regression, and Meta-Analysis," *Infant and Child Development* 27, no. 2 (March/April 2018).

<sup>16</sup> Gerianne Alexander, Teresa Wilcox, and Rebecca Woods, "Sex Differences in Infants' Visual Interest in Toys," *Archives of Sexual Behavior* 38, no. 3 (2008), pp. 427-33.

foundational force, but as a means of bringing outliers in line with characteristics that are typically naturally present in others of the same sex. All the while, the primary motivating force is not to avoid shame, but to develop oneself and become more like other admirable members of one's own sex. Erosia comes late in this process and allows individuals more fully to experience a masculinity or femininity they have already begun to develop.

Now let's move on to Chapters 7 and 8. Here, Stotts integrates his major points and draws out some principles for how to get the most out of sex and how it can contribute to a satisfying life. He advocates an open, flexible, thoughtful, and deliberate approach to sex. He explains that sex should be *both* a source of intense pleasure and a "moral impetus" (p. 203) to become the best we can be. These come together because sexual pleasure itself has to do with our ideas and values, in particular, our erotic framework. An important aspect of sex is that it "lets us not only directly experience the reality of our values and beliefs, but also the necessary unity of our minds and bodies" (p. 218).

In this way, Stotts rejects other approaches to sex which are usually focused on either pleasure (indulgent camp) or morality (restraint or abstinent camp), but not both. These include what he calls the three false alternatives: that one should indulge in sex for pleasure alone, abstain from sex, or engage in it in highly restrained ways. He explains that these alternative perspectives, although different from one another, all have an "impoverished conception of sex" (p. 220) that divorces it from a person's character and higher values. None of them sees sex as a source of moral growth.

With this understanding in the background, Stotts advises us to cultivate good and satisfying sex lives. This includes a wide range of decisions and actions. He organizes some of them for us. To begin with, he advises us to develop good characters and good relationships, including deep and intimate romantic relationships. He also recommends that we think deliberately about how we want to approach sex, what our goals are for any given sexual experience (and for our sex lives as a whole), and to cultivate habits and dispositions that will bring these about. Importantly, he also emphasizes thinking positively and openly about sex, carefully weeding out any thoughts we may have about sex being "'only bodily,' 'dirty,' or 'dangerous'" (p. 227).

Overall, despite the misgivings I raise above, I highly recommend *Eros and Ethos*. It is what a philosophical book should be—a deeply insightful analysis of the issues and a practical guide in

an important aspect of life. It invites the reader to examine his whole being and, especially, the ways he thinks about and engages in sex. All the while, it keeps the reader focused on positivity. It advocates an orientation toward openness, exploration, and satisfaction rather than unnecessary self-restraint or thoughtless indulgence. Its advice is sound and wholesome and will urge you to make yourself better.

## Book Reviews

Frankfurt, Harry G. *On Inequality*. Princeton, NJ: Princeton University Press, 2015.

Harry Frankfurt's book *On Inequality* has been released at a crucial time in public discussions about economic inequality. This is no coincidence, as Frankfurt himself says in the preface. His book is one of countless to be released in the aftermath of the success of Thomas Piketty's *Capital in the Twenty-First Century*,<sup>1</sup> which thrust the issue of economic inequality into the public eye. Frankfurt's book, however, is the opposite of Piketty's in that it is neither a tome nor does he rely in any way on the use of mathematics to make his point. The book is pocket size and written in an accessible way, making it more likely actually to be read by academics and laymen alike.<sup>2</sup> Frankfurt's book is unusual in two more ways in that it is neither a novel contribution to the debate nor does it side with Piketty's (and many others') claim that economic inequality is the paramount issue facing societies today.

Frankfurt's book is not novel in the sense that the content is largely based on two previous papers written by him on the topic of inequality.<sup>3</sup> The titles of the two chapters in the book closely follow the titles of the papers and repeat Frankfurt's case for what he calls the "doctrine of sufficiency" (p. 7). This doctrine denies that economic equality is a moral ideal worthy of aspiration:

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<sup>1</sup> Thomas Piketty, *Capital in the Twenty-First Century* (Cambridge, MA: Belknap Press, 2014).

