

REASON PAPERS

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July 2014

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Editorial

While superstition is anathema to philosophers like us, let's face it: 2013 was, true to all numerological portents, an ill-omened year for *Reason Papers*. Both of the journal's editors began the year with medical ailments that required surgery, delaying volume 35, number 1 by more than a month. Having gotten the issue out, Khawaja decided that the time was ripe to fall ill yet again, and then decided to take his time recovering from his illness, emerging from it at last in mid-February 2014.

The fall of 2013 also brought the dread plague of "financial exigency" to Khawaja's institution, which then became the basis of his college's zealous quest to divest itself of a fair proportion of its full-time faculty. In other words, having run out of money, the college began to *fire* people big time. In consequence, Khawaja spent a fair bit of the fall of 2013 preoccupied with the prospect of unemployment, only narrowly to escape the wrath of the bean counters. Meanwhile, Biondi, in exemplification of the maxim that no virtue goes unpunished in the academy, was given the equivalent of capital punishment for her time-consuming and labor-intensive service on a series of college-wide standing committees. That is to say: she was forced to become chairperson of her department, a gulag in which she remains imprisoned for the foreseeable future.

In a final blow, the Mises Institute, which had hosted *Reason Papers*'s server *gratis* for more than a decade, suddenly announced that it would no longer be able to do so, thereby jeopardizing the very existence of the journal. That induced a panic-stricken search by the editors to find a replacement server, which succeeded only as the year came to a welcome end.

Well, hardship, as the good Lord puts it, is followed by ease.¹ And fortunately, by all accounts—numerological, theological, and straightforwardly factual—2014 is proving to be a more provident year for *Reason Papers*, and not coincidentally, for its editors. As just remarked, in late 2013, we managed to migrate the journal's content from the Mises Institute's server to a new one presided over by a new webmaster, Blake Barber. We're very grateful both to Blake and (yet again) to Stephan Kinsella, who helped enormously with the transition from the one server to the other, a transition complicated by the editors' Luddite incomprehension of the technical details of the move. Have a look at the newly refurbished *Reason Papers* website for changes to our submission deadlines and the like. While you're there, feel free to check out the new look of the site, as well as the re-organization of the "Books for Review" page, and its transformation into a "Books *and* Films for Review" page.

In practical terms, we've decided to dispense altogether with *Reason Papers* volume 35, number 2, publishing what was supposed to be our fall

¹ Qur'an, 94:6.

2013 issue now, in July 2014, and re-labeling it volume 36, number 1. To keep to our twice-a-year publication schedule, we'll publish *Reason Papers* volume 36, number 2 late in December 2014, but from 2015 onward, we'll be publishing (roughly) in February and September of each year rather than in June and October as we previously had. Academic readers will immediately see the rationale for the changes: February and September publication dates allow us to use winter and summer breaks, respectively, to get the editing done.

If there's a silver lining in the star-crossed events of 2013, it may well come from the abrupt decoupling of *Reason Papers* from the Mises Institute's server. While we were grateful for the free hosting they gave us, *Reason Papers*'s presence on the Mises server was a decision made by our predecessors at the journal, and was one we followed by default, rather than by reason of any implicit or explicit alliance between the journal and the Institute. The marriage of convenience nonetheless continued to have misleading implications, suggesting as it did to some readers (despite our protestations) that *Reason Papers* was in some sense the "house journal" of the Mises Institute.

As it happens, one editor strongly disagrees with the Mises Institute's ideological agenda and activities; the other editor is mostly indifferent to them. More to the point, as we insisted in our inaugural editorial back in 2011, despite the prevalence of Objectivist and libertarian material in *Reason Papers*, we don't regard the journal as the instrument of any party, doctrine, or faction. In other words, *Reason Papers* is not an Objectivist, libertarian, or even broadly classical liberal journal in the way that, say, *The Objective Standard*, *Libertarian Papers*, or *The Independent Review* are, or that *The Journal of Libertarian Studies* was. Nor, like *The Journal of Ayn Rand Studies*, is *Reason Papers*'s editorial mission set by a specifically Rand-oriented agenda, or for that matter, a libertarian or otherwise doctrinal one. We've repeatedly insisted instead that *Reason Papers* is a general-interest, non-partisan interdisciplinary journal modeled to some degree on publications like *Arion*, *Critical Review*, *The Common Review*, *Democratiya*,² *n+2*, *The New York Review of Books*, *Public Affairs Quarterly*, *Raritan*, and *Social Philosophy and Policy*—broader in scope than *Arion* or *Public Affairs Quarterly*, more formal than *Raritan*, less formal than *Social Philosophy and Policy*, less hip than *n+2*, and less narrowly ideological than *The New York Review*, but similar to all of them in its intention to occupy the difficult-to-characterize discursive space between specialized academic writing and high-level journalism.

² *Democratiya* was an online quarterly, now defunct, edited by Alan Johnson (a sociologist at Edgehill University, in Lancashire, UK), and dedicated to the discussion of "radical democratic political theory." It published sixteen issues between 2005 and 2009; its archives are now housed at the website of *Dissent* magazine.

As many readers will remember, recent symposia at *Reason Papers* have featured discussions of Sari Nusseibeh's *What Is a Palestinian State Worth?* and Jason Brennan's *The Ethics of Voting*.³ As remarked in a previous editorial, Brennan's book in effect stands to Nusseibeh's as theoretical framework to case study: where Brennan argues in an essentially American political context that some citizens ought not to exercise their right to vote, Nusseibeh offers a one-state solution to the Israel/Palestine dispute according to which Israel grants Palestinians civil rather than political rights, thereby precluding Palestinians' right to vote.

The two symposia in the current issue bear a somewhat similar theory-to-case-study relation to one another. The first, on *Democracy and Moral Conflict* by Robert Talisse (Vanderbilt University), concerns the so-called "paradox of democracy" which Talisse describes and hopes to resolve in the book:

Democratic authority owes to the ability of democracy to *justify* itself to its citizens But the liberties secured by liberal democracy ensure the emergence of a plurality of moral commitments among citizens. In [some] cases, it is not clear that any *moral* justification for democratic authority could succeed; proposed justifications of this kind will often look strikingly question-begging. So it seems that democracy produces the conditions for its own demise. It upholds a conception of political justification that it cannot satisfy precisely in those cases where a justifying story is needed most.⁴

What's striking about Talisse's resolution of the apparent paradox is its epistemic and discursive orientation:

[T]he folk epistemic commitments *we already endorse qua believers* provide reasons to sustain our democratic commitments—including, crucially, our commitments to pursuing only democratic means of effecting social change—even when confronted with collective decisions that we must regard as morally unacceptable.⁵

³ Symposium on Sari Nusseibeh's *What Is a Palestinian State Worth?* *Reason Papers* 34, no. 2 (October 2012), pp. 15-69; Symposium on Jason Brennan's *The Ethics of Voting*, *Reason Papers* 35, no. 1 (July 2013), pp. 11-57.

⁴ Robert Talisse, "Précis of *Democracy and Moral Conflict*," *Reason Papers* 36, no. 1 (July 2014), p. 16.

⁵ *Ibid.*, p. 17.

The symposium begins with a précis of the book by Talisse, followed by commentaries by Joseph Biehl (Felician College) and Chris Herrera (Montclair State University), and ending with a response by Talisse.⁶

Our second symposium is a (regrettably belated) retrospective look at “Waco”—the popular name for the violent 1993 confrontation between the U.S. federal government and the Branch Davidians, a fundamentalist religious sect led by David Koresh and based at the so-called Mt. Carmel complex near Waco, Texas. The symposium begins with an editorial introduction by Irfan Khawaja (Felician College), and includes contributions by four eminent experts on this now half-forgotten event: Michael Barkun (Maxwell School, Syracuse University), author of *Culture of Conspiracy: Apocalyptic Visions in Contemporary America*; Paul Blackman and David Kopel (Independence Institute), co-authors of *No More Wacos: What’s Wrong with Federal Law Enforcement and How to Fix It*; and Dick Reavis (North Carolina State University), author of *The Ashes of Waco: An Investigation*.

“What,” we asked our symposiasts, “would you say that we’ve learned—or ought to have learned—from Waco two decades after the fact?”⁷ The answers are complex, but one relatively simple answer can be inferred from the juxtaposition of the Waco symposium and the one on *Democracy and Moral Conflict*. Waco is what happens when the folk-epistemic commitments we “endorse” as believers *don’t* provide “us” with reasons to sustain “our” democratic commitments. In this light, the Waco tragedy is a complex, vivid, life-or-death depiction of Talisse’s paradox of democracy in modern American life. What it depicts are the stakes involved in a collective failure to live up to the epistemic-discursive conception of politics that Talisse so ably defends. And “Waco” is just one token of a recurring type of event.

In a sense, *all* of democratic politics stands as case study to the theorizing and dramatics of ancient Athens. To that end, two items in this issue explore the resources of ancient Greek thought and drama for contemporary ethico-political concerns. Anne Mamary (Monmouth College) reflects on the hope that she finds in the work of the poets Plato and Aristophanes, articulating an ethics and aesthetics of hope with strikingly contemporary resonance. By contrast, in a review of Eugene Garver’s recent work on Aristotle’s *Politics*, David Riesbeck (Rice University) suggests that

⁶ The *Democracy and Moral Conflict* symposium was originally an Author-Meets-Critics session at Felician College (Lodi, NJ) sponsored by the Felician Ethics Institute (October 27, 2012), and organized by Joseph Biehl and Irfan Khawaja. Thanks to Rob Talisse, Joe Biehl, and Chris Herrera for permission to publish their work in *Reason Papers*. One presentation at the original event has been published elsewhere: Steven Ross, “Review of *Democracy and Moral Conflict*,” *Essays in Philosophy* 14, Issue 1, Article 9 (2013), accessed online at: <http://commons.pacificu.edu/eip/vol14/iss1/9/>.

⁷ We’d originally planned the symposium roughly to coincide with the twentieth anniversary of the event, but due to the delays mentioned in the text, we’ve ended up running the symposium on its twenty-first anniversary.

for Garver, what is illuminating about the *Politics* is its *distance* from twenty-first century concerns: Garver's book, Riesbeck suggests, "argues that the *Politics* remains valuable for us today precisely because the many glaring differences between Aristotle's world and our own help us 'better to see ourselves by contrast.'"

Our July 2013 issue featured the journal's first recent engagement with the topic of free will and, generally, with topics in the philosophy of mind. In that issue, Eyal Mozes offered a stringent critique both of Sam Harris's rejection of free will and of the conception of causality presupposed by that critique, defending agent causation as an alternative to it.⁸ Despite its eminent philosophical pedigree, agent causation has often struck hard-boiled physicalists as an obscure, mystical, and incoherent idea. Two reviews in the current issue demystify agent causality a bit, the first a discussion by Bernardo Aguilera (University of Sheffield) of Eric Marcus's *Rational Causation*, the second a discussion by Frank Scalabrino (University of Dallas) of James Swindal's *Action and Existence: A Case for Agent-Causation*. Both reviews stress the connection between agent-causation and the explanation of action, serving implicitly to tie issues in the philosophy of mind to issues in ethics and meta-ethics, and by implication to the journal's core interest in normative studies.

The topic of agent-causation bears an interesting relation to another well-represented topic in this issue: ethical egoism. An agent is not just an entity *capable* of action, but a metaphysically unified entity that *initiates* action. An egoist—on one interpretation of an intensely contested concept—is an agent who initiates action for the sake of unifying her agency, and thereby maintains her identity by the actions she initiates. So while an agent-causal philosophy of mind concerns itself with the metaphysical conditions under which an agent initiates action, ethical egoism asks and answers meta-ethical questions about what an agent *ought* to pursue in order to preserve her own agency qua human.

The *locus classicus* of contemporary ethical egoism is, of course, Ayn Rand, and two items in the current issue focus directly on Rand's ethical thought. Mark LeBar (Ohio University) reviews *Meta-Ethics, Egoism, and Virtue*, the first volume in the Ayn Rand Society Philosophical Studies (ARSPPS), a planned multi-volume series on Rand's thought sponsored by the Ayn Rand Society. On the whole, LeBar finds himself unconvinced by the ARSPPS effort: "though I am sympathetic with Rand's work as social criticism, whether there are new avenues for addressing contemporary metaethical issues to be found in her work remains to be seen." Meanwhile, Irfan Khawaja comes at Rand's egoism from just the reverse direction, taking issue with academic philosophers' treatments of Rand in textbooks and anthologies intended for undergraduates. Finally, Gary Jason (California State University,

⁸ Eyal Mozes, "Review of Sam Harris, *Free Will*," *Reason Papers* 35, no. 1 (July 2013), p. 161.

Fullerton) offers the first of a three-part series on the depiction of egoists and egoism in film.

Khawaja's discussion of Rand's treatment at the hands of contemporary textbook editors reminds us of the often overlooked role of reputation in philosophy. To be taken seriously in philosophy, one needs a reputation that certifies that one is *worth* taking seriously; a philosopher who lacks the relevant sort of reputation will go unread regardless of the brilliance (or supposed brilliance) of his arguments. Ayn Rand is one example of a philosopher currently lacking the sort of standing in the field that makes her worth taking seriously within it, but she's not the only one. Both Robert Nozick and Karl Marx fit the bill from opposite ends of the political spectrum. Both Nozick and Marx are, to be sure, taken seriously by a devoted coterie of libertarians and leftists, respectively, and both are (unlike Rand) accorded a grudging sort of tolerance in academic philosophy that occasionally borders on respect. But like Rand, both Nozick and Marx also tend to elicit eye-rolling condescension by mainstream philosophers.

The point is vividly put in this way about Nozick by Hilary Putnam:

I say I respect Bob Nozick's mind, and I certainly do. I say I respect his character, and I certainly do. But if I feel contempt (or something in that ballpark) for a certain complex of emotions and judgments in him, is that not contempt (or something like it) for *him*?⁹

All things considered, Putnam thinks it is.

And Marx doesn't do much better, at least within mainstream analytic departments. After all, the very description of analytic Marxism (by analytic Marxists) as "Non-Bullshit Marxism" implies that *non-analytic* (a.k.a. "dialectical") Marxism is little *more* than bullshit.¹⁰ The point is put somewhat more decorously in this way by David Miller in a review of G. A. Cohen's classic defense of analytic Marxism, *Self-Ownership, Freedom, and Equality*: "[T]he book is an outstanding example of the intellectual gains to be won by clear and rigorous thinking about questions that are usually blanketed by ideological fog."¹¹ The implication would seem to be that non-Cohenite Marxism is unclear, sloppy thinking blanketed by ideological fog. In any case,

⁹ Hilary Putnam, "Reason and History," in Hilary Putnam, *Reason, Truth, and History* (Cambridge: Cambridge University Press, 1981), p. 165.

¹⁰ G. A. Cohen, *Karl Marx's Theory of History: A Defence*, expanded ed. (Oxford: Oxford University Press, 2000), p. xxv.

¹¹ David Miller, "My Body Is My Own," *London Review of Books*, October 31, 1996, reviewing G. A. Cohen, *Self-Ownership, Freedom, and Equality* (Cambridge: Cambridge University Press, 1995), accessed online at: <http://www.lrb.co.uk/v18/n21/david-miller/my-body-is-my-own>.

even in its most accepted forms, analytic Marxism remains an outlier within analytic philosophy itself.

Predictably, this outlier status infuriates those who sense the subterranean contempt that their colleagues feel for them, and occasionally decide to write books intended to set those colleagues straight once and for all. Mark D. Friedman's *Nozick's Libertarian Project: An Elaboration and Defense*, reviewed here by independent scholar Danny Frederick, aims to rehabilitate Nozick's libertarianism. Meanwhile, Terry Eagleton's *Why Marx Was Right*, reviewed here by C. Upendra of the Indian Institute of Technology at Indore, aims to do the same for Marx and Marxism. Readers can decide for themselves whether the Nozick and/or Marx depicted by our reviewers deserve renewed respect or continued contempt.

Ironically, one and the same recent event seems, depending on one's perspective, simultaneously to confirm and disconfirm both Nozickian libertarianism and Marxian communism—namely, the global financial crisis that began in 2008. On the one hand, in demonstrating capitalism's persistent liability to depressions and its concomitants (mass unemployment, economic dislocation, etc.), the financial crisis seems to constitute a large-scale objection to libertarian capitalism on par with the Great Depression of 1929, and in so doing, offers comfort to Marxism. On the other hand, in demonstrating capitalism's persistent tendency to *survive* the depressions it's thought to create, the same crisis seems to raise difficulties for Marxism while offering comfort to libertarian defenders of capitalism. The dispute turns on the difficult question of the right causal explanation for the crisis itself. Eileen Norcross and William Thomas shed new light on that puzzle, reviewing books that discuss the precursors and aftermath of the financial crisis. Though not directly concerned with the financial crisis itself, Jared Meyer and Gary Jason offer reviews of books on allied topics—Austrian economics and business ethics, respectively.

As high school students and undergraduates in the late 1980s and early 1990s, both editors of this journal were indoctrinated by our mentors in the belief that the Port Huron Statement of 1962 represented the apex of moral idealism for young adults of our age, and that the leaders of the (by-then essentially defunct)¹² Students for a Democratic Society (SDS) ought forever to serve as our role models in moral and political affairs. This fulsome preface to the Port Huron Statement in a standard college anthology is typical of the party line we encountered in our own educators:

What remains most impressive from the Port Huron Statement . . . is its moderation, its faith that change can take place within the system, its conviction that social democracy could be achieved quickly and effectively, without revolution. The Port Huron Statement speaks

¹² A new SDS organization was formed in 2006; see <http://www.newsds.org/>.

eloquently to the idealism of a generation of student activists. Just as eloquently, it testifies to their innocence.¹³

Though as a high school/college student one of us wrote in defense of sanctions against *apartheid* South Africa and in defense of the (first) Palestinian *intifada*, and demonstrated against the Gulf War of 1991, neither of us ever found SDS or its activities all that “impressive.” Both of us were alienated by Mark Rudd’s nihilism, put off by the essential banality of the entire SDS program, and put off as well as by the axiomatic allegiance to the Left implicit in the SDS enterprise.

Recent years have seen the rise of an international student organization, Students for Liberty (SFL), loosely modeled on SDS, but distinctively libertarian in outlook, and unlike the old SDS, powerfully outfitted for electronic/virtual/social-media-oriented politics in the twenty-first century. Both comparisons and contrasts with SDS leap readily to mind. Like the SDS-ers, the SFL-ers, “bred in at least modest comfort,” are “housed now in universities,” and look “uncomfortably to the world” they inherit.¹⁴ What annoys them, however, is that they appear to be inheriting a hell of a lot of debt—debt they appear to want to repudiate by abolishing not just the “the welfare state,” but income redistribution as such. A proposal to abolish income redistribution wouldn’t have gotten very far at SDS, and yet there are interesting affinities between the SDS and SFL enterprises—a similar anti-imperialist strain, a similar political radicalism, a similar moral energy, a similar strain of youthful zealotry, and, in fact, a similar preoccupation with the politics of the Left.

From an old-fogey perspective of the sort occupied by the editors of this journal, SFL seems like an interesting phenomenon to observe, talk about, and interact with. This issue’s engagement with SFL consists of a review by Matt Faherty of the SFL pamphlet *After the Welfare State*. Faherty is a one-time SFL activist and 2014 graduate of the University of Chicago, where, as a history major, he wrote a senior thesis on the Treasury Secretaries of the

¹³ William H. Chafe and Harvard Sitkoff, eds., *A History of Our Time: Readings on Postwar America* (New York: Oxford University Press, 1983), p. 229. Though he doesn’t specifically mention SDS, Chomsky’s assessment of The New Left (in 1970) is similar: “In his manifesto of 1865, Bakunin predicted that one element in the social revolution will be ‘that intelligent and truly noble part of youth which, though belonging by birth to the privileged classes, in its generous convictions and ardent aspirations, adopts the cause of the people.’ Perhaps in the rise of the student movement of the 1960s one sees steps towards a fulfillment of this prophecy.” Noam Chomsky, “Notes on Anarchism,” accessed online at: <http://www.chomsky.info/articles/1970----.htm>. Thanks to George Abauza for directing us to Chomsky’s essay.

¹⁴ From the Port Huron Statement, excerpted in Chafe and Sitkoff, eds., *A History of Our Time*, p. 229.

Gilded Age. His review here is the first of a series of undergraduate articles and reviews we'd like to run discussing SFL's activist and outreach materials. We welcome reviews from outside of the libertarian/SFL fold as well as by SFL insiders, and welcome commentary on the movement for our Afterwords department. We can't promise ahead of time to be "impressed," but we can promise a fair and vigorous debate.

We're not superstitious, but it *cannot* be a coincidence that in strictly numerological terms, "2014" is a 20 plus two lucky sevens. Our lucky year?

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Symposium:
Robert B. Talisse's *Democracy and Moral Conflict*

Précis of *Democracy and Moral Conflict*

Robert B. Talisse
Vanderbilt University

Democracy and Moral Conflict is an attempt finally to get right an idea that I've been fixated on since starting in philosophy.¹ That idea, roughly, is this: Democracy is about epistemology, and epistemology, being about conduct, is a normative enterprise. My central claim is that each of us has sufficient epistemological reasons to be democrats, even when our moral reasons for democracy run out. I admit that this is a striking thesis. Most often the case for democracy is presented as a *moral* case, and many have found the very idea that there are *epistemological* reasons to endorse democracy far-fetched. Accordingly, I've been pressed on the details. With the help of Joe Biehl and Chris Herrera, I here have another opportunity to attempt to get this right. These opening remarks sketch the main thread of argument in *Democracy and Moral Conflict*.

Democracy and Moral Conflict proceeds in four stages. First, I identify a *political* problem that has received little attention from theorists: the *Problem of Deep Politics*. Second, I argue that this *political* problem gives rise to a *philosophical* problem: the *Paradox of Democratic Justification*. Third, I argue that leading democratic theories are *unable* to resolve this paradox. Fourth, I develop a *folk-epistemic* view of democracy that resolves the Paradox of Democratic Justification and addresses the Problem of Deep Politics. I will not here rehearse the critical arguments that comprise the third phase of the argument, but instead focus on the others.

First, the Problem of Deep Politics emerges from the fact that we can no longer see democracy simply as a procedure for making collective decisions by fairly aggregating individuals' preferences. Proceduralism fails because we can no longer see *preferences* as the *currency* of collective decision-making. For a range of complicated reasons, we now recognize that

¹ Robert B. Talisse, *Democracy and Moral Conflict* (Cambridge: Cambridge University Press, 2009).

democracy decides in matters about which citizens' most fundamental *moral* commitments are at stake. We get a *problem* from the fact that it is frequently the case that when democracy decides, some citizens lose; democracy presents them with a collective decision that they must regard as not only disappointing or suboptimal, but morally intolerable. But democracy also claims the authority to identify which reactions to such outcomes are morally permissible; indeed, democracy claims the authority to punish severely those who respond to morally intolerable democratic outcomes in forbidden ways.

When this is combined with a leading feature of liberal democratic theory, we get *The Paradox of Democratic Justification*. To explain: Democratic authority owes to the ability of democracy to *justify* itself to its citizens. That justification typically proceeds in moral terms, but the liberties secured by liberal democracy ensure the emergence of a plurality of moral commitments among citizens. In the Deep Politics cases, it is not clear that any *moral* justification for democratic authority could succeed; proposed justifications of this kind will often look strikingly question-begging. So it seems that democracy produces the conditions for its own demise. It upholds a conception of political justification that it cannot satisfy precisely in those cases where a justifying story is needed most.

I propose, then, a set of *epistemological* reasons why citizens should sustain their democratic commitments even when democracy delivers a collective result that strikes them as morally intolerable. The claim is that there is a set of *folk-epistemic* norms governing belief as such. By describing these norms as *folk*, I mean to convey, first, that they're not the *products* of philosophical reflection, but comprise in large measure the data that philosophical theories of epistemology must try to preserve and explain. Second, I also mean to convey that the *folk-epistemic* norms are normative *for the folk*. That is, we *take ourselves* to be governed by them. The argument here is that there are certain epistemic norms such that, when you assess one of your beliefs as being in violation of any of them, either the belief dissolves or your comportment toward the belief significantly changes. The most obvious case is when you assess one of your beliefs as violating the *truth norm*: "I believe that *p*, and *p* is false." As G. E. Moore observes, this first-personal assessment typically has the effect of *undoing* the belief that *p*.² My folk-epistemic argument attempts to build on to the *truth norm* other norms governing our beliefs, particularly with respect to evidence and supporting reasons. So consider the self-assessment, "I believe that *p*, but all of my reasons support *not-p*" or "I believe that *p*, but my reasons for *p* fail." To be sure, this is not as strong an indictment of the belief that *p* as the Moorean case, but it's an indictment nonetheless. To assess oneself in any of these ways is to acknowledge some kind of epistemological shortcoming: One has failed to track one's evidence. Finally, consider a self-assessment like this: "I

² G. E. Moore, "Moore's Paradox," in *G. E. Moore: Selected Writings*, ed. Thomas Baldwin (London: Routledge, 1993), pp. 207-12.

believe that *p*, but I systematically ignore all of *p*'s critics," or "I believe that *p*, but all of my evidence has been carefully rigged by the Minister of Truth." Again, such assessments are probably not enough to undo the belief by themselves, but they do signal that something's amiss epistemologically. When we encounter a belief that we hold and assess in this way, we feel compelled to tell ourselves a story about the aptness of the belief, and if such a story fails, we find ourselves revising, adjusting, or abandoning it.

From these a case can be built for there being three basic folk-epistemic norms: *Truth*, *Evidence-tracking*, and *Evidence-responsiveness*. The case for democracy emerges from the consideration that these norms can reliably be satisfied only within a certain kind of social-epistemic environment. For example, one can take oneself as satisfying these norms only if one can assess oneself as functioning within an epistemic environment that permits reasons and evidence to be exchanged freely and assessed openly. Democracy is the political order that most reliably secures that kind of environment.

The upshot, then, is that the folk-epistemic commitments *we already endorse qua believers* provide reasons to sustain our democratic commitments—including, crucially, our commitments to pursuing only democratic means of effecting social change—even when confronted with collective decisions that we must regard as morally unacceptable. The appeal to folk-epistemological norms resolves The Paradox of Democratic Justification, since it enables a justification for democracy that appeals to a kind of normativity that is not subject to the "fact of reasonable pluralism."³ But the folk-epistemic argument also points the way toward addressing the *political* problem of Deep Politics, as it identifies, *on the basis of epistemological norms already in place*, a mode of political engagement appropriate for free and equal democratic citizens. It seems to me that it also allows for compelling arguments concerning the need for democratic states to enact policies aimed at maintaining a healthy social-epistemic environment (including the protection of public spaces and political campaigns from commercial encroachment, and much else). Accordingly, the folk-epistemic argument points to a unique variety of perfectionism: *epistemic perfectionism*. This is the view according to which the democratic state may indeed promote a certain kind of good among its citizens, namely, the epistemological goods associated with capacities for open inquiry, the free exchange of reasons, and reasoned debate and criticism.

In short, the folk-epistemic argument attempts to show that, despite all of the important respects in which we are deeply divided at the level of our moral convictions, we nonetheless share a set of epistemological norms that are robust enough to provide an independent and compelling case for sustaining our democratic commitments, even when democracy produces

³ See John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), p. 24 n. 27.

collective decisions that we must regard as seriously morally flawed. That, in any case, is the hope.

Comments on Talisse's *Democracy and Moral Conflict*

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1. Introduction

“Public philosophy” isn’t easy to do well. It requires threading the needle between the desire to connect meaningfully with a non-professional audience on matters of decidedly everyday import, of practical rather than merely theoretical concern, on the one hand, and the demanding professional standards that one must acknowledge when attempting theoretical solutions to practical problems, on the other. While writing for a non-professional audience, the philosopher nevertheless hopes that there will be some pros that come along for the ride, and he doesn’t want to lose them, doesn’t want to be accused of cutting any uncuttable corners. But while careful to exhibit the appropriate fidelity to philosophy, the socially minded writer cannot forget the public nature of his primary audience, nor of the problem he has taken pen to paper to address.

With respect to his learned, insightful, probing, clever, and earnest *Democracy and Moral Conflict*, Robert Talisse should have little to worry about from the pros keeping tabs to see whether he’s crossed his t’s and dotted his i’s.¹ But whether he has convinced his popular readership—indeed, his fellow citizens—that he has a workable solution to their problem, the problem of providing a justification of democratic society under conditions of deep moral pluralism, is another matter.

I believe that he hasn’t—not because the attempt is fumbled, because his prose isn’t up to the task, or because his solution to the problem of contemporary democracy leans on faulty arguments (though I am not without nits to pick), but rather because we have reason to think that no such attempt *could* succeed. To borrow and bend a remark of John Rawls (which is quoted in Talisse’s book), the question that *Democracy and Moral Conflict* tries to answer in fact has no answer. That is, there is no philosophically principled solution to the problem of “deep politics,” or so I’ll argue here.

¹ Robert B. Talisse, *Democracy and Moral Conflict* (Cambridge: Cambridge University Press, 2009). All parenthetical page references within the body of the article will refer to this text, unless explicitly specified.

2. The Problem of Deep Politics

The problem of “deep politics” is the problem a democracy faces when its citizens have become divided (antagonistically) over the core values that they believe to be the basis of their communal bond and which they believe their democratic institutions are ultimately meant to serve. What can be said to members of such a divided polity? How can we *justify* to them—to each and every one of them—their continued commitment to their democracy *whether or not* their particular version of the core values is upheld? How can we prove to them that their sustained membership in the democratically regulated political community is appropriate *even though* their understanding of the nature and purpose of that community has been publicly repudiated?

We do this by appealing to them in their capacity as proper epistemic agents, agents who operate in a “social-epistemic system” (p. 142), that is, fundamentally defined by the pursuit of true beliefs fixed and maintained via a process of “open reason-exchange” (pp. 104-5 and 143-44). Talisse argues that our interest in believing what is true, an interest each of us has regardless of our peculiar moral positions and simply in virtue of being believers, commits us to remaining “open to the kind of epistemological engagement that is possible only within a democratic political order” (p. 144). The advertised merit of this proposal is its putative moral-neutrality: it does not attempt to sustain democratic allegiance by appealing to some *moral* value—be it justice, equality, liberty, opportunity, or what have you—that the democrat might especially be expected to cherish. Any such attempt is bound to fail, Talisse insists, because the problem of deep politics just *is* the lack of agreement on the interpretation and importance of these values. If we could rely on every democratic citizen not only to understand, say, justice in the same way, but also to insist on it with equal fervor, we wouldn’t find ourselves in the deeply contentious state we’re in.

Before sizing up Talisse’s epistemological solution, it behooves us to dwell a bit more on the problem as well as the alternative solutions that he rejects.

3. Whose Politics

We find ourselves in deep conflict with one another, but it would seem from Talisse’s repeated characterization of the problem, that this wasn’t always so. Consider some of his claims:

Increasingly we find that the political issues we must face unavoidably call into play our most fundamental moral commitments, our judgments concerning what is really important, what is ultimately valuable, what makes life worth living. (p. 2, bold mine)

[T]here is good reason to think that, under **current** conditions, freedom, autonomy, dignity, liberty, and equality are *essentially*

controversial—no elaboration of the details of their content can win widespread and sustainable agreement. (p. 4, bold mine)

The paradox of democratic justification pervades our politics; **contemporary** democratic societies are plagued with controversies and clashes that emerge from the need for a democratic political order to justify itself to a morally and religiously conflicted citizenry. (p. 15, bold mine)

[D]emocracy is **losing** its grip on citizens who feel **increasingly** that the **current** state of politics is morally intolerable. (p. 36, bold mine)

But if we are being confronted with a recently emerging (and worsening) phenomenon, we should ask *why now?* What has changed? What's *happened* to our politics? More pointedly, what's happened to *us*?

Of course this last question suggests another: *who* is “us”? This question isn't, I believe, idle. Whether this is a problem for contemporary *American* democracy, rather than a problem for contemporary democracy, as such, would presumably affect how it might be addressed. I'm not sure that Talisse takes this possibility seriously. While he acknowledges that his discussion is decidedly American-centric, he attributes this to his relatively superior knowledge of the American political landscape. He also insists that “folk epistemological” principles at the heart of his solution are not cultural-specific, but that is a different issue from whether the problem is.

Nonetheless, that Talisse thinks that the problem is endemic to democracy as such (or perhaps *liberal* democracy as such),² is evident from his acceptance of Rawls's characterization of the ethical landscape of liberal democracy, which takes “a reasonable pluralism” of “comprehensive doctrines,” doctrines according to which their adherents come to understand what counts as a *good* life, to be a “fact” of a free society. As Rawls in one place puts the point:

[T]he diversity of comprehensive religious, philosophical, and moral doctrines found in modern democratic societies is not a mere historical condition that may soon pass away; it is a permanent feature of the public culture of democracy. Under the political and social conditions that the basic rights and liberties of free institutions secure, a diversity of conflicting and irreconcilable comprehensive

² While Talisse finds the qualifier “liberal” not particularly illuminating, the account of democracy he gives importantly embodies many of the individual rights and protections—of speech, thought, press, religion—that are often taken as essential to “liberal” regimes. See Talisse, *Democracy and Moral Conflict*, p. 14 n. 1, as well as the discussion at pp. 43ff.

doctrines will emerge, if such diversity does not already exist. Moreover it will persist and may increase.³

Talisso concurs, acknowledging that “[d]emocratic politics cannot proceed from a settled consensus on a comprehensive moral doctrine because no such consensus is likely to exist among free and reasonable persons” (p. 153). The seeds of the contemporary problem of democracy, a problem that threatens to tear it apart, would seem to have been sown right from the start, and *necessarily so*. The problem must therefore be structural. The establishment of a (liberal)⁴ democratic political order begins with the official enshrinement of a public/private distinction regarding normative matters. In a democracy the public institutions, and in particular the law, are exclusively in the service of *political* interests, such as access to and distribution of various goods and powers that can be expected to be needed and coveted by *every* citizen, regardless of the *moral* interests they might hold. By constitutionally excluding those substantive moral interests over which disagreement can be expected from the purview of these institutions (save for charging them with the responsibility of guaranteeing each individual’s liberty to decide those matters for herself), they are effectively privatized. But once these matters are handed over to the individual, disagreement about them will not merely be expected but essentially guaranteed to increase. And what the problem of deep politics implies is that there is a tipping point in a democratic society when its moral diversity has become so rich—or so divisive—that its political unity is under threat. Sufficiently deep moral fragmentation augurs political fragmentation.

It is among the virtues of Talisso’s book that it helps us to recognize just how moral fragmentation occurs. Appealing to recent work in economics and epistemology, Talisso draws our attention to the phenomenon known as “group polarization,” whereby “members of a deliberating group, predictably move toward a more extreme point in the direction indicated by the members’ predeliberation tendencies.”⁵ Applied to the present topic, the privatization of the moral domain encourages group polarization: individuals who share certain comprehensive doctrines will naturally seek each other out, sharing

³ John Rawls, “The Domain of the Political and Overlapping Consensus,” in *Debates in Contemporary Political Philosophy*, ed. Derek Matravers and Jon Pike (London: Routledge, 2003), pp. 160-81; quotation at p. 161.

⁴ I will assume, rather than explicitly state, this qualifier in my subsequent use of the term “democracy,” unless I specify otherwise. It might be worthwhile to mention here that the present comments would be more carefully stated by using the qualifier “legitimate.”

⁵ The quotation is from legal scholar Cass Sunstein, “The Law of Group Polarization,” in *Debating Deliberative Democracy*, ed. James Fishkin and Peter Laslett (Oxford: Blackwell, 2003); quoted in Talisso, *Democracy and Moral Conflict*, p. 56.

their views with each other rather than with those who are likely to be less receptive to them, with the result that their shared doctrine will become increasingly peculiar to them, overlapping less with the increasingly peculiar doctrines of other groups of like-minded individuals who have been sequestering themselves as well. Crisis occurs when one or more groups finds intolerable the structural exclusion of their doctrinal views from the political sphere. So, what, then, is a democracy to do?