<sup>2</sup> Research has shown that in the Kindle version of Piketty's book, people generally get to page 26 before they stop reading; see Jordan Ellenberg, "The Summer's Most Unread Book Is . . .," *The Wall Street Journal* (July 3, 2014), accessed online at: <https://www.wsj.com/articles/the-summers-most-unread-book-is-1404417569>.

<sup>3</sup> Harry Frankfurt, "Equality as a Moral Ideal," *Ethics* 98, no. 1 (October 1987), pp. 21-43; Harry Frankfurt, "Equality and Respect," *Social Research* 64, no. 1 (Spring 1997), pp. 3-15.

Economic equality is not, as such, of any particular moral importance; and by the same token, economic inequality is not in itself morally objectionable. From the point of view of morality, it is not important that everyone should have *the same*. What is morally important is that each should have *enough*. If everyone had enough money, it would be of no special or deliberate concern whether some people had more money than others. (p. 7)

The doctrine of sufficiency stands in stark contrast to Piketty's (and others') claim that economic inequality *as such* is a major problem. Although not of any intrinsic value, Frankfurt admits that economic equality may have instrumental value in preventing some of the negative side-effects that vast economic inequality might have. Most prominent amongst these is disproportional influence on political and economic processes.

It is not entirely clear why Frankfurt believes that preventing inequality from having undue influence on the political and economic processes presupposes economic egalitarianism. Few people, if any, would claim that sustaining inequality through inappropriate means is a good thing. It seems that those who are most committed to preventing undue influence on political and economic processes are, in fact, the ones least likely to uphold economically egalitarian values. It is difficult to reconcile belief in the working of the free market, and thus being skeptical of excessive regulation that might be used for partisan interests, with economic egalitarianism.

After making a brief case for economic sufficiency in the first section of Chapter One, Frankfurt discusses and criticizes several defenses of economic equality in the next four sections, most prominently Abba Lerner's defense of economic equality based on the idea of diminishing marginal utility. The last section of the first chapter discusses in some depth the notion of "enough" in Frankfurt's theory. He distinguishes between two possible meanings of "enough":

In the doctrine of sufficiency, the use of the notion of "enough" pertains to meeting a [basic] standard rather than to reaching a limit. To say[, in general,] that a person has enough money means—more or less—that he is content, or that it is reasonable for him to be content, with having no more money than he actually has. (p. 48)



In other words, a situation where someone has “enough” is a situation where someone is “content” with what he has. Frankfurt rightfully notes that there is a difference between the general understanding of having enough money and his more specific sense of “enough” in terms of having *sufficient* money. Having money sufficient to pay the bills every month and buy only basic sustenance hardly seems like a situation in which many people would consider themselves content. Contentment is reached when any problems you have are not due to a lack of money or simply cannot be solved by having more money.

Here, Frankfurt’s notion of “enough” runs into trouble. In making the distinction between enough and sufficient income, he assumes that enough income can only be reached by earning a surplus on top of a sufficient level of income. Being content then necessarily becomes a matter of earning an income above a sufficient level.<sup>4</sup> Should there be any needs that are left unfulfilled after the standard of enough has been met, then satisfying them is merely an *option* for the person involved. Frankfurt says, “Even if he knows that he could quite possibly obtain even greater satisfaction overall, he does not feel the uneasiness or the ambition that would incline him to seek it” (p. 55). A useful analogy would be the old comparison between the sort of life a surfer wants in order to be content and the sort of life a person with expensive tastes wants to be content.<sup>5</sup> The surfer wants nothing more than to be able to surf all day and he works just enough to meet his basic financial needs (i.e., paying the rent and utility bills for his small oceanside apartment and basic sustenance). The person with expensive tastes, on the other hand, works a lot more hours than strictly necessary in order to pay for his expensive tastes. The surfer has sufficient money, but it is doubtful whether—on Frankfurt’s view—he has enough money.