4. Talisse's Rejection of the "Politics of Omission"

For all intents and purposes, Talisse sees three options. The first is the normatively minimalist attempt to secure a "mere *modus vivendi*" (p. 47),⁶ essentially a "truce" among the various conflicted parties, motivated by a shared "desire to avoid all-out conflict" (p. 47). This is normatively minimalist in that it makes no pretense of *justifying* the democratic order beyond the purely instrumental case for avoiding a war of all against all. Talisse, again following Rawls, quickly dismisses this proposal on the basis of its inherent instability: since there is no guarantee that every party *will* prefer a truce to taking their chances in war, the preservation of democracy cannot be guaranteed.

This leads to the Rawlsian proposal of a "freestanding" justification of democracy. Rawls, like those advocating a *modus vivendi*, eschews the possibility of a "comprehensive," or morally non-neutral, justification of democracy (for the very reasons mentioned above), but thinks that we can stabilize its status as a going proposition by explicitly defining the polity in terms of the "shared fund of implicitly recognized basic ideas and principles" (p. 47)⁷ to which the various groups, despite their differences, were already committed by virtue of there being a part of the democracy in the first place. As a practical corollary, the Rawlsian proposal requires that each citizen of the democracy conduct all of his public *political activity*—from arguing to lobbying to voting—in terms that every other citizen can necessarily agree with simply in virtue of *his or her* membership in the democracy.

Talisse thinks that this won't do; rather than being a program for preventing the political fire we're facing, it spills gasoline on it. In response to the potential divisiveness that is built in from the start of a democratic regime, Rawls insists that we double-down on the public-private distinction, not only accepting it in our institutions, but also demanding it in our discourse. But given the phenomenon of group polarization, Rawls's "politics of omission," which requires that *moral inquiry* be relegated to the private sphere, won't enable us to overcome or transcend our partisan differences, but will only exacerbate them.

⁶ The quotation is originally from Rawls, *Political Liberalism*, 2nd ed. (New York: Columbia University Press, 2005), p. 142.

⁷ *Ibid.*, p. 8.

Talisse's real target, however, is not Rawls's solution, but rather the justificatory pessimism that rationalizes it. Democracy can be justified, Talisse argues, just not morally. There is indeed a "comprehensive doctrine" from which democracy can be justified, a comprehensive doctrine to which every citizen can be guaranteed to subscribe, and it is epistemological. Proper believers not only take their beliefs to be true, but are importantly committed to believing them only if they have good reasons for thinking them true. Moreover, such reasons are in principle available to all believers, and can be offered and exchanged with other believers in properly conducted deliberative engagements. Talisse insists that such engagements, as noted above, are only really possible within a democratic political structure, one that guarantees each citizen the opportunity freely to pursue the truth. Since we want to hold our beliefs only if they're true, and since our beliefs are more likely to be true if they withstand the scrutiny of other truth-seekers in deliberative engagement, and since such engagement is only realizable within a properly functioning democracy, we each have a reason—an essentially infeasible reason—to be democrats.

5. The Paradox of Reasonable Pluralism

There is a fair amount of "proper" and its derivatives in the foregoing sketch of Talisse's position, and that is because Talisse makes crucial use of them in his own exposition. And no doubt he needs to: if every believer is *ipso facto* committed to a democratic political order and if belonging to a democratic political order is a necessary condition for being a believer, no resident of a non-democratic society has ever had beliefs. Hence only democrats can be *proper* believers, for only they can be sufficiently self-aware of the reasons they have their beliefs, reasons that "do not recede when the believer recognizes the way in which they are generated. Thus the distinction between genuine and specious belief is a distinction between 'self-aware' and 'deluded' epistemic agents" (p. 133). Talisse continues:

Our claim is that self-aware epistemic agents—agents whose epistemic practice reflects their epistemic commitments—must uphold the epistemic norms that can be practiced and can flourish only within a democratic political framework. Anti-democrats surely hold anti-democratic beliefs, but such believers are deluded about their own implicit epistemic commitments; were their epistemic commitments made explicit to them, they would see that anti-democratic beliefs are inconsistent with their conception of themselves as truth-seekers. (p. 133)

That the manifest absurdity of the descriptive version of this thesis is only slightly mitigated by the introduction of normative notions needn't unduly concern us here, since the normative version threatens to undermine the prospects of the justificatory project itself. The relevant sense of "justification" for Talisse is an argument that would rationally persuade its

audience. But Talisse's epistemic justification must certainly prove ineffective when directed toward deluded epistemic agents, agents who are unable to practice the epistemic norms proper to belief (*ex hypothesi* for the reason that they aren't in a democratic political framework). For them, the attempted justification must fail. Of course the justification in question was never meant for them; it is meant for members of a divided democracy, as a solution to *their* problem of "deep politics." And surely they are the proper audience, for presumably only self-aware agents, agents who manifest the appropriate concern for the fact that their beliefs are properly reasoned, could take Talisse's epistemic argument on its merits and be persuaded that they should *be* democrats. The only problem with this is that such agents already—and necessarily—are democrats. Why should they need a justification to remain so?

This brings us full circle to the questions I raised above, which I might recast as follows: What's going wrong here? Why are we—good democratic epistemic agents—now failing? Why do we face the problem of deep politics? While these are questions that I believe Talisse assumes to be legitimate, I don't believe that his account is well-suited to provide answers to them; indeed, it seems to render them paradoxical. Recall that Talisse joins Rawls in taking a "reasonable pluralism" of comprehensive doctrines to be a "fact" of contemporary democratic society, claiming that "the sentiment that in large part drives the Rawlsian program is sound. . . . Democratic politics cannot proceed from a settled consensus on a comprehensive moral doctrine because no such consensus is likely to exist among free and reasonable persons" (p. 153). But if that is so, if *disagreement among democrats* over comprehensive doctrines is neither unexpected nor unreasonable, then why insist on remaining committed to an "open reason-exchange" for the purpose of arriving at *true* comprehensive doctrines? Being democrats, we have already been operating within an environment of open reason-exchange and we've got incompatible comprehensive doctrines to show for it. Why think that more reason-exchange is going to reverse this trend?

Talisse isn't blind to this difficulty. He admits that though "each of us is committed to the truth of our comprehensive doctrine . . . we find by dialogically engaging with others that our best arguments and reasons do not move all of those who disagree" (p. 153). Yet rather than abandon the epistemological solution as misguided, Talisse responds to this fact by *recommending* to divided democrats that they voluntarily and for "pragmatic" reasons, adopt Rawlsian restrictions on their public discourse, that they essentially partake in the politics of omission "in order to facilitate democratic decision and *so that* argument over fundamental value commitments can continue in the future" (p. 154). Talisse thinks that such a self-imposed politics of omission "falls out of our commitment to the truth of our most deeply held beliefs," and enables us to "preserve democracy and thereby secure the conditions under which proper epistemic practice can continue" (p. 154). What it seems we would be preserving with such a move are the conditions proper to dividing us over the truth of our most deeply held beliefs.

6. The Politics of Practical Identity

I believe that the foregoing suggests that we take seriously the possibility that the problem of deep politics isn't really the problem Talisse (and perhaps Rawls) thinks it is. If a reasonable pluralism of comprehensive doctrines is indeed "a permanent feature of the public culture of a democracy,"⁸ then either democrats have *always* been divided—in which case the problem is not a contemporary one—or the ethical divisions that currently threaten our democracy are not best understood in terms of commitments about which our society can reasonably allow a plurality of views. Since the first disjunct raises the thorny question of how any democracy could survive its formation, the second might be worth exploring.

A great many things can be deliberated about and decided upon within the open reason-exchange emblematic of a democratic framework, but what is ethically most significant to the deliberating community, what gives it its practical identity, isn't one of them. The idea of a practical identity I borrow from Christine Korsgaard, who uses it to refer to a "description under which you value yourself, a description under which you find your life to be worth living and your actions worth undertaking."⁹ A person's life has the meaning or shape that it has in virtue of the practical identity it has; what one has reason to do or not to do is determined by one's identity. A community's practical identity might best be understood in terms of an understanding of the kind of life that is worth living that is sufficiently shared by its members. Communities, we might say, *are* communities, rather than mere collections of individuals, only to the degree that the individuals who comprise them understand themselves to belong to or participate in a shared way of life. The "way of life" a people pursues determines what is acceptable and unacceptable for them, what they will allow, encourage, or demand from anyone who wishes to join them. This is not at all to say that every individual member of the same community possesses the very same practical identity, but it is to say that both the individual and her fellows must see their respective identities as variations on a common theme, a theme that each individual takes her own particular identity to manifest. What matters is that it is part of the individual's identity that she *belongs* to her community, and that the identities of the other members of her community allow them to judge that she is "one of us."

We can expand on this last point and say that if a pluralism concerning comprehensive moral doctrines is going to count as *reasonable*, it must be seen by members of the community as existing *within* the normative constraints that demarcate their way of life. If a comprehensive doctrine shared by a minority of the community is not understood to be in practical

⁸ Rawls, "The Domain of the Political and Overlapping Consensus," p. 161.

⁹ Christine M. Korsgaard, *The Sources of Normativity* (Cambridge: Cambridge University Press, 1996), p. 101.

conflict with the prevailing identity of the community, it is tolerable. What is intolerable are those doctrines that appear to manifest a distinct communal identity that impedes the political action of the community which the political structure was erected to serve. And I am assuming that the assembling of a democratic political structure presupposes a distinct community that chooses to have equal access to institutionalized authority. If this line of reasoning is sound, then people in possession of different comprehensive doctrines can come together in a democratic arrangement only if they are capable of seeing each other as members of the same community, as sharing in the same way of life. Catholics and Protestants, say, or secular French and Muslims, can only participate with one another in a functional democracy to the degree that they understand their doctrinal differences to be encompassed by a larger, shared identity which both groups believe themselves to belong. Both groups must, despite their differences, see themselves *and each other* as, say, Northern Irish (less plausibly, as Irish or British), or as French.

I said above that these identities, including their variants expressed by one or another comprehensive doctrine, are not acquired by a process of open deliberation and reason-exchange. Despite our rather indiscriminate use of the truth-predicate, *how* we come to believe (and so believe to be true) that a certain way of life is most worth living is quite different from how we come to believe any of the myriad propositions, both empirical and theoretical, that enable us effectively to live that life. Whereas the latter kinds of beliefs are acquired through experience, study, discussion, and debate, our practical identities are generally inheritances, or the result of epiphanies, gestalt switches, and road-to-Damascus conversions. They are rarely, if ever, the result of rational persuasion or arrived at by “the exercise of proper epistemic agency” (p. 149). Moreover, precisely in virtue of the intimacy and emotional nature of such commitments, instead of subjecting them to the discursive scrutiny of those with whom we disagree, we find ourselves naturally motivated to seek out like-minded fellows with whom to share it. Group polarization begins at home.

I submit that this picture of things is far more plausible than what seems to follow from the account presented by Talisse. Consider, for example, a person who identifies herself as a Catholic. According to Talisse, to the extent that the Catholic believes her various “deep” Catholic claims to be *true*, she has, and importantly takes herself to have, arrived at those beliefs via the exercise of her epistemic agency—by a proper exercise to the degree that it was arrived at the result of “open reason-exchange,” and deluded if arrived at otherwise. Moreover, if the Catholic is properly committed to maintaining those beliefs so long as they are *true*, then she will be committed to “keeping the logical space of giving reasons open” to those with whom she disagrees (p. 144). But how many Catholics have come by their deep commitment by way of reasoned argument, and how many are to be found in collaborative investigation of the truth of their commitments with Jews, Muslims, Mormons, or atheists? What we find, rather, is that in matters of faith, Catholics seek guidance from other Catholics.

Moreover, we find that over time, what any collection or group of Catholics believes might not be exactly the same as what some earlier generation believed, and yet the latter group still understands themselves to *be* Catholic. In other words, by a process of group polarization the set of beliefs Catholics are committed to will be seen (perhaps more obviously from the outside, perhaps not) to have changed from some conception C_1 to C_2 . According to Talisse, this is evidence that they haven't conducted themselves in an epistemically proper way, for, according to Catholics who hold C_1 , C_2 is *ex hypothesi* false (p. 144). But this misunderstands the relationship that obtains between oneself and the core beliefs that comprise one's identity. If a Catholic's identity-defining set of beliefs has evolved from C_1 to C_2 , then the *Catholic* has changed. If some self-described Catholics undergo the change from C_1 to C_2 and some others don't, then there is the potential for dispute about who is "really" a Catholic and who isn't. While there might be ample reasons to wish that the "truth" of the matter could be, and perhaps only be, arrived at by engaging in open-reason exchange, there seem considerably fewer reasons to believe that such is the case.

So what if they can't settle their differences, can't find their way to *seeing* them as reasonable variations on a commonly shared Catholic identity? Depending on their circumstances, their aspirations, and what they now hold to be tolerable or not, they might agree to some sort of brokered peace or truce that permits them to get on with practical business of a less tendentious nature. But they might also come to a very different conclusion, and become convinced that the time has come to go—perhaps violently, perhaps peacefully—their separate ways. What is implausible to suppose, however, is that there is justification for remaining equal partners in a joint venture of living that each side must find rationally compelling in virtue of their having properly fixed beliefs.

7. American Identities and Others

In closing, I want to offer a few comments, brief and impressionistic, that are in keeping with the thought that the contemporary problem facing democracy is very much a problem about communal identity and that this problem takes a peculiar, and particularly pressing, form in the case of the United States. Many democracies begin within a community defined in historical, primarily ethnic, terms: they are French, Argentine, Irish, or Israeli. Such democracies are, other things being equal, functional insofar as their ethnic minorities sufficiently identify with the majority to be participating in a uniform political life (importantly, the majority must also see the minorities as, for political purposes, equal members of the community). The dangers that such "ethnic" democracies face is likely to be found in minorities not only growing in relative size but increasingly insisting on institutionalizing elements of their peculiar identity that the shrinking majority cannot abide.

The United States is, in a certain sense of the term, an exceptional democracy. While it was established by people primarily of English and Christian heritage, *American* identity, even at the founding, was understood to

be more notional or ideological than ethnic. To be an American, so it seemed, required holding certain commitments, such as those asserted in the Declaration of Independence; it was to see oneself as belonging to a community and a land where the respectful, yet individually determined pursuit of happiness was not only promised but guaranteed. Being notional, it was relatively unproblematic for a French, Chinese, or Puerto Rican to *become* American.

But it is only unproblematic to become American as long as being American is a relatively stable notion. Notional identities, however, seem considerably more susceptible to change (and more rapid change) and development within particular sociological niches than ethnic identities seem to be. And what is driving some of the deepest divisions in contemporary American society may well be the widening gulf among competing ideas of what it *is* to be American. Among the myriad differences to be found among Americans, what is arguably the most divisive is the apparently growing split between those who are likely to see themselves as embodying the American ideal and those who are increasingly *rejecting* the notional understanding of American identity in favor of one defined in historical, ethnic, and religious terms. The great divide in American society might well be the result of a growing intolerance between a (predominantly) white, Christian community, protective of their historical sense of American identity, openly nationalistic, and more likely to be rooted to the land over generations, and a more ethnically diverse swath of citizens who are generally more secular, more cosmopolitan, less tethered to their community, and understand American heritage in a more open-ended, free-floating way. These latter are also far more likely to read—and agree with—Rawls.

To what degree the foregoing characterization of contemporary American society is accurate is, for present purposes, not particularly relevant. Nonetheless, if the crisis facing America's democracy—and, indeed, any democracy—is ultimately a matter of divergent and disputed communal identity, then we should not expect the crisis to be resolved by a rational argument that convinces the disputants that their commitment to the truth of their identities requires they remain committed to "their" democracy. We might, at most, allow that the considerations Talisse calls to our attention should convince all parties to remain committed to democracy, but we have little reason to believe that they should be convinced to remain committed to the same one.

The Paradox of Democracy

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1. Overview

Not only are there problems with the day-to-day workings of democracy, say critics. Democracy itself is often seen as the problem. How should we respond when, for example, citizens say that, while they are committed to representative self-rule, they have tolerated enough tolerance? Should we take their complaints seriously, and believe that because of current social or political conditions they are being forced to choose between political coexistence and their fundamental beliefs? On the one hand, it would seem irresponsible not to take these complaints seriously. On the other hand, it is unclear what it would mean to take them seriously, and even if we could, we might end up questioning just how committed to democracy these citizens really are.

It is usually one thing to grumble about such issues, and another thing to write about them. In *Democracy and Moral Conflict*, Robert Talisse does both, and suggests ways to restore some of the political faith that he thinks we have been losing.¹ He warns that the discussions which we need to have about moral values are too often close to breaking down. Talisse then makes a number of predictions about where we might be headed if we don't address the growing number of citizens who say that they are ready to give up on democracy, much less civil discourse, in spite of our efforts to make them more tolerant. Still, although Talisse avoids defeatism, as well as many of the abstract generalizations that tempt other writers on the topic, he leaves a few questions unanswered. I will try to address those questions in this essay, though I have no illusions that it will be a simple matter to answer them.

2. Paradox and Its Prospects

Skeptical arguments about multiculturalism and church-state relations (two topics that Talisse considers) are often presented as reflecting differing interpretations of rationality and values. To the extent that we understand democracy as a system where rational, free decisions can be made about individual and collective values, such arguments deserve our attention.

¹ Unless otherwise noted, all references are to Robert Talisse, *Democracy and Moral Conflict* (Cambridge: Cambridge University Press, 2009).

Along these lines, Talisse suggests that we are awash in information, yet seem at the same time to have become jaded toward the idea that we might resolve our differences through careful, open dialogue. The obvious question this raises is what we think that all of this information, and our ability to share it, is supposed to be for. We know that the information that we have doesn't always convey or accurately express the beliefs that we hold about controversial issues. We know as well that, despite some promises that the digital age will be one of political leveling and "access," giving a voice to everyone with an Internet connection, there is reason to wonder whether anything is being leveled, at least in an inarguably good way. As Talisse notes, technology is increasingly becoming part of the political process, almost to the point of becoming, for some people, the process itself.