This is where a paradox develops in Frankfurt’s theory. On the one hand, it is doubtful that the surfer has enough (according to the idea of enough as a basic standard of income). On the other hand, one reason why Frankfurt rejects economic equality as holding intrinsic value is because equality unduly focuses on comparing oneself to

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<sup>4</sup> Frankfurt does not put a number on the amount of money an average person would need in order to be content, but it’s safe to assume that it would be a bit more than just an average net salary.

<sup>5</sup> Philippe Van Parijs, “Why Surfers Should Be Fed: The Liberal Case for an Unconditional Basic Income,” *Philosophy & Public Affairs* 20 (1991), pp. 101-31.

others and thereby distorts the true desires and needs you have: “Exaggerating the moral importance of economic equality is harmful, in other words, because it is *alienating*. It separates a person from his own individual reality, and leads him to focus his attention upon desires and needs that are not most authentically his own” (p. 12). Frankfurt thus claims that the amount of money you need to be content should be seen as independent of how much money others have, yet adhering to this principle would mean that the doctrine of sufficiency becomes void. Either we recognize each individual as holding distinct preferences and tastes which can be met by any level of monetary income large enough to satisfy him or we set an (arbitrary) standard of personal income that is enough rather than just sufficient and which forces individuals falling below this standard to sacrifice some of their time in exchange for money (i.e., the satisfaction of further needs would not be an option but mandatory). Ironically enough, choosing the second option, as implied by the doctrine of sufficiency, entails comparing incomes between individuals.

In the second chapter of the book, Frankfurt broadens the scope to include other kinds of inequality. As was the case with economic inequality, he also outright rejects the moral significance of these inequalities, saying: “In addition to equality of resources and equality of welfare, several other modes of equality may be distinguished: equality of opportunity, equal respect, equal rights, equal consideration, equal concern, and so on. My view is that none of these modes of equality is intrinsically valuable” (p. 68). Frankfurt argues by way of analogy: Just as it is irrelevant to judge someone’s individual economic situation by comparing it to someone else’s, it is also irrelevant to judge other aspects of his situation by comparing it to the situation of others: “Every person should be accorded the rights, the respect, the considerations, and the concern to which he is entitled by virtue of what he is and what he has done. The extent of his entitlement to them does not depend on whether or not other people are entitled to them as well” (p. 75). It’s easy to see why people feel badly when they see two radically different lives played out in front of their eyes, but moral condemnation of inequality loses a lot of its sting when it is pointed out that despite the enormous difference between the person who is incredibly well-off and the person who is less well-off, the person less well-off might still be doing fairly well. Frankfurt is right to keep on repeating that what we find upsetting is the situation of those truly suffering rather than that of a person who might not be as wealthy, as well respected, or have as many opportunities as a wealthy

person but who might still have enough to realize most of his individual needs and preferences.

Lastly, Frankfurt discusses the difference between treating people equally and treating them with respect, for he holds that the inability to differentiate between the two has contributed significantly to the moral appeal of egalitarianism. Whereas equality is concerned with impersonally levelling outcomes, respect takes into account information about those involved to decide on a suitable distribution. It's easy enough to see how respectful treatment might lead to different distributional outcomes. Ordinarily speaking, if some details of a situation are known, that will lead to diverging outcomes that pay suitable respect to the different individuals involved. Consider group publications in academia. Although each person mentioned as an author contributed to the research project, this does not automatically mean that all of them have an equal claim to be listed as primary authors. Some instigated the work or contributed disproportionately more than others. This will have different distributional outcomes because of the importance given to authorship of publications in making decisions about awarding tenure to academics. Primary authorship will carry more weight than secondary authorship.

What becomes interesting is when lack of information precludes an unequal distribution amongst a group of people. Here, Frankfurt cites an example given by Isaiah Berlin:

The assumption is that equality needs no reasons, only inequality does so. . . . If I have a cake and there are ten persons among whom I wish to divide it, then if I give exactly one tenth to each, this will not, at any rate automatically, call for justification; whereas if I depart from this principle of equal division, I am expected to produce a special reason. (p. 80)<sup>6</sup>

In contrast to Berlin, who assumes that equality is the default position, Frankfurt argues that in this case equality is in fact the right choice, but only because equality and respect coincide due to the *lack* of information. Dividing the cake unequally would be unfair because there is no reason to assume that some people can lay claim to more than the share they would receive under an equal distribution. The

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<sup>6</sup> Isaiah Berlin, "Equality," *Proceedings of the Aristotelian Society* 56 (1955-1956), pp. 281-326; quotation at p. 305.

equal distribution does not disrespect anyone, because it is not known whether they merit more than what they are currently getting. Although the equal distribution might be labeled respectful from the point of view of the person doing the distributing, individuals might feel disrespected due to the fact that they know their own situation and believe that they deserve more cake. At birthday parties, for example, it would be considered disrespectful to give everybody an equal amount of cake, when the person whose birthday it is knows that he or she deserves more cake on that specific day.

Frankfurt implicitly assumes that this is not a problem; dividing the cake equally is the only logical solution when no relevant information is available. Unequal distribution becomes the default option only when information is available. Upon closer inspection, however, this might not always be the case.

According to Frankfurt's reasoning, there are two possible distributions:

- (1) No information is available, so divide the cake equally amongst all the people.<sup>7</sup>
- (2) Information is available that shows different levels of merit, so divide the cake unequally.

Intuitively, (2) seems like a clear-cut case. Why would anyone deny someone's merit and disrespect them by giving them as much as everyone else, when it is clear that they deserve more? Frankfurt states this point well: "There is a sense in which being guided by what is relevant—thus treating similar cases alike and relevantly unlike cases differently—is an elementary aspect of being rational" (p. 84). However, is an equal distribution necessarily irrational even in cases where information concerning merit is available? Frankfurt seems to think so, although he denies that irrationality itself is necessarily immoral. One might argue that even with the existence of information that could prove an individual's superior merit, and thus claim to a larger piece of the cake, it would still be rational to distribute equally. The computational limits of the human mind might make it implausible to take into account all information about everyone's possible merit, especially since real-life situations will often involve a significant

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<sup>7</sup> I will not discuss cases in which there might be information about the people involved but the information shows that each of them has equal merit and thus should get an equal share.

number of people and not just ten (as in the example). Herbert Simon has made the case that the most rational thing to do in circumstances such as this, is to use the strategy of “satisficing” to get to a situation that is “good enough” rather than optimal.<sup>8</sup> Akin to the concept of “enough” discussed above, satisficing is about reaching a threshold and not a limit. It seems at least plausible that an equal distribution represents the most rational threshold given cognitive limitations.

*On Inequality* is elegantly written by one of the foremost philosophers of our time and provides a surprising amount of insight for such a brief book. Despite its accessibility and brevity, it is unlikely that it will have a significant impact on discussions on inequality, since it largely replicates previous work done by Frankfurt. Had more effort been put into updating and expanding the content, the book would stand out much more in the post-Piketty era.

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<sup>8</sup> Herbert Simon, “Rational Choice and the Structure of the Environment,” *Psychological Review* 63, no. 2 (1956), pp. 129-38, esp. p. 129.

Sommers, Tamler. *Why Honor Matters*, New York: Basic Books, 2018.

The primary goal of Tamler Sommers's *Why Honor Matters* is to offer a critical analysis of "dignity culture" and argue for the benefits of a "constrained honor culture." According to Sommers, "dignity frameworks" focus on abstract and ideal conditions.<sup>1</sup> Under such frameworks, every person has an objective value in virtue of being a person and, as such, there is little need to defend one's self-worth, as it cannot be diminished.<sup>2</sup> Sommers claims that, because of this, self-respect is free and shame has less force in dignity frameworks. "Honor frameworks," however, are both personal, as honor is closely tied to one's identity, and social, in that one's value is rooted in how others perceive you (pp. 26 and 17). Honor is notoriously difficult to define, but Sommers holds that honor is social, local, and committed to the idea that one's worth and respect is earned (pp. 15-24). You have honor, if those in your community respect you and value your worth in terms of local custom.