Where does this leave disagreements about values? One answer would be that the problem is not simply that, with a little reflection we could see what we should have known by now, that as citizens we can't always get what we want from democracy. This would have us recognizing that technology or not, many of our wants will remain unsatisfied. Our form of government could instead be seen as a mechanism for compromises once we take that fact for granted. But more than ever, citizens are standing up, and asking, "What if I insist that what I want is of critical importance, and I judge democracy on the basis of how strongly it resists interfering with my values?" To make matters worse, these citizens frequently do this on the basis of what would seem to be dubious arguments. Do we have an obligation to correct their views, even if as Talisse claims, these citizens may have misjudged something or been misled by slick TV commentators?

We can of course reply that such citizens are being unreasonable, but we must at some point be able to explain why the angry citizen should take our word on her rationality. In addition, we ought to be able to give some account of what we mean by *rationality*, and do so in a way that can avoid the suspicion that our bias in favor of democracy is coloring that definition. This is a special problem where the citizen's accepting a particular view on rationality would mean that she would also have to accept the way that we rank what are in the end still going to be her values, not ours. In other words, it might seem that we could more easily stare down the disgruntled citizens if we knew more about what rationality is. But concepts like rationality and reason are very much context-bound, and even the powers that we attribute to reason seem to vary with different historical periods.

It might be that what reformers really want to say is that the key to reforming our democracy is to get people to think more critically, or even logically. Talisse argues that we could learn much if we would closely examine folk epistemology, which he thinks "entails commitments to core democratic norms of freedom of speech, thought, and expression, freedom of conscience, political equality (including equality of participation), freedom of the press, protected dissent, political accountability and so on" (p. 6). Yet these are interpretive notions, too, and when we try to clarify them across cultural or political viewpoints, I'm afraid that we will encounter many of the

same problems of subjectivity and circularity. We seem to need an understanding of how rationality is distributed among the members of society. Possibly more importantly, we need to know how rationality, whatever we decide that is, *should* be distributed. I'm skeptical that we can, outside of the philosophy classroom, do much more than arrive at a crude model of rationality. (I am also skeptical that my results should apply to the classroom down the hall.) But even if we could do that, I am not sure that the resulting model of rationality or epistemology would help us to resolve moral disputes between large groups of citizens who differ on what are, we might say, already controversial topics like abortion.

Talisse is right that we should be concerned about the prospect that one side seems content with labeling those on the other side as "murderers." But this rhetoric does not seem to be the result merely of a lack of rationality or an insufficient awareness of epistemic commitments, though that is certainly part of the problem. It seems that what we also lack are convincing answers to questions about how people should use reason when they order their wants and preferences, and when they then take to the streets or to their keyboards. On that point, the skeptic can reply that if we had such a normative model of rationality, and we had a way to obtain widespread acceptance of it, we would by now have resolved a number of issues related to justice and tolerance along the way. If we could depend on some assurances of truth and sincerity, it might seem doubtful that citizens would have much to be disgruntled about.

It is true that citizens can become so dissatisfied and distrustful that they declare that they have run out of options. For them, additional compromise on a controversial moral issue, such as stem-cell research or abortion, can no longer be justified. Yet the question is what these citizens really distrust. I am not sure we know that, so I am also unsure whether they can be brought to the bargaining table by politely reminding them that this is a democracy, and that they have agreed to be rational. Even setting aside the practical question of how we could do that, we would still encounter the moral question of whether we should want to. Would it work to emphasize that "at the core of democracy is the belief that *reasoned argument* is possible, even among people who are very deeply divided over moral and religious doctrines" (p. 9)? This seems reasonable on some accounts of democracy. But what does such an argument really amount to, and should we think that the potential for argument really translates into a desire for compromise?

Often those who seem most interested in argument are the least interested in cutting a deal. We can argue that "the presumption of moral pluralism, then, comes to this: for every citizen holding a plausible doctrine, there are other citizens holding opposing but also plausible doctrines" (p. 13). Still, how do we make compromise appealing again to citizens who feel that they have already gone as far as they can in that direction? I don't know how we can do that, if what we want is for citizens to see that democracy presupposes a specific approach to resolving their differences. Attempts to get citizens to see that they are being irrational never go over very well in part

because of the difficulty of convincing them that they shouldn't want the things that they say they do.

Take believers in religious values (p. 181). We can show them where their beliefs are inconsistent or contradictory. In doing that, we would presumably move closer to getting them to bend a bit on some policy issue that they now reject on religious grounds. That approach to reform is as old as the Socratic *elenchus*. It is also a short step from there to the idea that citizens who hold inconsistent beliefs about X should not be voting one way or another on important moral issues related to X. But we know that we would encounter considerable practical difficulty if we invited the religious to debate with the atheist (or with a member of another religion). That suggests that what we need are reasons more compelling than the ones that each side currently holds. It is unclear where we should look for those reasons.

The compelling reasons that I am envisioning would have to do with, for instance, the need to subject our existing beliefs to scrutiny, to live an examined life, and so on. That is only the start of any such list, yet we can already see that there is a problem in knowing how we would expose false or contradictory beliefs. This is not to deny that there are grounds for thinking that democracy is best served by clear-headed voters. But we seem also to have agreed that, in order to convince the citizen that he is irrational, we will need what we seem to need to convince him of anything else: a rational argument. And if he has decided that argument has already done all that it can, our work will be cut out for us.

The participants in Socratic conversations seemed troubled by the revelation that they did not have knowledge. Today, those disenchanted with democracy can claim that knowledge is not really at issue. That is, they might grant that writers on political philosophy know a thing or two about the procedural side of things. They might even grant that they should have paid attention in logic class. Nevertheless, at issue for them might be a deeply felt sense that, when I reject your ideas about abortion, it is because I feel that you are missing something that neither I nor anyone else can provide in the way of evidence. In my experience, this degree of moral conviction, or moral *certainty* really, can bring our conversations about policy issues to a standstill.

When that happens, how can we get the discussion going again? Talisse is right to think that solutions like those offered by Jurgen Habermas, in which we piece together still more inclusive and open models of conversation, are often question-begging. Still, let us suppose for the moment that I am the disaffected voter whom Talisse describes. As a participant in a contentious political discussion, I am going to take a very dim view of any governmental action that would attempt to override my moral beliefs. If I claim to believe that abortion is murder, and I believe other things about my right to determine which values should take precedence, it will be hard to get me to accept taxpayer-funded abortion clinics. I have, after all, been told that democracy will not ask me to choose between state and conscience. I will then reach what Talisse calls "the paradox of democratic justification" (p. 15), where

the issue is that of *justifying* the democratic requirement that citizens must tolerate—or at least not judge *intolerable*—a wide range of moral and religious doctrines and be willing to accept democratic compromises in cases where their fundamental values conflict with standing democratic outcomes. (pp. 21-22)

In this state of paradox, dissenters like me will seem content to shout at each other, feeling that our arguments have done all that they can. The alternatives I have, Talisse explains, can include civil withdrawal and disobedience. In more extreme cases, disenchantment with democracy will turn into a paranoia that Hobbes would have understood: I might withdraw, arm myself, and dare others to press their demands for compromise (see p. 37). This is a plausible way to think of what can happen when beliefs are in conflict. It is plausible enough that I am not sure there is very much *paradoxical* about it.

On the contrary, it seems to me that we could understand this outcome as one that is consistent with some interpretations of the social contract, particularly as that theoretical-historical concept is transformed within our actual political system. What we might think of as having started as an experiment in political organization, driven by our desire to reconcile the incompatibility of our intuitions about how to live together, concludes with each side accusing the other of renegeing on the contract. As disenchanted citizens, we contend that we cannot be bound by laws that call on us to abandon values that we regard as central. Frustrated and distrustful, we protest that our loyalty to democratic ideals was based on the promise that it was precisely this form of government that was supposed to respect our moral values. More to the point, citizens can protest that democracy was supposed to mean that they would not have the values that others hold injected into their lives without some say in how this would happen.²

Social-contract theories, and other approaches to justifying democracy, will seem to the disenchanted to have been too slow in getting around to spelling out just how all of this compromising is supposed to play out. Talisse notes that once cynicism and distrust take hold, it is going to be difficult for citizens to make responsible choices about policies and leadership. As Talisse explains, we probably do know what is wrong with insults and other rhetorical tactics: they interfere with the type of meaningful dialogue that we should be having, if we are serious about truth. Is it true, however, that most of us, if we reflect on the benefits and rewards involved,

² Ronald Dworkin (in his *A Matter of Principle* [Cambridge, MA: Harvard University Press, 1985]) gives some examples of how we might understand liberal democracies in this way. I realize that I am speaking only in very general terms, and there are various interpretations of liberalism. But I think that my claims, and Talisse's for that matter, apply adequately to a very generic version of liberalism.

would be able to say how serious we really are about that? It is easy to misjudge how eager citizens will or should be to put their account of epistemology before their account of moral values. We can recommend that people adopt a particular style of discourse. But how appealing is that going to be if the version that we advocate seems to them only to open up the possibility of continued discussion with those whose values are seen as unacceptable anyway? Talisse suggests that “no matter what their moral comprehensive doctrines happen to be,”

citizens have, from their own epistemic perspective, compelling reasons to engage each other in critical, reasoned dialogue. Given that such engagement requires that participants exercise certain epistemic capabilities, all citizens have compelling reasons from their own epistemic perspectives to support political institutions that aim to cultivate the requisite capabilities. (p. 182)

I wonder whether the disaffected can question the legitimacy of our political structure as soon as they feel compelled to give up what they regard as their *fundamental beliefs*. And in some respects, we can understand why citizens might want to stake more and more of a claim for their beliefs, and look on any attempt to keep them from acting on those beliefs as an unacceptable intrusion into their lives. That response seems selfish maybe, but as I interpret the conventional portrait of a liberal democracy, this is a predictable course wherever people enter into a consensual arrangement on a national scale.³

The conditions for the paradox are built into the social-contract tradition, in other words, if that tradition also presupposes some vague provision for what we have for the past few decades been calling “tolerance.” After all, what, exactly, did we agree to tolerate? It is probably an exaggeration to say that there are as many answers to that as there are citizens with beliefs. But it does seem that toleration has got to involve your accepting my way of life, to the degree that I can claim that it reflects my fundamental beliefs. There are, of course, limits on what I can demand that you tolerate. My suggestion is that the perceived limits on that will tend to move further and further back by citizens as distrust grows, and *vice versa*. Talisse claims that “the liberties of conscience secured by a democratic constitution lead to a pluralism of moral commitments among the democratic citizenry” (p. 35). He thinks that “where there is a pluralism of moral commitments, there will be a plurality of moral conflicts, and some of these conflicts will engage the values and commitments that citizens take to be *fundamental* and hence non-

³ Here I am thinking of the kind of social-contract theories that Roberto Alejandro outlines in his book *The Limits of Rawlsian Justice* (Baltimore, MD: Johns Hopkins University Press, 1998).

negotiable” (p. 35). But once more, wiggle room seems to be built into whatever it is that we mean when we speak of liberties of conscience.

Within the social-contract tradition, talk of liberty and its relationship to conscience could mean that those who consent, or who are given to believe that consent was already made on their behalf by their ancestors, are to think that their political dealings are both grounded in and protective of their moral values. So far, so good, as we have seen. But if this is our rendering of *conscience*, we may seem also to be reassuring citizens that those values cannot be trumped by, for example, an obligation to the state or to each other. On the one hand, we might think that this emphasis on conscience, on the citizen’s sense of moral integrity, helps us to look back and see where the moral high ground was when luminaries like Henry David Thoreau or Martin Luther King, Jr., took their stands.⁴ Their consciences, we now tend to think, were reliable judges of Right and Wrong. In short, they were onto something, even if the rest of us didn’t know it then. On the other hand, if we let it be known that we are willing to cut that type of deal with citizens and their moral compasses, I am not sure that we should be surprised if we also find that self-interested citizens choose to hoard as many of their values as they can.

That shouldn’t surprise us because this is something that those citizens too might defend on the grounds that they know better than their opponents what is good for the country. Announce that citizens can appeal to fundamental values when they don’t want to compromise, and in time we might all find reasons to have as many of those values as we can. All the while, we could claim that no one else is entitled to raise questions about just how fundamental this or that value is to us. It can seem to be a point of pride for some citizens to declare that they are unwilling to bend to an employer’s demand that they, for example, remove head scarves in accordance with company dress policy. The matter of following religious traditions, they will respond, is not up for discussion.⁵ From the citizen’s perspective, it is the employer’s fault for not seeing how essential those traditions are for the employee’s sense of self.⁶

⁴ As Stephen Nathanson puts it, “one can take seriously one’s duties as a citizen without forfeiting independent judgment or moral autonomy”; see Stephen Nathanson, *Should We Consent to Be Governed?* (Belmont, CA: Wadsworth, 2001), p. 88.

⁵ Talisse elaborates in *Democracy and Moral Conflict* on such cases in several passages like this one: “Consider religious commitment. Many religious believers do not, indeed, cannot, regard their deepest value commitments as bargaining chips with which to attempt to strike the best political deal they can in light of their interests. Indeed according to many religious believers, their commitments are not quite interests at all; they are instead more like categorical commands or inviolable directives from god or from some other source of ultimate moral authority” (p. 27).

⁶ Although I think that there are some important differences between this and claims that, for instance, obeying a state policy would threaten one’s integrity, the net effect on the person’s views toward the state itself might be the same. The distinction

Upon hearing about cases like these, we can say that this kind of reasoning does not make much sense. We can even say that anyone would be overly generous if the suggestion was that such positions on values are the product of reasoning. From there, we can bring back our concerns about what type of voice such beliefs should be given in debates about policy or when electing leaders. But the point may be that we can only confront views like this by making interpretive moves, questioning motives, alleging fallacies, and so on. As we have seen, there is a way to accomplish something by exposing what we see as inconsistencies or logical fallacies in the claims for value-exemption; the trouble is simply that the disgruntled citizen might only see circularity in our routine.

We might also ask just how sincere we have to be when we assert value claims, or what test of authenticity or logical rigor our value-commitments, through all of this, have to meet.⁷ If I declare that I am now Jewish, and that by my reasoning should therefore not be required to work on Friday evenings, there are no developed traditions of discourse that will let my employer follow up with questions about just how Jewish I am, even if concert tickets for that night are visible on my desk. And where would that discussion go? Would it ultimately have me trying to state how strongly my beliefs were held, or about the possibility of my offending a deity through my actions? It does seem that the questions that we have about values could be answered, and the paradox avoided, if people found that, on reflection, they only had a minor or superficial attraction to the values in contention or even a practical rationale, as in the Friday concert example. It is an open question, and an important one, whether we should speak in terms of citizens who believe that their values are not merely tacked-on parts of their personalities, the way that an accent might be a coincidental feature of a person's speech, or whether they should be able to describe themselves according to those values.

Another approach would be to say that conflicts over values might seem avoidable if we could get everyone involved to adopt the same process of subjecting their beliefs to scrutiny. This might have been Plato's dream, that considerations of logic and epistemology would precede each political moment. But this is what the norms of toleration seem to restrict us from doing, which is one reason why Plato was not an advocate for political

between one's sense of self, or personhood, and integrity, might also relate somehow to beliefs about who one is accountable to. In the case of religious toleration, the believer might argue that, while personhood can be maintained, integrity cannot, if that parameter is to be judged by God. On the latter point, see William Lyons, "Conscience: An Essay in Moral Psychology," *Philosophy* 84 (2009), pp. 477-94.

⁷ Mike Martin makes several interesting observations on this theme, namely, that the way we assign the roles of principled actor and earnest interrogator has a lot to do with what we think about the cultural status of values; see Mike Martin, *Self-Deception and Morality* (Lawrence, KS: University of Kansas Press, 1986), pp. 44-59.

accommodation. We can't insist that anyone comply with such a request to subject their value claims to much scrutiny. Talisse might agree with this, as he seems to say that there is something vacuous in the many calls for citizens to simply be "civil" when they differ on moral issues, where being civil only amounts to their pretending not to object. Still, I am not sure that calling on citizens to be tolerant makes any more sense if we want to instill the idea that transparency and dialogue are primary values in a democracy.

There is nothing particularly original about the skeptical position that I am describing. Alexis De Tocqueville and others were getting at the same thing. But with the benefit of a few centuries of practice at liberal democracy, we can now see that once we start the toleration ball rolling, so much will rest on just how committed we are to tolerance, and even to what constitutes an acceptable level of respect for beliefs.⁸ This is why I think it is reasonable that we will find ourselves differing over whether my respect for your right to worship entails that, for instance, you must respect my right to keep my business open on Sunday. Push me a bit more, and ask me to work on Sunday, and I can allege that you are doing more than just challenging my religious practices. Now you are attacking my moral personhood, and that is downright undemocratic of you.

An objection would be that there is a rational way to resolve our conflict. The employer could ask questions about why other employees, some of whom might be of the same religion, do not seem to have the same model of personhood. We could imagine, for example, that one member of a religious tradition sees nothing wrong with employee dress codes and shopping on Sundays. Isn't the reaction that others, who align with the same tradition, have against the restrictions therefore arbitrary? We might also ask why the religious believer seems to accept state intervention into some aspects of religious practice, but not others. Perhaps the point is not to deny that in cases like these there are many skeptical questions that we might ask. But anyone entering into this kind of discussion is going to need an account handy of where toleration begins and ends, and I tend to doubt that reflection on an idealized model of epistemology or inference will suffice.⁹

The trouble, if it is a trouble, seems to be that as long as even one person can appeal to conscience, and cite fundamental beliefs, it is unclear

⁸ Writers on moral pluralism can seem to assume that it is obvious which beliefs would be worthy of tolerance, and that the sticking point is simply what we are supposed to do with those who ask, but do not deserve, tolerance. In an otherwise good analysis of the issues, for example, we find vague remarks like this: "when a community calls for tolerant treatment, we need not answer that call if the community itself exhibits various forms of intolerance to its own members or members of other groups"; see Hans Oberdiek, *Tolerance: Between Forbearance and Acceptance* (Lanham, MD: Rowman & Littlefield Publishers, 2001), p. 131.