Sommers rejects dignity cultures because individuals in those cultures fail to take responsibility, expect inherent respect, are subject to hyper-individualism, and develop an increased aversion to risk, all of which lead to many of the problems we find in Western cultures. He, instead, argues that "honor has a lot to teach us and that we are wrong to ignore or reject it" (p. 9), in part because there are benefits to

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<sup>1</sup> Sommers uses "cultures" and "frameworks" in very similar ways. A culture is defined, in part, by its evaluative framework. Thus, a dignity culture is one which operates with a framework that evaluates persons and actions based on a person's immutable dignity and self-worth.

<sup>2</sup> The inherent self-worth of individuals in a dignity framework, as I see it, functions as a baseline from which one gains social respect. All that the dignity framework needs to be committed to is that self-worth cannot fall below a certain point. If this is true, then much of Sommers's objection with dignity frameworks, that an assumption of inherent respect makes people less responsive to important social pressures for promoting and discouraging behaviors, doesn't hit its mark.

reviving honor culture and utilizing its methods for social order. For example, Sommers thinks that we can reduce some of the problems we face, such as young people of color getting swept up in the school-to-prison pipeline, and increase social cohesion as a way to fight oppression.

One aspect of Sommers's project that I find particularly interesting is his case for introducing restorative justice, which he considers an "honor-based approach" (p. 153), into Western criminal justice systems, which are largely retributivist. Retributivist theories are grounded in the belief that we ought to punish in virtue of the fact that wrongdoers deserve punishment (p. 130). According to retributive justice, punishment is proportional to crime, crimes are committed against the state as a whole and not just the victim, and reason rather than emotion should dictate verdicts (p. 163). These demands make retributive justice dignity-based. Under dignity frameworks, justice is performed by a neutral third party because they will be better able to see the objective facts about guilt and culpability (p. 37).

However, retributivism fails to include the interests of those involved, such as victims, and misses the personal nature of being harmed. Honor-oriented systems of justice reject the view that justice has to be blind and impartial, so they are opposed to retributivist models of criminal justice (p. 157). Retributivism's commitments alienate victims and denies them a say in the punishment of the crime committed against them. While this claim is not a new one, the use of honor to defend it is a unique contribution to the literature. A personal approach where a victim can defend themselves to their attackers is, Sommers argues, a deeply honor-driven view. This can allow a victim to feel empowered and engaged in the justice process. In honor cultures, it is seen as shameful for someone else to settle a dispute; they "are expected to handle their own business" (pp. 17, 35, and 150). The ability for victims and offenders to engage each other, if they desire to, is clearly compatible with an honor framework, as it promotes a victim dealing with their victimizer (p. 36).<sup>3</sup>

An honor framework, though, can lead to oppression. Violence and aggression in honor cultures is a looming issue that Sommers's view faces. He attempts to address this concern by explaining the

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<sup>3</sup> Sommers doesn't argue that restorative justice is a replacement for our current system, only that it be included. He does think, though, that core principles of the criminal justice system should be abandoned (p. 153).

benefits of constrained honor while recognizing the risks of unconstrained honor cultures. A well-functioning honor culture strikes a balance between social rules that must be followed and personal freedom that keeps individuals from being oppressed (p. 29). A lot of work, however, is being done by the term “constrained” in order to produce a “well-functioning” honor culture. Constrained honor cultures promote individual virtues and healthy ways to address conflict in a wide range of cases, without abstracting away from the individuals and communities involved. Sommers argues that by restricting what kinds of rules ought to be adhered to, we can eliminate certain courses of action as clearly illegitimate.

In honor cultures, we can introduce constraints by having trusted elders in those communities call for them. The kinds of restrictions that would be necessary are those that Sommers points out in groups like *Becoming a Man (BAM)*, which argues for integrity, accountability, positive anger expression, self-determination, respect for women, and visionary goal setting (p. 207). First, they must be flexible and focus on building moral character. Second, they should be small in size and relatively egalitarian. Third, they ought to have a mix of younger and older members so that the older ones may impart knowledge and constrain the younger members’ actions. Fourth, they should have ways of resolving conflict that are personal and managed by skilled mediators. Fifth, they need to ensure that everyone’s needs are met in the group (pp. 208-10).

I’m sympathetic with this project and agree that many of what Sommers calls honor virtues, like courage, are undervalued, which can lead to a poor moral education. I also agree that improving moral education by promoting such virtues can solve many social problems. Much like Sommers, I’m partial to non-ideal theories of justice, as they are more sensitive to victims. One size rarely fits all. That being said, I find there are reasons to be skeptical of the project as it is described here: the first is theoretical, while the second is practical.

First, and most importantly, I have some theoretical concerns about the relationship between a commitment to honor culture and a constraint, such as those listed by *BAM* or the five elements of a properly functioning honor culture. While Sommers tries to mitigate oppression in honor cultures by introducing proper constraints, using constraints like those above can go two ways. First, such principles could be compatible with denying many basic standards of treatment, which could easily lead to oppression. Second, these principles could



have a dignity framework built into them. Either way, Sommers's view has a problem. I'll discuss these in turn.

First, principles like the five elements identified by Sommers are compatible with oppressive treatment. Flexibility, with an emphasis on building moral character, sounds nice. If it were too restrictive, it would fall afoul of the "one size doesn't fit all" view. However, the kind of moral character being built is purposely left ambiguous. It is well within the realm of possibility that moral character includes doing things that are "emotionally difficult" because it is "right," like honor-killing a loved one. The flexibility might be used to argue that one could choose other kinds of actions when dealing with an insult to the family honor, but notice that the ability to do otherwise does not constrain one from acting in this way. The fifth element is similarly compatible with oppression, as having basic needs met does not mean that the risk of maltreatment is lower. As in cases like segregation, basic needs were often met: communities were not denied access to food and water, or shelter or education. However, they were denied fair and equal treatment and the standard of the goods they were provided reflected the systemic oppression that existed. The fact that their basic needs were met served as a shield behind which racist oppressors hid.

The second of Sommers's elements is relatively unproblematic aside from the risk of xenophobia in one's own group and a distrustfulness of others. While not a significant risk for oppressive behavior, keeping groups relatively small is not clearly a constraint on it either.<sup>4</sup> The third element of cross-generational learning is also not itself a risk, but it is also not a clear constraint on oppressive behavior. The fourth element, which indicates a need for personalized conflict-resolution with the help of skilled mediators, may be better in helping to de-escalate potentially problematic situations, given that the mediator and the kinds of conflict-resolution are not prone to adopting violent or oppressive techniques. I can be a skilled mediator by manipulating one of two parties to be submissive or quiet in their oppression, which would de-escalate a situation and remove conflict. Beyond this, the need for a mediator at all seems in conflict with

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<sup>4</sup> There may be a further egalitarian concern that the second element risks constraining individualism too much. Maintaining a small group of people who constrain each other's behavior through social pressure may push too far in the direction of homogeneity and uniformity. This homogeneity may be oppressive in and of itself.

Sommers's view that it is disgraceful for the honor-bound person to have someone else handle their problems.

What about the second way of approaching these elements, so that they can stop oppressive kinds of behavior? In that case, a different problem arises. Honor cultures would be constrained to minimize the risk of oppression and other negative kinds of behaviors, but a dignity framework seems to have been smuggled in at the ground level. The only way to constrain honor behavior so as to avoid oppression, is to presuppose dignity-oriented terms and conditions. If it takes dignity to constrain honor so that it avoids the common objections regarding illegitimate violence, then why adopt the honor framework at all?

If we, instead, argue that such constraints still allow for honor to do its work in managing behavior, then we should still worry about internal conflicts between the two frameworks. If dignity means that people are due a certain level of treatment and respect and as such cannot be manipulated into submission by a mediator, while honor means that respect is not something we have inherently but is something earned, then we cannot hold both at the same time. If Sommers is right that constraints of this kind are compatible with dignity-oriented constraints, there needs to be a clearer argument for how they are compatible.