⁹ Kyle Swan, "Legal Toleration for Belief and Behaviour," *History of Political Thought* 31, no. 1 (2010), pp. 87-106.

how we would ever judge anyone to be acting unreasonably or undemocratically in these situations. Closely related to this would be the suggestion that we can use these conflicts as teaching moments. Talisse contends that

our paradigmatic objective is having true beliefs, and in order to pursue the truth properly, we must allow our own beliefs to be scrutinized and criticized by those with whom we disagree. Thus, to refuse to engage in this way is not simply to violate the norms of a traditional democratic ethos to which we are supposedly committed, it is to violate the very epistemic norms that account for the depth of our moral and religious commitments. (p. 152)

Again, however, pointing out what we think are contradictory or inconsistent beliefs among the citizens seems unlikely to resolve anything. I don't doubt that many of our public discussions about values would not meet high standards of openness or fairness. But in light of what we know about how value-claims can play into a person's self-image, the real problem seems to be that a government which would intervene is going to risk the appearance of *moral* illegitimacy. It would, at any rate, if we think that liberal democracy is supposed to allow for the flourishing of different kinds of personhood.

We can imagine something analogous to the clash of values in our previous examples going on in cases of jury activism. In those cases, the jurors' stance, which can be contrary to what they would admit is warranted by the evidence, is sometimes said to be justified by appeal to the jurors' conscience or to values that they take to be more basic than those which are expressed in the court's instructions. Suppose that the accused in a murder trial is an ethnic minority, and that some of the jurors are convinced that the legal system has too often been prejudicial toward members of that demographic. When explaining how they reached their verdict, the jurors might cite fundamental values, and suggest that these should take priority over, say, the judges' instructions. Are the jurors acting immorally? Given the power of deliberation and freedom from persecution for dissent, people will order their values in ways that can reflect highly individualized, private hierarchies.¹⁰ When we tell people that they can, through it all, listen to their consciences, we open the door to the overriding function of this notion of basic beliefs and values. It should then not seem odd that, however much they cherish democracy and self-rule, citizens would try to grab as many other value claims, and maintain that, as it turns out, *those* claims are more basic.

¹⁰ Jonathan Cohen raises a similar question with regard to voters: To what extent can we demand that they rid themselves of contradictory intuitions in order to qualify for the right to vote? See Jonathan Cohen, *The Dialogue of Reason: An Analysis of Analytical Philosophy* (Oxford: Oxford University Press, 1986), p. 192.

We asked above whether we should conclude that this means that citizens are not thinking clearly when they make these value judgments. Have they misunderstood the terms of the contract, in this case, as it relates to their obligation to serve the legal system? I gather that Talisse supports something like that conclusion. He thinks, for example, that “the views that [we] already have about how we should think and reason commit [us] to a democratic political order” (p. 4). He also stresses that

the case for democratic politics . . . draws from principles that are *epistemic* rather than *moral*. . . . [N]o matter what you believe about morality, you have overriding epistemological reasons—reasons concerning how, what, and when one ought to believe something—to endorse democratic politics. (p. 4)

But I am not sure that one can simply choose to hold a belief. Beliefs must come from somewhere, and it seems that they must strike us as convincing or worthy of acceptance. If that is true, the problem of hoarding beliefs won't be solved by convincing citizens to privilege a belief about what their preference for democracy should commit them to. While Talisse might be right that we already have commitments to something like that belief, we surely also have many other commitments, as well as beliefs about how strong those commitments should be and how we can best discuss them.

We are over-simplifying if we think of beliefs as though they have sharply defined edges, that we could with the right tools isolate the belief about how open we should be to compromise from the belief in rationality or the democratic process. I wonder if the average person's stock of beliefs is not too messy for that. I also wonder about Talisse's suggestion that we separate epistemology and morality. I don't deny that a belief can be tested according to a particular model of epistemology, and the criteria that we want to go along with that. We routinely do this in philosophical argument as well as ordinary conversation. But it is rare that we focus on beliefs *per se* without letting on that they are meant to apply to or describe something. Our beliefs have to be *about* things, or it is hard to see what good they would do us. This applies here in the sense that a theory of liberal democracies might presume that two people might have radically different beliefs about moral values, and that is only a sensible assumption if we also think that those people hold, in turn, different beliefs about how such values might be known, and if they are items of potential knowledge in the first place. And that thought brings us back to the epistemic principles that Talisse mentions in the quotation above. There are of course epistemic principles, including those having to do with things like verification or consistency, but these seem to be very much a part of our moral and political lives as well.

To see how this works, we could now suppose that we are asked to decide whether a parent should be allowed to keep a child home from school

so that the family might observe some religious ceremony.¹¹ I think that most would agree that there is no objective way to decide whether we should treat the issue as a moral or an epistemic one (or both). Even better, why not think in terms of political, legal, or even aesthetic issues? The point, then, is that a determination of how we ought to reason about our beliefs and commitments cannot be made in isolation from what we think the benefits of doing so are. On some interpretations of political theory, we must work from a theory of what it is good for citizens to have, and how much of what they consider valuable can be secured through a particular mode of reasoning. Yet when we approach things that way, we are already in the thick of things, morally speaking. It is unclear what we would gain by trying to think about these contested values in purely epistemic terms.

Even the notion that moral pluralism commits us to a specific type of rational discourse seems to me questionable, if the basis of the commitment is not supposed to be a moral value. If one wants to recommend a particular method of arguing, one way to make the case is to show that it is superior to the alternatives. But how might the alternatives be ranked? The difficulty isn't so great that we have to be reduced to silence or disaffection. It is not as though values were inherently mysterious to us. If we are talking about a decision procedure for purchasing used cars, we will probably want to appeal to things like price, reliability, and so on. If we are talking about a decision regarding how tolerant and open to compromise citizens should be, even the term *citizen* is going to denote moral responsibilities, which makes the term essential if we mean to explain rules against treason, for instance. All of this bears on the issue of a separation of epistemology and morality in the following way. For Talisse's claims about folk epistemology to make sense, he might have to be thinking about arguments that citizens might make for one way of life as opposed to another. Yet even the idea that we might have to respect other faiths can be read as an expression of various moral principles. Once we grant the inter-connected nature of beliefs and values, we seem to be back at the start, asking why I should tolerate, and what I am to be tolerant of.

I have tried to suggest that it is unclear whether epistemological theories can give us the leverage that we need if we mean for that answer also to accommodate particular views about citizenship. I hinted above that things will be even more complicated, if we mean for our answer about values and how they should be ranked to draw upon an understanding of our history. By that I mean that someone who feels pressed to the wall about his values could note that, while the general concept of democratic government has remained stable, the prevailing beliefs about moral values within it have not. The idea that Thomas Jefferson and others might have tried to set down strict laws for the protection of these and other basic freedoms, while they also took it to be essential that they were able to safeguard their own rights to own slaves

¹¹ Talisse discusses such an example; see his *Democracy and Moral Conflict*, pp. 177-81.

strikes us today as tragically misguided. If it seems that way, however, that is partly because we know so many other details about our past.¹²

Living in the U.S., it is appealing to think that we long ago, after listening to better reason, outlawed slavery and extended the vote to women, for instance. But such knowledge does not license our saying that we have finally clarified the limits that ought to be placed on things like life, liberty, and the pursuit of happiness. On the contrary, we have within the same history added even more rights-claims to our list of basic demands that citizens can make on a liberal democracy, and ultimately, on each other. We have done this, interestingly, even as we have tried to embrace the idea that it would be culturally imperialistic for us to tell other democracies how they should define hate speech, dissent, or gender-equality. We are told to be tolerant of a framework like the one that Germany relies on now. There, we concede that Germany can claim to be a liberal democracy despite the fact that it is illegal to deny the Holocaust. The American citizen caught in the paradox of democracy might protest that, if there were a unitary way to define freedom of speech or truth, and a way for those who are offended by certain claims about history to resolve their disputes over respect or toleration, it should be easy to say that those who support rules against offensive speech simply need to compromise.

Perhaps citizens who live under political systems slightly different from ours need to think of the greater good, or perhaps think of some liberal ideal about the difficulty in defending one way of life over another. Yet claims about progress throughout history do not come self-contained, without a particular package of historically mediated values to go along with them. We cannot pretend that we have resolved controversies about which values ought to take priority, as long as not everyone agrees, for instance, on the degree to which religion should be injected into school curriculum, or the amount of evolutionary theory to which all students must be exposed. Taking what the skeptic might regard as moral drift into account, the citizen might reason that, as soon as one group sees another achieve victory for its value-stance, the first group will seek to improve its own position before the next round of compromises, so that what counts as an unfair advantage is going to change over the years. This too seems a predictable feature of tolerant, pluralistic democracies.

3. Concluding Thoughts

Talk of toleration and liberalism is everywhere. Talisse asks that we consider a number of relevant issues that arise when we try to unpack these concepts. I have tried to focus on one of those issues, on the ways that claims about tolerance relate to the perceived strength of political justification. How can the moral principles that drive a person into the contractual arrangement

¹² Jean Imbert, "Toleration and Law: Historical Aspects," *Ratio Juris* 10, no. 1 (March 1997), pp. 13-24.

not continue to exert their force when it comes time to evaluate the way the arrangement actually unfolds?¹³ Talisse seems to suggest that we could learn how to respond to that kind of question, if we could do a better job of acknowledging the depth of our commitments, mainly those associated with folk epistemology. I have tried to show why I think that to some extent our satisfaction with our political arrangements will have to correspond to the level of confidence that we have in the methods that it provides us for resolving moral differences. But we may not agree how far, when I announce that I have my doubts concerning democracy as a way for us to organize and govern, I can let my doubts go.

Where Talisse points out that it is important for us to decide how seriously we should take such doubts, he is getting at a moral issue that, on any credible interpretation of democracy, citizens should be talking about. Talisse has gone quite far toward showing how incomplete most of our answers have been up to this point. It could be that our theories of social contract and political legitimacy must do more than explain what could have motivated citizens to enter such arrangements. It might be equally important to ask what provisions citizens should make for second thoughts. Still, I think that the more that the arrangement we enter into is voluntary, and presumes to be accommodating, pluralistic, and so on, the more it will encounter the type of problem that Talisse describes. While I do not agree with some of what Talisse says about such things, in the end, we differ mostly on what type of overhaul our preferred methods of reasoning really need, or what type of reform of their thinking most citizens are likely to accept.

¹³ Bernard Williams discusses this issue as it might relate to social contract theories, in his “Rawls and Pascal’s Wager,” in Bernard Williams, *Moral Luck: Philosophical Papers 1973-1980* (Cambridge: Cambridge University Press, 1981), pp. 94-100.

Responses to My Critics

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I thank Joe Biehl and Chris Herrera for taking the time to read my book and to formulate their responses. I've learned a lot, and it's a true honor to have one's work taken up by one's peers. Since the criticisms are quite varied, I'll treat my critics separately.

1. Reply to Biehl

I agree with much of what Biehl says, and I think the account he gives of how the Problem of Deep Politics has emerged is surely part of the story. Our disagreement may not be as extensive as it may appear. So let me try to clarify something that's not well articulated in the book.

I think it's worth distinguishing three different tasks one might be pursuing when one attempts a "philosophical justification of democracy." Two of these are quite familiar, the third less so, and I take myself to be pursuing the third and less familiar task. The first is the task of showing why we should *establish* a democracy as opposed to some other kind of regime. The second is the task of showing why democratic outcomes are authoritative, why we must *obey* the law. The third is aimed specifically at the question of why one should *sustain* one's democratic commitments when confronted with a democratic outcome that one regards as morally intolerable. I'm asking neither the *establishment* question nor the *obedience* question; my focus is on the question of *sustaining democracy*. So my arguments are aimed explicitly at those who already have democratic commitments, but are considering abandoning them in favor of some non-democratic means of social change.

So, when Biehl notices that my folk-epistemic argument can succeed only among those who are *already* democrats, he's quite right. But that's the whole point of the enterprise. The folk-epistemic argument tries to establish that we each have sufficient epistemological reasons to sustain our democratic commitments—including our commitment to democratic means of social change—even when our moral reasons give out.

This clarification of the justificatory task I'm pursuing helps me to address Biehl's further challenge. On my view, the purpose of continuing with our practices of democratic engagement across moral differences is *not* that of reaching anything like a consensus on a comprehensive doctrine. If *that's* the only solution to the Problem of Deep Politics, then I agree with

Biehl that it is not solvable. But more importantly, the folk-epistemic argument is *not* aimed at convincing people to adopt certain epistemic virtues or to take up a certain form of (epistemic) life. The claim rather is that certain epistemic norms are *internal* to our cognitive lives as such; we *already* endorse the folk-epistemic norms. The argument aims to make these norms explicit. And the proposed reason why we should continue arguing across moral divides is that this is necessary, if we are going to be able to assess ourselves (first-personally) as living up to the epistemic norms we already endorse.

So consider the following epistemic self-assessment:

I believe that p, but whenever I discuss p with competent opponents, my reasons come up short.

It strikes me that an assessment of this kind must strike one as symptomatic of *some kind* of epistemic shortcoming, something to be diagnosed or else the belief will unravel. More generally, in order to see our beliefs as *proper*, we must be able to assess them as *defensible* (at least up to a point). So it seems, then, that the following self-assessment is also symptomatic of epistemic failure:

I believe that p, but I systematically ignore all arguments to the contrary.

In order to see our beliefs as *proper* (that word again!) we have to be able to assess ourselves as meeting some threshold of engagement with the considerations on the other side. Otherwise, we begin to see our beliefs as something more like afflictions, obsessions, compulsions.

Again, the argument for democratic engagement flows from something about the *internal* normativity of belief. We need to engage with each other's reasons, if we are going to be able to take ourselves to be living up to our own epistemic standards.

Biehl's points about practical identity are all welcome. But it looks to me as if Biehl conflates epistemic phenomena that are best kept distinct, namely, *belief production*, *belief maintenance*, and *belief revision*. Of course, a complete ethics of belief will have to address all of these systematically, but they are nevertheless distinct. So Biehl is quite right to claim that, for example, one's fundamental religious commitments are often *not* the products of deliberation and reasoning; they are more often the result of upbringing and tradition. I accept this as surely true about the origin of many of our beliefs (and it should be said that I'm comfortable with talk of "commitments" rather than "beliefs" as well).

But recall that I'm most interested in the context of *sustaining democracy*; and here we are talking about folks who are *so* offended by a given democratic outcome that they're considering giving up on their commitments to democratic means of social change in order to realize in the

political world “the whole truth” as they see it. Now, Joseph Schumpeter says that the mark of the civilized person is to acknowledge that one’s deepest convictions are the products of contingent history and culture, but nonetheless “stand unflinchingly” for them¹; but I take it that Schumpeter intends to suggest that there are few civilized people and many barbarians. My point is that both Biehl and Schumpeter may be correct about the origins of our deepest moral commitments. But it seems to me that for better or worse we’re generally barbarians: we do not see the contingency in the *origin* of our moral commitments to entail anything about their ultimate *justification*. And our barbarism goes deeper than this in that those who do accept Biehl’s view that our moral commitments mainly function merely as indicators of group-identity are likely *not* to be people who would consider trying to win the entire political world (at the cost of democracy) for the truth as they see it.

In other words, the Schumpeterian view engenders an easy-going Rortyan mood: “Sure, we’ll stand unflinchingly for the Big Stuff, but we don’t sweat the Small Stuff . . . oh, and by the way, it’s *all* Small Stuff.” For now, I’ll just say that the question of *sustaining democracy* is addressed to Schumpeterian barbarians who not only stand unflinchingly for (and only for) the truth, but are willing to knock others down in order to realize it in politics.

2. Reply to Herrera

Herrera sees clearly that I’m concerned with the question of *sustaining* democracy; I want to say something to aggrieved, angered, and distrustful democratic citizens. Yet, crucially, in saying something to such citizens, I also seek to say something *about* them as well; and more importantly, I aim to say something *about* them that they themselves would endorse as accurate. Accordingly, the *first-personal* aspect of the folk-epistemic argument is crucial. To put it in a way that picks up directly on one of Herrera’s remarks: The argument is not aimed at trying to convince the “angry citizen” that she should “take our word on her rationality” (p. 31).² The aim rather is to convince her to take *her own word* on her rationality. That is, the folk-epistemic story is supposed to capture norms that are *internal* to belief as such, rather than imported from some tweedy professor’s lofty armchair and imposed from above upon the lowly and (epistemically) impure masses. If this first-personal approach fails, I think the Problem of Deep Politics is not solvable.

So the approach is to take the angry and aggrieved at their word about their rationality rather than to insist that they conform to someone else’s conception of it. If this seems unpromising, consider that the complaints,

¹ Joseph Schumpeter, *Capitalism, Socialism, and Democracy* (New York: Harper & Row, 1942), p. 243.

² Chris Herrera, “The Paradox of Democracy,” *Reason Papers* 36, no. 1 (July 2014), pp. 30-43.

protests, and critiques of the angry and aggrieved are saturated with the vocabulary of folk epistemology. They claim to be especially interested in truth, facts, reason, and evidence. They seek to expose cover-ups, strip away smoke screens, and reveal conspiracies. They speak truth to power, and engage in “straight talk” and “common sense.” The folk-epistemic argument asks them to walk the walk that accompanies the talk that they talk. Maybe that’s too cynical a way of putting the point. Here’s another: My argument tries to show that the epistemic norms appealed to by the angry and aggrieved are *the proper norms*. The argument asks those who are disillusioned enough by democracy to consider pursuing non-democratic means of social change to *live up to* the norms that drive their disillusionment. The charge, then, is not that those who seriously consider deserting democracy in reaction to a morally intolerable outcome are being *irrational*, but rather that they are being *untrue* to the norms to which they claim their allegiance.

Herrera worries that the folk-epistemic strategy depends upon citizens’ willingness to “put epistemology before [their] moral values” (p. 35). Later, he challenges the idea (which he attributes to me) that we should “separate epistemology and morality.” I am quite sympathetic to the thought that all forms of normativity are of the same fabric. Indeed, I think that moral and epistemic normativity are part of a broader normative project, namely, that of living life on our own terms, or living a life that can reflectively be endorsed. So I don’t see the matter as one in which individuals must give priority to epistemology; rather, it seems to me that in order to muster and sustain the confidence in one’s moral judgments required for mounting serious defection from democracy, one must take one’s moral judgments to pass some epistemic threshold of correctness (or at least not fall short of it). So I agree with Herrera that the moral/epistemic divide is not a clean one; I also would resist the thought that we should expect citizens to prioritize the epistemic *over* the moral. But it seems to me that these categories of normativity run together, that is, side by side: I think we’re likely to see the moral normativity of a commitment wane as we come to regard it as epistemically defective. But that’s not to *prioritize* the epistemic; it is rather to acknowledge that to assess a moral commitment as *false* is also to assess it as non-binding.

I have one final point of contention. I don’t think that we can adopt the view that “democracy [is] supposed to mean that [we] would not have the values that others hold injected into [our] lives” (p. 34). Surely politics of any variety involves precisely this kind of imposition. What’s special about democracy is that it tries to limit the scope of such impositions by means of constitutional constraints on the scope of collective decision-making, and even where it does allow others’ values to be injected into our lives, the injecting results from a process that respects our fundamental political equality. Depending on how any given election goes, many citizens will find new points at which others’ values (values alien to their own) will be injected into their lives. Under normal circumstances, that the unwelcome results are the product of a properly constrained and otherwise well-ordered political process is enough to render those results *tenable*, even when I must regard them as

deeply mistaken or worse. The folk-epistemic view is not aimed at relieving us of the hard fact that politics is about forcing people to do what they otherwise would not do. However, it does try to show that certain epistemic commitments we already endorse give us sufficient reason to uphold democracy even when it goes badly. But the success of this kind of argument does not turn on the ability to convince citizens never strongly to oppose, or even resist democratic outcomes; the bar for success is set much lower. The folk-epistemic argument attempts to show that our epistemological reasons are sufficient to keep our protest, dissent, and resistance within the bounds of democracy.

Symposium: Waco Twenty Years Later

The Contested Legacies of Waco

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1. Introduction

In the spring of 2003, I asked the editor of a well-known online publication whether he'd be interested in an essay I wanted to write on the topic of "Waco, Ten Years Later." He wasn't. Waco, he told me, was one of those topics that fell between the proverbial high stool and the low stool: it wasn't quite history, and it wasn't quite current—and so, it was irrelevant to his readership. I resolved at that point to wait ten years when Waco would finally become "history," and try again. As it happens, I've waited *eleven* years, and ultimately decided to run my own symposium on the subject.

"Waco," as I'll refer to it here, is popular shorthand for what the U.S. Treasury Department Report refers to as "the Firearms Investigation of Vernon Howell, Also Known as David Koresh," what the U.S. Justice Department Report refers to as "the Events at Waco, Texas," and what the Danforth Report calls "the 1993 Confrontation at the Mt. Carmel Complex."¹ In the year 2014, however, the quoted phrases neither clarify very much nor refresh memories in any helpful way. When I taught the topic of Waco to undergraduates in an upper-level seminar called "Philosophical Issues in Criminal Justice" at Felician College in the fall of 2011, not one of my 18-21 year old students recognized the words or phrases "Waco," "Mt. Carmel

¹ See *Report of the Department of the Treasury on the Bureau of Alcohol, Tobacco, and Firearms Investigation of Vernon Wayne Howell also known as David Koresh* (September 1993), accessed online at: <https://archive.org/details/reportofdepartme00unit>; *U.S. Department of Justice Report to the Deputy Attorney General on the Events at Waco, Texas* (October 8, 1993), accessed online at: <http://www.justice.gov/publications/waco/wacotocpg.htm>; *Final Report to the Deputy Attorney General Concerning the 1993 Confrontation at the Mt. Carmel Complex, Waco, Texas* (November 8, 2000), also known as the "Danforth Report," accessed online at: http://en.wikisource.org/wiki/Final_report_to_the_Deputy_Attorney_General_concerning_the_1993_confrontation_at_the_Mt._Carmel_Complex,_Waco_Texas.

Complex,” “Branch Davidian,” or “David Koresh.” In the wake of 9/11, the Iraq War, the Fort Hood Massacre, and innumerable mass shootings in the U.S. from Aurora to Newtown, my students seemed unsure why anyone might want to single out Waco for special attention, even after I explained what it was.

Given this collective loss of memory, it might be worth rehearsing the bare bones of the event, just to refresh memories and have them before us. Wikipedia does a perfectly creditable job in describing the event:

The **Waco siege** (also known as the Waco Massacre) was a siege of a compound belonging to a religious group, the Branch Davidians, by the FBI between February 28 and April 19, 1993. The Branch Davidians, a sect that separated in 1955 from the Seventh-Day Adventist Church, was led by David Koresh and lived at the Mount Carmel Center ranch in the community of Elk, Texas, nine miles east-northeast of Waco. The group was suspected of violations of federal gun control laws and a search and arrest warrant was obtained by the Bureau of Alcohol, Tobacco and Firearms (ATF) in order to investigate the matter.

The incident began when the ATF attempted to raid the ranch on February 28. An intense gun battle erupted, resulting in the deaths of four agents and six Branch Davidians. Upon the ATF’s failure to raid the compound, a siege was initiated by the Federal Bureau of Investigation (FBI), the standoff lasting 51 days. Eventually, the FBI launched an assault and initiated a tear gas attack in an attempt to force the Branch Davidians out of Mt. Carmel. During the attack, a fire engulfed Mount Carmel Center and 76 men, women, and children, including David Koresh, died.

Much dispute remains as to the actual events of the siege. A particular controversy ensued over the origin of the fire; a government investigation concluded in 2000 that sect members themselves had started it. The events at Waco were cited as the primary motivation for the perpetrators of the Oklahoma City bombing that took place exactly two years later in 1995.²

Broadly speaking, two competing interpretations of Waco—which I’ll call *libertarian-anarchist* and *mainstream*—sit side by side in our national consciousness, expressing dissonant elements of a sort of repressed national trauma, the nature of the clash between them obscured by the passage of time. What they represent are contested conceptions not just of the U.S.

² Accessed online at: http://en.wikipedia.org/wiki/Siege_of_Waco. I’ve taken the liberty of editing the entry slightly for clarity and style, of re-writing a few clauses, and of eliminating the hyperlinks and footnotes in the original.

government, but of government as such, understood as an unregulated regulator of force in a given territory.

Within libertarian-anarchist circles, Waco is thought to be the conclusive answer to charges of “paranoia” about the nefarious intentions of the U.S. government, and in particular of federal gun control laws and federal law enforcement. The point is succinctly put in this way by libertarian journalist James Bovard:

Waco is the preeminent symbol of government out of control, of law enforcement turning into a marauding army, and of federal agencies acting as if they were responsible to no one. Waco is also a classic example of the Clinton administration continually spinning its way out of a catastrophe, showing how any problem can be “solved” if the truth is sufficiently delayed and rationed.³

The basic normative presupposition of the libertarian-anarchist account of Waco is the justifiability of a strong right to own firearms and use them in self-defense, including self-defense against the government itself. On this view, there is something *prima facie* illegitimate about gun control, or at least about gun control as typically conceived by its advocates. Consequently, there is little reason for sympathy or patience for federal law enforcement engaged in the enforcement of firearms regulations. A further implication of the view is the essentially non-threatening and non-rights-violative nature of the Branch Davidians’ gun-related activities, a.k.a. “stockpiling illegal weapons.” If we have a right to firearms, there is nothing inherently threatening, immoral, or rights-violative about unorthodox religious groups’ stockpiling weapons of the sort currently regarded as illegal. Such activities ought to be, legally speaking—and are, constitutionally speaking—permissible. In fact, a government that interferes with them is *prima facie* engaged in rights violations.

Considered in this way, the basic lesson of Waco is that a government structured like the U.S. government is inevitably bound to engage in systematic rights violations. A federal gun control policy, like a federal tax code or any government-enforced regulatory regime, demands full compliance, down to the bureaucratic details of the activities it regulates. Those who fail to comply invite the wrath of the full force and power of the federal government, as the Branch Davidians did. Thus unorthodox or dissident groups that insist on arming themselves practically invite violent confrontation with the federal government. The odder their beliefs, the less sympathy they can expect from the wider population; the less sympathy they get, the more likely they are to end up dead over what are ultimately squabbles over bureaucratic paperwork.

³ James Bovard, “feeling your pain”: *The Explosion and Abuse of Government Power in the Clinton-Gore Years* (New York: Palgrave, 2001), p. 269.

Many defenders of the libertarian-anarchist view would go further. On what has become a standard interpretation, “Waco” names a deliberate massacre of innocent civilians by the government:

The governmentally authorized and deliberately planned slaughter of seventy-six adults and children at Waco, Texas on April 19, 1993 illustrated the lengths to which the central government now is prepared to go in deploying lethal force against its subjects.

Some years ago an acquaintance of mine, a legal scholar and expert in the field, remarked on the importance of studying the U.S. government’s treatment of Native Americans in order to learn what government might someday do to other groups in society. His prophetic words merit attention as we contemplate the federal government’s actions in Waco.⁴

On this view, Waco was an atrocity on par with, say, the Sand Creek and My Lai massacres, and deserves a place of ignominy besides them. After all, a government capable of burning dozens of civilians alive is probably capable of any conceivable atrocity, and if it rationalizes its conduct by invoking its power to regulate firearms, that power is a fundamental threat to all of us. So conceived, the libertarian-anarchist interpretation gives us “license to infer the worst,” that is, license to infer that the U.S. government is less the rights-respecting institution that most Americans take it to be, and more accurately describable as a rights-violative regime that deserves armed resistance by those on the receiving end of its many depredations.

Within mainstream circles, by contrast, Waco has had little traction and has little political-cultural meaning.⁵ The most recent item on *The New*

⁴ Charlotte Twight, *Dependent on D.C.: The Rise of Federal Control Over the Lives of Ordinary Americans* (New York: Palgrave Macmillan, 2003), pp. 308-9. See also Carol Moore, *The Davidian Massacre: Disturbing Questions About Waco Which Must Be Answered* (Franklin, TN: Legacy Communications, 1995).

⁵ There are, of course, some exceptions that effectively prove the rule. Among books, three have achieved a certain degree of mainstream recognition and popularity: Dick J. Reavis’s *The Ashes of Waco: An Investigation* (Syracuse, NY: Syracuse University Press, 1995); David Thibodeau and Leon Whiteson’s *A Place Called Waco: A Survivor’s Story* (New York: Harpercollins, 1999); and most recently, Clive Doyle, Catherine Wessinger, and Matthew D. Witmer’s *A Journey to Waco: Autobiography of a Branch Davidian* (Lanham, MD: Rowman and Littlefield, 2012). Among film documentaries, the two best known are perhaps PBS’s Frontline documentary, “Waco: The Inside Story” (1995), and William Gazecki’s “Waco: The Rules of Engagement” (1997). For a brief discussion of the influence of Waco on popular culture, see part 5 of Carl Hoover’s “Branch Davidians’ Impact on Pop Culture Ranges Between Wacky, Insightful,” *Waco Tribune-Herald* (March 23, 2003), accessed online at: <http://www.religionnewsblog.com/2812/the-branch-davidian-sieges-influence-on-popular-culture>. One notable cultural artifact omitted from Hoover’s survey is AC/DC’s “Burnin’ Alive,” a hard-rock critique of the Clinton Administration and

York Times's "Times Topics Branch Davidian" page dates to July 1, 2007, and mentions the Waco siege only in passing. The item before it, dated April 15, 2007, describes a conflict between various contemporary successors to David Koresh's Branch Davidian group. Tellingly, the last sustained series of articles on Waco in the *Times* dates to the summer of 2001, and focuses on the aftermath of Senator John Danforth's year 2000 inquiry into the possibility of a government cover-up over Waco. Needless to say, there is no item in the *Times* offering a twenty-year (much less twenty-one year) retrospective on the event.⁶ On the mainstream view, Waco is simply the case of a cult that challenged the federal government to a duel, lost, and deserved to lose. As President Clinton put the point: "I do not think the United States government is responsible for the fact that a bunch of fanatics decided to kill themselves."⁷ In this case, we have a mirror-image of the libertarian-anarchist narrative, with implications that take us to the exact opposite of the libertarian-anarchists' conclusions.

The basic normative assumption of the mainstream view is the *justifiability* of a federal gun control policy. On this view, gun control is a moral and practical necessity, and a legitimate, indeed essential, government function. A government that fails to regulate the possession and use of weapons under its jurisdiction ceases to *be* a government: it fails to sustain the monopoly on the legitimate use of force that a government is required to have, and thereby surrenders to anarchy. So some sort of gun control is a non-negotiable feature of government as such. If such a government tolerates gun ownership at all, that ownership must be controlled by law, and there is properly speaking no rule of law without a single, consistent regulatory and enforcement framework. In the American context, that means a system of federalized law ultimately fashioned and supervised by Congress. Furthermore, the rule of law demands recognition of a basic asymmetry between the powers of law enforcement and the procedural rights of citizens confronting law enforcement as suspects in a criminal investigation. While citizens have rights of due process, and law enforcement has responsibilities to respect the rules of criminal procedure, ultimately, the task of law enforcement requires that government be expected to issue demands backed by force, and requires that criminal suspects acquiesce peacefully in those demands. That applies, of course, to gun laws as well: those who defy the enforcement of gun laws, as the Branch Davidian leadership did, are a threat to the rule of law, and are by implication a threat to those protected by it.

defense of the Branch Davidians (from *Ballbreaker*, 1995).

⁶ An exception to the rule from *The Journal*, an Irish news website: Christa Finn, "The Waco siege ended on this day 21 years ago, leaving 79 dead," accessed online at: <http://www.thejournal.ie/the-waco-siege-ended-on-this-day-21-years-ago-leaving-79-dead-1422082-Apr2014/>

⁷ Quoted in Bovard, "*feeling your pain*," p. 269.

Given the value of the rule of law, no such threat can be tolerated. If one appears, it must be neutralized, by force if necessary, by overwhelming force if it comes to that. Though what happened at Waco was regrettable, it was ultimately justifiable: a state must defend itself against those who challenge its monopoly on force, which is what the Branch Davidian leadership self-consciously chose to do.

As a factual matter, the mainstream position holds that it was the Branch Davidian leadership, not the government, that started the fire that led to the deaths of the Branch Davidians. From this perspective, the contrary libertarian-anarchist position is simply a form of conspiracy theorizing characteristic of the notorious “paranoid style in American politics.”⁸

Every state, legitimate or otherwise, faces enemies that seek its overthrow. In the past, the federal government of the United States has faced enemies motivated by racism in the guise of the Confederacy and the architects and defenders of Jim Crow. Today, the federal government faces an alliance of religious fundamentalists who regard the state’s monopoly on force as a challenge to God’s law, and libertarian-anarchists who regard the same monopoly as a challenge to their rationalistic, Jacobin conception of liberty. The Branch Davidians seem to have embodied both conceptions simultaneously. Given the indispensable value of the state for the protection of genuine liberty, the mainstream account holds that such paranoia be delegitimized at both the normative and straightforwardly factual levels. After all, a cult capable of burning its own members alive is capable of anything, as are the anarchist paranoids who would attribute the Branch Davidians’ murder-suicide to the government that tried to save them from it. Here, too, we have license to infer the worst, not about the government, but about those who reject its legitimacy.⁹

Put in interrogative form, the *specific* issues that divide the two interpretations might be enumerated as follows:

1. Is gun control justified? If so, in what form? If not, how are arms races between competing groups of citizens to be handled?
2. What degree of suspicion justifies a government’s authority to use force while conducting a search for contraband on private property?

⁸ Richard Hofstadter, “The Paranoid Style in American Politics,” *Harper’s Magazine* (November 1964), accessed online at: <http://harpers.org/archive/1964/11/the-paranoid-style-in-american-politics/>.

⁹ For a classic expression of this sort of view (though not directly about Waco), see Conor Cruise O’Brien, “Thomas Jefferson: Radical and Racist,” *The Atlantic* (October 1996), pp. 53-74.

3. Do citizens have a right to self-defense against what they perceive to be disproportionate uses of force by the government?
4. Granting that some uses of force are clearly disproportionate, even in cases of self-defense, what are the criteria of proportionality for the use of force in self-defense, whether by governments or private citizens?
5. How do we adjudicate between mainstream and “conspiratorial” interpretations of controversial events? At what point are we entitled to dismiss conspiracy theorizing as paranoid psychopathology, instead of taking it seriously and engaging with it in public discourse?

All five of these issues remain recurring and unresolved ones in the psychopolitics of American democracy.

As the contributors to our symposium make clear, it is clear enough why Waco has drifted into relative obscurity over the years, having been displaced by the events of 9/11, by the wars in Afghanistan and Iraq, and by Islamic terrorism generally. Interestingly, Waco competed for attention with Islamic terrorism from the very outset: the Waco siege began on February 28, 1993, two days after the first bombing of the World Trade Center on February 26 of that year. To take *The New York Times* once again to illustrate the point: the first major coverage of the Branch Davidian siege consisted of a single article on March 2, 1993, following three solid days of wall-to-wall coverage of the Trade Center attack, with articles on the Trade Center bombing vastly outnumbering those on Waco until well into the Waco siege.

When on April 19, 1995, Timothy McVeigh and his co-conspirators blew up the Alfred P. Murrah Building in Oklahoma City, a casual viewer might easily have followed the news while missing the fact that McVeigh had intended his attack as retaliation for the government’s actions at Waco. The Oklahoma City bombing was soon followed by the Monica Lewinsky scandal (1998), by the bombings of the U.S. embassies in Kenya and Tanzania by Islamic terrorists (August 1998), and by rumors of a “Wag the Dog” scenario involving the Clinton Administration’s bombing of the Shifa Pharmaceutical Plant in Khartoum, Sudan (August 1998). The three items formed a single narrative thread supplied by the film “Wag the Dog” (1997): rumor had it that Clinton had started a phony war in order to distract attention from the sex scandal of which he was the culpable protagonist.