My second objection to Sommers's view concerns its practical implications. I will first explain Sommers's view about the practical benefits of honor language. Dignity culture, he argues, lacks the motivational oomph to get agents to act. This is because "it's difficult, maybe impossible, to feel connected to something as massive as all of humanity except in the most abstract and metaphorical manner" (p. 89). Honor frameworks, however, employ strong motivational moral emotions, like shame, through an instilled sense of concern regarding what others think. Sommers claims that without a deep sense of shame for acting wrongly, it is less likely that we will feel responsible for our actions (p. 17). Honor cultures also allow for the possibility of using honor language, such as shame, to produce real results. For example, shame language could decrease homicides that are caused by gun violence and participation in lifestyles that lead to imprisonment. Gangs already function within an honor framework, so the task is to determine how best to introduce constraints that can make it a well-functioning honor culture.

Despite Sommers's optimism about the efficacy of shame, the use of shame in communicating wrong action is, at best, overstated.

Those studying shame in the context of incarceration find that shame is both psychologically harmful to the incarcerated and ineffective in producing empathetic responses and decreasing recidivism.<sup>5</sup> Tangney et al. show that “shame often prompts defensive efforts to project blame outward, presumably hindering the ability to accept responsibility, to learn from one’s mistakes, and to use the pain of shame to motivate constructive changes in the future.”<sup>6</sup> The negative response to shame, along with a desire to hide from the pain of having a negative assessment of the self as worthless and powerless, leads to an externalization of blame.<sup>7</sup> Such responses increase the likelihood that an inmate will lash out and externalize blame, deny responsibility, or engage in escapism.

Furthermore, if we want restorative justice, then shame may be a bad method for achieving it. Tangney et al. state that “shame-proneness is (depending on assessment method) negatively or negligibly correlated with other-oriented empathy and positively linked with the tendency to focus egocentrically on one’s own distress.”<sup>8</sup> Such moral responses are not well suited for restorative justice, as empathetic responses seem essential to the effectiveness of this kind of justice. Thus, the practical outcome that Sommers claims his approach provides does not seem to be supported by the evidence. The role of honor as fundamental in ameliorating crime and oppression is, at best, unclear and, at worst, exacerbates problems regarding empathetic responses. While I’m sympathetic to the use of honor language as one aspect of moral development and to the importance of developing all of

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<sup>5</sup> June P. Tangney, Jeffrey Stuewig, Debra Masheke, and Mark Hastings, “Assessing Jail Inmates’ Proneness to Shame and Guilt: Feeling Bad About the Behavior or the Self?” *Criminal Justice and Behavior* 38, no. 7 (2011), pp. 710-734; quotation at p. 723.

<sup>6</sup> June P. Tangney, Jeffrey Stuewig, and Andres G. Martinez, “Two Faces of Shame: The Roles of Shame and Guilt in Predicting Recidivism,” *Psychological Science* 25, no. 3 (2014), pp. 799-805; quotation at p. 801.

<sup>7</sup> Verda Konstam, Miriam Chernoff, Sara Deveney, “Toward Forgiveness: The Role of Shame, Guilt, Anger, and Empathy,” *Counseling and Values* 46, no. 1 (2001), pp. 26–39; quotation at p. 27.

<sup>8</sup> June P. Tangney, Jeffrey Stuewig, Debra J. Mashek, “Moral Emotions and Moral Behavior,” *Annual Review of Psychology* 58, no. 1 (2007), pp. 345–72; quotation at p. 350.

the virtues, there are theoretical and practical problems with the argument Sommers provides.

Although I cannot endorse Sommers's view, I do think the book is worth reading. It does a good job of detailing how focusing too much on dignity can lead to problems in accepting responsibility and mobilizing action in the face of oppression. Sommers also makes a compelling case for restorative justice, despite the concerns I have raised regarding his argument for constrained honor. Retributivist justice excludes victims from criminal justice. Incorporating their wishes into our proceedings would benefit them by restoring their self-respect and by allowing inmates to see the pain they have caused, which may be effective in promoting guilt rather than shame.

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