It’s plausible to think that the sex appeal, intrigue, and disquieting ramifications of the “Wag the Dog” controversy muted the impact of Waco across the breadth of the Clinton presidency. In any case, the Clinton Administration was effectively vindicated on Waco in ways it was not vindicated in the “Wag the Dog” scandal. Whether he perjured himself or not, Clinton ultimately admitted to lying under oath in the matter of Lewinsky, and though no “Wag the Dog” scenario was involved, the fact remains that the

Clinton Administration bombed the Shifa Pharmaceutical plant without ever being able to offer conclusive evidence that it was (as the administration had claimed) an Al-Qaeda terrorist facility for the manufacture of VX nerve gas.¹⁰ By contrast, Special Counsel John J. Danforth's year 2000 inquiry into Waco was widely thought to have proven that the Branch Davidians rather than the government had set the fire that consumed the Mt. Carmel complex, thereby vindicating the government's version of events. As a *New York Times* headline somewhat hyperbolically put the point: "A Special Counsel Finds Government Faultless at Waco."¹¹ So it's easy to see why "Wag the Dog" would attract attention, while Waco would fall into obscurity.

By the time of Timothy McVeigh's execution in June 2001, few people, I suspect, could connect the execution with anything having to do with Waco. By the fall of 2001, the execution itself had faded into the background of national awareness, and had long since been forgotten.¹² The fall of 2001 was of course the fall of 9/11, and it was imagery of the destruction of the Twin Towers that effectively displaced Waco, permanently, from social memory. After the carnage of the decade-and-a-half following 9/11, Waco had come to seem quaint in the scope of destruction it involved, and also irrelevant to current events, which seemed to have less to do with Christian fundamentalists than with Islamic ones.

¹⁰ For accounts of the Lewinsky scandal, see Richard Posner, *An Affair of State: The Investigation, Impeachment, and Trial of President Clinton* (Cambridge, MA: Harvard University Press, 2000), and Ken Gormley, *The Death of American Virtue: Clinton vs. Starr* (New York: Broadway Books, 2011). For an account of the bombing of the Shifa Pharmaceutical Plant, see Daniel Benjamin and Steven Simon, *The Age of Sacred Terror: Radical Islam's War Against America* (New York: Random House, 2003), chap. 9.

¹¹ Jim Yardley, "A Special Counsel Finds Government Faultless at Waco," *The New York Times*, July 22, 2000, accessed online at: <http://www.nytimes.com/2000/07/22/us/a-special-counsel-finds-government-faultless-at-waco.html?src=pm&pagewanted=2>.

Taken literally, the *Times's* headline flatly contradicts both the text of the article and the text of the Danforth Report; see, e.g., Danforth Report, pp. 51-55, 65-85, and 87-95. Since most of pp. 79-84 of the Danforth Report was redacted, it's unclear how the author of the headline could possibly have concluded that the sections specifically criticizing the government's conduct had found the government "faultless." The article itself seems to be a summary of the press conference at which Danforth announced his findings; it's unclear whether the reporter had read the text of the Danforth Report.

¹² This despite the tendentious, factually challenged efforts of McVeigh's most famous apologist, Gore Vidal. See Gore Vidal's "The Meaning of Timothy McVeigh," *Vanity Fair* (September 1, 2001), accessed online at: <http://www.vanityfair.com/politics/features/2001/09/mcveigh200109>.

In a discussion of the FBI's conduct at Waco, the historian Richard Gid Powers writes:

The lesson the FBI may have carried away from the congressional hearings [on Waco, in 1995] was that it really had nothing to fear when it attacked right-wing domestic extremists, since its actions—and its mistakes—would be excused by liberals and Democrats, while in the long run conservatives were going to support the Bureau no matter what. And so the Bureau made right-wing extremist groups the almost exclusive focus of its domestic intelligence operations, even though the first World Trade Center bombing on February 26, 1993 should have been a wake-up call that Islamist extremists represented the graver threat, despite the Oklahoma City bombing of April 19, 1995.¹³

I find Powers's comment ironic, implying as it does that Waco and Islamism belong in separate, hermetically sealed categories, each conceptually and practically irrelevant to the other. The implication is, I think, somewhat misleading. As I suggest in the next section, contrary to the implication of Powers's claim, I think Waco ends up illuminating the politics of the Near East and South Asia, and vice versa, and that both Waco and its Islamist cousins reflect a similar ethico-political dynamic.

2. From Mini-Secession to Civil War: Waco, Jamia Hafsa, and Iraq

Despite its apparent obscurity and provinciality, I would suggest that Waco is a historically significant event with global relevance, an event that functions as a token of a recurring type of event. At the most fundamental level, Waco is an instance of *theologically or ideologically inspired mini-secession*.

In prototypical form mini-secession works like this: A determined secessionist group, often religious, appropriates a piece of land in a sovereign nation (or some functional equivalent), inviting others to join the group in escape from a sinful and fallen culture, and in expectation of apocalypse and salvation. In defiance of the law, the group stockpiles weapons and practically invites confrontation with the outside world; eventually, a reluctant government responds with force to what it takes to be intolerable provocation with force with the intention of upholding the rule of law. Rejecting the moral and political legitimacy of the government and its authority to uphold its sovereignty, the secessionists invoke and act on a God-given right of self-defense against aggression. The government responds in kind, and eventually escalates its own use of violence against the group. The ultimate result is widespread loss of innocent life.

¹³ Richard Gid Powers, *Broken: The Troubled Past and Uncertain Future of the FBI* (New York: Free Press, 2004), p. 378.

In the wake of the disaster, partisans of the government as well as those of the secessionist group struggle to assign blame for the event in an atmosphere of conspiracy theorizing and outrage. After a series of hard-fought ideological battles (themselves marked by violence), the victors win an uneasy victory against what appear to be anarchist fanatics and conspiracy theorists. The fundamental philosophical and political issues go unresolved, however, so that when another token of the same type of event arises in outwardly different guise, it goes unrecognized, and the pattern continues, driven by the unresolved character of the issues that gave rise to it.

In this light, consider the Lal Masjid siege that took place in Islamabad, Pakistan from roughly February until July of 2007. Setting aside the religion of the combatants and the geographic location of the siege, the Lal Masjid siege bears an obvious similarity to its Branch Davidian counterpart. The siege began over a land dispute between the Pakistani government (more specifically, the Capital Development Authority of Islamabad) and Lal Masjid/Jamia Hafsa, a mosque and religious school run by Abdul Rashid and Abdul Aziz Ghazi, two charismatic Islamic fundamentalist clerics with ties to (and sympathies for) Al-Qaeda. According to the Pakistani government, the school was built “illegally”—that is, without proper permission on “public land”—and was therefore to be slated for demolition. The Ghazi brothers and their supporters described the government’s decision as an act of desecration, and vowed to resist the government. In doing so, the brothers seem to have capitalized on the ostensible similarity of the government’s actions in the Lal Masjid case with those of the Hindu fundamentalists who in December 1992 had destroyed the historic Babri Masjid at Ayoydha, India.

The result was a very Waco-like stand-off accurately (if somewhat inelegantly) described (once again) by Wikipedia:

The **Siege of Lal Masjid** was a confrontation in July 2007 between Islamic fundamentalist militants and the Government of Pakistan led by General Pervez Musharraf and Shaukat Aziz, then Prime Minister of Pakistan. The focal points of the operation were the Lal Masjid (“Red Mosque”) and the Jamia Hafsa madrasah complex in Islamabad, Pakistan.

Since January 2006, Lal Masjid and the adjacent Jamia Hafsa Madrasah had been operated by Islamic militants led by two brothers, Maulana Abdul Aziz and Abdul Rashid Ghazi. This organization supported the imposition of sharia (Islamic religious law) in Pakistan and openly called for the overthrow of the Pakistani government, led by its President Pervez Musharraf. Lal Masjid was in constant conflict with authorities in Islamabad for 18 months prior to the military operation. They engaged in violent demonstrations, destruction of property, kidnapping, arson, and armed clashes with authorities. After Lal Masjid militants set fire to the Ministry of Environment building and attacked the Army Rangers who guarded

it, the military responded, and the siege of the Lal Masjid complex began.

The complex was besieged from July 3 to July 11, 2007, while negotiations were attempted between the militants and the state's Shujaat Hussain and Ijaz-ul-Haq. Once negotiations failed, the complex was stormed and captured by the Pakistan Army's Special Service Group. The conflict resulted in 154 deaths, and 50 militants were captured. The assault resulted in pro-Taliban rebels along the Afghanistan border nullifying a 10-month-old peace agreement with the Pakistani Government. This event triggered the Third Waziristan War, which marked another surge in militancy and violence in Pakistan and has resulted in more than 3,000 casualties. In 2013, Musharraf was arrested for being personally responsible for ordering the siege.¹⁴

Both the similarities to and differences from Waco are striking. As with Waco, we have a fundamentalist religious group engaged in weaponized mini-secession from the government. As with Waco, the secession takes place in a fortified religious complex—a sacred space that is also a militarized base of operations for illegality. As with Waco, the secessionists represent a radicalized version of a mainstream sect, and elicit the same combination of revulsion and quasi-approving sympathy from the wider population—a combination that makes law enforcement against the group particularly difficult. As with Waco, the government besieges the compound, then negotiates, then finds the negotiations at a stalemate, then escalates against secessionists, with widespread loss of life. As with Waco, the secessionists end up discredited within mainstream circles and valorized outside of them.

Of course, Jamia Hafsa differs from Waco by representing a kind of nightmarish “possible world” scenario difficult to imagine in the American case. Unlike the Branch Davidians, the Lal Masjid militants had ties to regional and international terrorist groups. Unlike the Branch Davidians, they explicitly threatened—and attacked—the rights of those outside of their circle, and beyond their walls. And unlike Waco, “the surge in militancy and violence” following the event was a full-scale civil war, rather than a single catastrophic bombing.

Given the differences between the two cases, I think we can safely infer that a Jamia Hafsa scenario is very unlikely to take place in contemporary North America. But given the similarity between them, I think we can also see why tokens of the Waco type have, under the right circumstances, the potential to generate civil wars. Political philosophers often imagine “possible world” scenarios, and we can in principle imagine a possible world in which a North American secessionist group enacts a Jamia

¹⁴Accessed online at: http://en.wikipedia.org/wiki/Siege_of_Lal_Masjid. I've taken the liberty of editing the entry slightly, and of removing hyperlinks.

Hafsa rather than a Waco scenario—going on a rampage against the wider society rather than hunkering down in Mt. Carmel. It's not entirely clear whether—even with twenty years' hindsight on Waco—the results would be much prettier than was the case with Waco itself.

Now consider a case where a Waco-type event is a prelude to international war—namely, the Iraq War of 2003. The comparison of the Branch Davidian siege with the Iraq War might seem far-fetched,¹⁵ but I would insist that while the events differ radically in scope and temporal duration, they are recognizably events of the same general kind. In this case, instead of secession within a sovereign nation, a sovereign nation secedes from and defies the dictates of “the international community” in the context of a dispute over weapons.

As of the eve of war in March 2003, Iraq stood in defiance of a series of UN Resolutions stretching from UN Resolution 687 (1991) to UN Resolution 1441 (2002), each of them governing the disposition of Iraq's programs for the development of weapons of mass destruction (WMD).¹⁶ Interestingly, the weapons-control provisions of UN Resolution 687 resemble those of the federal statutes used against the Branch Davidians. In both cases, violation of the law consisted not of stockpiling weapons per se, but of the possession of the technological or logistical capacity to generate illegal weapons (and by implication, a stockpile of them). As Kopel and Blackman put the point, in describing U.S. gun control laws:

In fact, machine gun conversion parts are classified as machine guns even when not assembled. Under federal law, a ‘machine gun’ is a functioning machine gun, or all the parts needed to make a machine gun, or the parts used to convert a regular gun to a machine gun. In other words, if a person possesses a machine gun conversion kit, but does not possess any type of actual firearm, the person is considered by federal law to possess a machine gun. Similarly, if a person owns all in one place all the parts necessary to assemble a machine gun, then the person is a machine gun owner under federal law.¹⁷

¹⁵ The suggestion is made independently of me by Dick Reavis in his contribution to this symposium.

¹⁶ The definitive discussion of the status of Iraq's weapons of mass destruction is Charles Duelfer's *Comprehensive Report of the Special Advisor to the Director of Central Intelligence on Iraq's WMD, with Addendums*, also known as “the Duelfer Report,” accessed online at: <http://www.gpo.gov/fdsys/pkg/GPO-DUELFERREPORT/content-detail.html>.

¹⁷ David Kopel and Paul Blackman, *No More Wacos: What's Wrong with Federal Law Enforcement and How to Fix It* (Amherst, NY: Prometheus Books, 1997), p. 54, but see generally, pp. 53-58.

With respect to Iraq, clause (8a) of UN Resolution 687, describing the post-1991 war settlement for Iraq, puts the weapons issue in this way:

The Security Council . . . [d]ecides that Iraq shall unconditionally accept the destruction, removal, or rendering harmless, under international supervision, of:

(a) All chemical and biological weapons and all stocks of agents and *all related subsystems and components and all research, development, support, and manufacturing facilities*

I won't belabor the obvious and undeniable differences between the two cases, but the similarities are, to my mind, striking, instructive, and easily missed. We do not, in ordinary (non-weaponized) life, typically equate the parts of a thing with an assembled version of the thing. No one thinks that if you have own the unassembled parts of a 1969 Gibson SG guitar, you own the guitar, or if you own the unassembled parts of a house or a car, you own a house or a car. Nor would anyone think that if I sold you unassembled parts, I had sold you the assembled thing. Weapons, apparently, are different. To own an unassembled machine gun is to own a machine gun. To possess the subsystems, components, and manufacturing facilities of a WMD is to be in possession of a WMD. Furthermore, the threshold for suspicion of ownership or possession is even lower than ownership or possession of all the relevant parts. You can trigger probable cause if a law enforcement officer discovers that you own some machine gun parts. You can trigger the war-like enforcement of a UN Resolution if weapons inspectors discover some evidence that you are engaged in research and development of WMD.

The Branch Davidians, of course, were discovered to have *had* an illegal stockpile at the time of the ATF raid; Saddam Hussein had no such stockpile at the time of the 2003 invasion. But arguably, the *ex post facto* discovery or non-discovery of weapons stockpiles wasn't the relevant issue in either case. The legitimacy of the ATF's warrant to search the Branch Davidian complex didn't turn on whether or not the Branch Davidians actually possessed stockpiles of illegal weapons; it depended on whether there was probable cause to search for violations of federal weapons laws. If we apply the same analogy to the case of Iraq, the legitimacy of the U.S. government's "warrant to search" Iraq for WMD didn't turn on whether or not Iraq ended up having WMD; it turned on whether Iraq's defiance of UN Resolution 1441 was or was not the international equivalent of probable cause to search for violations of Iraq's post-war weapons agreements.¹⁸

The lesson here is that there is an inevitable connection between weapons control and violence. By its nature, weapons control is an uncertain

¹⁸ Those unwilling to accept the analogy between the Branch Davidian siege and the Iraq War may wish to apply the analogy not to the war but to the sanctions applied to Iraq between 1991 and 2002. I think one gets the same result in either case: sanctions regimes are, after all, sieges.

business. If weapons are illegal, those who possess illegal weapons will have an incentive to hide them. But if they are hidden and illegal, the law requires that they be ferreted out. Given the dangerousness of weapons, and the capacity to hide them, the threshold for suspicion will always be low: the possession of certain weapons cannot be tolerated, but cannot easily be detected, either. So the slightest hint of their possession will trigger some equivalent of search and seizure. But people on the receiving end of search and seizure do not typically take kindly to searches and seizures predicated on low thresholds of suspicion. If they are armed, they will use their weapons against those who have come to seize them, and when they do, government must respond in kind. The dynamic, it seems to me, is inherent in the very idea of a government's monopoly over the legitimate uses of force or weapons, whether local, national, or international. At some level, then, Charlton Heston was right: if you want to control someone's possession of weapons that he insistently wants to have, you have to be prepared to pry them out of his cold, dead hands. This implies, of course, that you have to be prepared to kill him.

3. Anarchy, State, and Dystopia

The Jamia Hafsa and Iraq examples serve to put Waco in a broader and more abstract context. What they suggest is that the distinctively American issue of federal gun control policy at Waco merely serves as a proxy for a more general philosophical issue applicable virtually anywhere.

What is common to all three cases—Waco, Jamia Hafsa, Iraq—is a fundamental conflict between a legally legitimized monopolizer of force enforcing its laws—whether a single state or an alliance of states acting in the name of the United Nations—and a powerful but subordinate entity that simultaneously falls within the domain of these laws while claiming (weaponized) immunity from them in the name of some other set of laws. At one level, the conflict concerns the possession of weapons: who is allowed to have which weapons, and where? At a deeper level, however, the conflict concerns the legitimacy of the very idea of an entity that monopolizes the means of law enforcement: who is to enforce what law, and how?

The basic theoretical issue might be put as follows. Either a single political entity monopolizes the instruments and exercise of force over a given territory, or not. If we grant the legitimacy of a force-monopolizing state, we must grant the state a monopoly over the means of coercion—weapons. So *some* sort of weapons control policy will be an essential feature of the monopoly power of any government. No government can afford to compromise in any significant way on its power to enforce its weapons control policies because no government can remain a government unless it monopolizes the possession and use of weapons. A state must either put down threats to that power, or lose its capacity to remain what it is—a state.

If, by contrast, we reject the idea of a force-monopolizer—if no single political entity is to monopolize the use of force—we're forced (so to speak) to anarchy. By most lights (including my own), a position that reduces

to anarchy seems to have found its way to absurdity. But contemporary libertarian thought is now essentially anarchist in theoretical orientation. On this view, the state needs—but lacks—a justification. It lacks one because the idea that constitutes the state, that of a legitimate or legitimized force-monopolizer, is a fundamentally illegitimate or incoherent one.¹⁹

Ultimately, I'm inclined to think that Wacos are an inevitable consequence of states that simultaneously claim a monopoly on the use of force while permitting a significant degree of religious and political freedom. A state that claims a justified monopoly on force is obliged to uphold the rule of law against those who do not wish to obey its laws, whether as a matter of general principle, or else on a particular occasion. But a liberal state (or its functional equivalent) gives people latitude to do as they please, holding out that freedom as the very basis of its legitimacy. If the freedom in question includes the freedom to possess weapons of a sort that challenges the state's monopoly on force, we have the inevitable makings of a weaponized Waco-like conflict between the state and private weapons owners. A state must enforce its monopoly in order to retain that monopoly and remain a state. But private citizens may combine unconventional beliefs with the possession of threatening weapons. Once those beliefs put in question the state's presumed monopoly on the use of force, we get a motivation for mini-secession, and the makings of a Waco.

The question is whether or not such inevitabilities are a price worth paying for the unregulated regulator of force that is the modern state. And *that* question turns on the price of the alternative—anarchy. If states inevitably lead to Wacos, why not avoid further Wacos by dispensing with the state? The question of the necessity of the state, and with it, the necessity of a uniform arms control policy is a highly unpalatable one, easy to ignore or evade—particularly easy once the initial traumatic event is buried under further layers of trauma. In any case, political philosophers might profit by conducting inquiries into the legitimacy of the state by considering the normative implications of what happened at Waco. Meanwhile, those interested in Waco and similar events might likewise profit by thinking about Waco in the context of philosophical debates about the legitimacy of the state.

This leads us, I suppose, to a suitably Biblical conclusion. If Wacos are an inevitable consequence of the existence of states, and the state is, for

¹⁹ For libertarian discussions of anarchy, see Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974); Murray Rothbard, *The Ethics of Liberty* (Atlantic Highlands, NJ: Humanities Press, 1982); John T. Sanders and Jan Narveson, *For and Against the State: New Philosophical Readings* (Lanham, MD: Rowman and Littlefield, 1996); Roderick T. Long and Tibor R. Machan, *Anarchism/Minarchism: Is a Government Part of a Free Country?* (Burlington, VT: Ashgate, 2008); Michael Huemer, *The Problem of Political Authority: An Examination of the Right to Coerce and the Duty to Obey* (London: Palgrave Macmillan, 2012); Peter T. Leeson, *Anarchy Unbound: Why Self-Governance Works Better Than You Think* (Cambridge: Cambridge University Press, 2014).

the foreseeable future, here to stay, we ought in some form to expect the recurrence of Wacos in the foreseeable future. That might sound a bit too deterministic, even prophetic, to some ears, as though we'd learned nothing in the last twenty years from Waco, and couldn't. I don't mean that. I simply mean that we haven't resolved the fundamental problem that led to Waco in the first place, and that we can't prevent a dynamic we don't understand. Perhaps it's best, then, to take the (paraphrased) advice of the Gospel of St. Matthew: "Woe to states because of Wacos—for it is inevitable that Wacos come, but woe to those through whom Wacos come."²⁰

²⁰ Matthew, 18:7.

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The Branch Davidian Stand-Off Twenty Years Later

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1. Introduction

The events that took place in and around the Branch Davidian compound in Mt. Carmel, Texas, between February 28 and April 19, 1993, generated enormous scholarly and popular literatures at the time, supplemented by hearings and litigation. In fact, so much has been said, from so many different perspectives, that it is difficult to imagine that there is much new light that can be shed on what happened. But we can reasonably ask whether the events that transfixed so many of us then look different twenty years later.

Trying to do that is made difficult by two factors. In the first place, memories are inevitably dimmed by the passage of time. Second, the September 11, 2001, attacks have drawn a line across contemporary history, so that acts of violence before 9/11 seem to have receded into a far distant past, a point to which I will return. As a result, it requires an act of considerable mental gymnastics to put oneself back into that earlier time and place. In what follows, I want to concentrate on two aspects of the Waco events: first, the context in which they occurred, particularly that involving the relationship between religion and the state; and second, the impact of the events in areas of law enforcement that were little known to the general public.

2. The Branch Davidians in the Context of Post-1970 Religion

The Waco stand-off occurred near the end of an approximately twenty-year period during which Americans were variously obsessed, terrified, and fascinated by an explosion of novel religions. They were popularly and pejoratively called “cults,” although most scholars came to prefer the more neutral term “new religious movements” (NRMs). In a number of cases these groups were seen to be actually or potentially violent, either against their own members or outsiders, although acts of violence involving such groups were in fact extremely rare. Sometimes the incidents occurred in the United States, as in the Branch Davidian case, but there were dramatic events in other countries that were widely reported in America.

The period began in 1978, with the mass suicides of the Jonestown colony of Americans who had fled to Guyana. That was followed in 1985 by

the armed stand-off between police and the MOVE group in Philadelphia that resulted in eleven deaths and the burning of an entire city block. The Branch Davidian events occurred eight years later, in 1993. The Branch Davidians were not actually a new group, having been founded in the mid-1950s, but their obscurity and perceived exoticism led to the public's assimilating them to the larger class of "cults." In 1994, 1995, and 1997, there was a series of suicides and murders among members of the Solar Temple group in Quebec, Switzerland, and France. In 1995, members of Aum Shinrikyo set off sarin nerve gas in the Tokyo subway. In 1996, the Federal Bureau of Investigation (FBI) engaged in a stand-off with the Montana Freemen, a group that included Christian Identity believers and schismatic Mormons, which ended peacefully. Then, in 1997, there was a mass suicide of members of Heaven's Gate in a suburb of San Diego.

At the same time, a number of NRMs were growing that did not become involved in dramatic or violent events, but did constitute part of the background against which these events were played. There were far more of these than can be named, much less described, in a brief essay. Among the more conspicuous were the Church of Scientology, founded in 1954 but which began to grow substantially in the 1970s; the Family (also known as the Children of God), in the late 1960s; Hare Krishna, which began about the same time; the Unification Church of Sun Myung Moon, which grew in America beginning in the early 1970s; and the Church Universal and Triumphant, established in 1974. Again, there were innumerable other novel religious groups also active in the 1970s, 1980s, and into the 1990s, that gave the era the appearance of a spiritual explosion. The common denominator among them was the divergence of their beliefs and practices from mainstream American religions.

From the point of view of ordinary Americans, this religious efflorescence was often a cause for concern. In addition to the violent events mentioned above, a popular understanding quickly arose, encapsulated by the stereotype of "cult." The term evoked a set of characteristics generally ascribed to these new religious groups. The stereotype included a charismatic, manipulative, and malevolent leader; zombie-like followers who had lost the capacity to act rationally, in their own interests; and a propensity for violence either against themselves or others. The stereotype was reinforced by a sub-culture of fearful parents whose children had become members, apostates anxious to "expose" the groups they had left, and so-called "de-programmers" who claimed to have the ability to shake members from their loyalties, if only they could physically be removed from the groups, by kidnapping if necessary.

Consequently, new religious movements came to be viewed and described in fairly lurid terms, often by individuals and organizations that had an interest in so portraying them. Few media had full-time religious reporters and even fewer of these had either the training or the sensitivity to deal with groups outside the major religious traditions. It need hardly be said, therefore, that law enforcement agencies, whose professional contact with religion

tended to be fleeting, given American constitutional arrangements, were particularly poorly placed to have continuing contact with a novel religious group—something that had probably not occurred since the fraught early days of Mormonism in the nineteenth century.

In retrospect, it is fairly clear that while there were specific errors that law enforcement committed at the Branch Davidian compound, many of them were traceable to broadly held beliefs about new religious groups. The Bureau of Alcohol, Tobacco, and Firearms, which participated in the initial fire-fight, and the FBI, which managed the stand-off, were imbued with the same notions about “cults” that pervaded the larger society. While the Branch Davidians had a relatively harmonious relationship with those living around them, they were certainly among the most obscure of sects, small and little known even to most religion scholars. Quite possibly had their gun registration problems occurred at another time, they might have been worked out amicably. But coming as they did in an atmosphere in which strange religious groups were assumed to be composed of violence-prone robots led by half-crazed zealots, a very different outcome was more likely.

Thus the events at Waco looked backward and forward. They looked back to earlier religious developments and fed off those as they had been constructed to form the cult stereotype. They looked forward, reinforcing that stereotype into the remainder of the decade of the 1990s. How could they not, given the denouement of the stand-off? The immolation of the compound and most of its inhabitants, nationally televised, appeared to reinforce everything that had been said about cults. David Koresh was dead and hence his role as a crazed sexual predator, manipulating his followers like a puppeteer, was seemingly beyond challenge. If anything, the sarin gas attack in Tokyo two years later, ordered by Aum Shinrikyo’s leader, Shoko Asahara, only confirmed what appeared to be the lessons of Waco. The cult stereotype was consequently strengthened by Waco, and its strengthening was to a considerable extent the product of the stand-off’s catastrophic ending. For it was far easier for the public to blame the Branch Davidians’ deaths on David Koresh and his followers than on federal law enforcement. A public predisposed to see such religionists as the irrational, hypnotized pawns of an insane master found their views confirmed by events.

3. Waco’s Hidden Impacts

Yet all was not as it seemed. If Waco had the negative consequence of reinforcing the cult stereotype, it also had positive, if unintended, consequences. The events at the compound produced results which, while scarcely secret, either interested the public very little or occurred below the threshold of journalistic curiosity. The internal investigations by the Department of Justice produced a multi-volume set of reports totaling more than 400 pages. Although the reports in their entirety were highly critical of the FBI’s conduct, perhaps the most significant element were the critiques from outside experts, and of these the most lacerating came from two scholars of religion. That was scarcely surprising, since during the siege, even though

the Branch Davidians were a religious sect that habitually saw the world in religious terms, the FBI had never consulted experts on religion. Instead, the FBI relied on the expertise of psychologists and psychiatrists who maintained that there was no point in talking to “unbalanced” people. While the Department of Justice reports were openly available documents, their length and complexity limited the degree to which their contents reached the general public. These reports, together with the general dismay felt by Attorney General Janet Reno and others in the Department, resulted in significant changes within the FBI. There were at least three sets of changes.

The first was structural. The failures at Waco led to a restructuring of the FBI’s ability to deal with crises. Specifically, a unit was created—the Critical Incident Response Group (CIRG)—that for the first time brought together crisis-response capabilities that had been dispersed through the agency at the time of the Waco siege. CIRG was established in 1994 to “integrate tactical, negotiations, behavioral analysis, and crisis management into one cohesive structure.”¹ When in the past command of a situation lay in the hands of the agent in charge of the nearest field office, it would now go to a crisis-management specialist.

The second was the willingness of the FBI to reach out to the academic community, for clearly one of the greatest weaknesses of the Waco operation was the failure to understand the role played by the Branch Davidians’ beliefs, a religious system that no one in the law-enforcement community knew anything about. In 1995, the year after CIRG was founded, the unit established a commission (of which I was a member) to address the question of how a broader range of expertise could quickly be drawn upon when Waco-like situations arose.

We did not have long to wait before such a test came. In September 1995, the so-called Montana Freeman, a sect-like group, as was mentioned above, composed of, among others, Christian Identity believers and Mormon schismatics, seized a ranch outside of Jordan, Montana. A stand-off with the FBI began on March 26, 1996, and lasted until June 13, but the contrasts between this operation and the Waco events are instructive. The FBI avoided any show of force and kept the press away; there was no “circus” atmosphere this time. More importantly, the FBI consulted a number of scholars of religion, including Philip Arnold, Catherine Wessinger, Jean Rosenfeld, and myself.² The stand-off ended with a peaceful, negotiated surrender. This not only avoided possible bloodshed, but validated the beliefs of those both inside

¹ “Critical Incident Response Group,” accessed online at: <http://www.fbi.gov/about-us/cirg>.

² Jean E. Rosenfeld, “The Importance of the Analysis of Religion in Avoiding Violent Outcomes: The Justus Freeman Crisis,” *Nova Religio: The Journal of Alternative and Emergent Religions* 1 (October 1997), pp. 72-95; Catherine Wessinger, *How the Millennium Comes Violently: From Jonestown to Heaven’s Gate* (New York: Seven Bridges, 2000), pp. 158-217.

and outside the FBI in the value of such consultations, as well as an emphasis on negotiations, even if they were protracted.

Third, a structured arrangement was made with scholars of religion that transcended crisis situations. In 1994, the Department of Justice had contacted the American Academy of Religion (AAR), the national association of religion scholars, asking it to “help educate federal law enforcement agencies about religious groups.”³ As a way of beginning this process, the AAR invited some FBI agents to attend its 1995 annual meeting where there would be a panel on the Oklahoma City bombing. Although agents came to this and some subsequent meetings, the visits were unproductive, since it was difficult to know whether any papers being presented would be of value for law enforcement. Consequently, beginning in 1999, the FBI and the AAR experimented with a new model, in which agents began to meet privately during the AAR convention with selected scholars who might have expertise relevant to existing or potential problems. This invitation-only arrangement turned out to be much more useful. It emphasized domestic groups until 2001, when the 9/11 attacks led to an expansion to include scholars of Islam.

In all of these cases, the outside scholars remained in advisory roles, not operational roles. To my knowledge, there has been no systematic evaluation of their impact, if any, on decision-making. One hopes there was a positive impact, in the direction of speedier and more peaceful conflict resolution.

4. Legacies

In short, while Waco could not be undone, it had consequences that might best be termed “preventive.” I dislike using the fashionable phrases “lessons learned” and “best practices,” which have become bureaucratic clichés. But the post-Waco environment did permit some positive developments and, with the hindsight of twenty years, one may say that some have persisted while others are a distant memory.

As I have mentioned, in the short term the Waco events reinforced the pejorative understanding of “cult” and “cult” leadership. From the standpoint of public education, therefore, despite massive media coverage, the public was left perhaps less enlightened than before. Little that happened in the few years afterward changed matters, as the listing of religious violence with which I began suggests. However, the slate was, as it were, wiped clean by the September 11, 2001, attacks. Although these, too, arose out of a religious milieu, they were sufficiently different from the events of 1978-c.1997 so that few were disposed to understand Al Qaeda as a “cult.” On the face of it, of course, that might have happened, but apparently cultural

³ I discuss this and other FBI-academia relationships at greater length in Michael Barkun, “*Project Megiddo, the FBI and the Academic Community*,” in *Millennial Violence: Past, Present and Future*, ed. Jeffrey Kaplan (Portland, OR: Frank Cass, 2002), pp. 97-108.

differences intervened and, by and large, the old stereotype was not applied to the new situation. Instead, a different stereotype began to be constructed of the crazed Islamic suicide bomber, as indifferent to life as the medieval assassin, and with a comparable capacity to insinuate himself into a host society. Thus, although “cult” did not disappear from either language or consciousness, its association with violence and its ability to ignite fear diminished greatly.

Those of us for whom memories of Waco are still relatively fresh need to remember that there is an entire generation for whom the very name is meaningless; or, rather, if it means anything, is merely the name of a small, obscure city in Texas. After twenty years, it has receded into that dim, generalized “past” along with the other significant events that have shaped the lives of an older generation—the Vietnam War, the assassinations of the 1960s, and so on. It may sound callous to say this of an event that occurred in 1993 and that took the lives of over eighty people. However, it is simply an acknowledgment of the foreshortened historical memories of the times in which we live, abetted, no doubt, by the voracious news cycle that constantly seeks the story of the moment. Unlike the years immediately after 1993, law enforcement no longer mobilizes as April 19th approaches, is no longer fearful that the extreme right will exact vengeance for Waco, as Timothy McVeigh apparently sought to do when he bombed the Oklahoma City federal building. But in a strange turn of events, the radical right has appropriated the Waco dead as its own martyrs, even though the Branch Davidians included many non-whites and had positive attitudes toward Israel.⁴

What has survived, at least to some extent, are the changes Waco effected in the FBI. The CIRG still exists twenty-one years later. It would never have been created had not the Waco debacle exposed failures in the FBI’s ability to meet crises. The bridge between the FBI and the academic community remains more or less intact, particularly the capacity to tap into religious expertise, which the FBI was able to draw upon after 9/11. And, of course, from the other side, scholars of religion became sensitized to the potential friction that might exist between unfamiliar religions and the state. The picture of American religious harmony—under such rubrics as the “three major faiths” and the “Judeo-Christian tradition”—was a cultural myth of the 1950s, the Eisenhower era, cemented by the Cold War and ratified by a consensus-oriented social science. It seemed for a long time unthinkable that religion could be a cause of conflict in America.

But, of course, by the time of Waco the Cold War had ended, the Eisenhower era was ancient history, and religion had been mobilized for partisan purposes, with the rise of the New Christian Right. Waco was the ultimate statement, if one was any longer needed, of religion’s potential for disharmony, regardless of where the fault lay for the terrible end to the stand-

⁴ Michael Barkun, “Appropriated Martyrs: The Branch Davidians and the Radical Right,” *Terrorism and Political Violence* 19 (Spring 2007), pp. 117-24.

off. This was not how the system was supposed to work, an especially bitter irony in this case, since the Branch Davidians were ultimately traceable to the Seventh Day Adventists, who had found their seat at what Martin Marty has termed “the republican banquet.”⁵ Thus the soul-searching that followed Waco was not only attributable to the horrendous loss of life, but to the event’s seeming repudiation of how the American religious system was supposed to operate. There have been no subsequent Wacos in the U.S. A full discussion of why that is so lies outside the bounds of this brief discussion. However, by way of concluding, let me close by suggesting three factors that seem primarily responsible.

First, the explosion of new and alternative religions seemed to have run its course by the late 1990s. They did not suddenly disappear, but their significance clearly waned. Second, however slowly, the lessons of religion scholars were absorbed by law enforcement—that beliefs are important, that they determine actions, and that they need to be understood. Finally, the very ferocity of Waco had an immunizing effect. There simply could be no more Wacos, not in the United States, no matter what the provocation.

⁵ Martin E. Marty, *Religion and Republic: The American Circumstance* (Boston, MA: Beacon, 1987), pp. 53-76.

From Razing a Village to Razing the Constitution: A Twenty-Year Retrospective on Waco

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1. Introduction

Twenty-one years ago, a botched investigation of possible gun-law violations by the Bureau of Alcohol, Tobacco, and Firearms (BATF)¹ culminated in a botched assaultive arrest attempt on February 28, 1993, resulting in the deaths of four BATF agents and six Branch Davidians. The Federal Bureau of Investigation (FBI) then led a siege that ensued for fifty-one days, until the FBI used tanks to gas and destroy the building housing the Davidians. The historic stand-off climaxed in a fire resulting in the deaths of seventy-six additional Davidians, about one-third of them children.

Called “the largest massacre of Americans by American Feds since 1890 and the fireworks at Wounded Knee”² and the “deadliest law enforcement operation in U.S. history,”³ the incident partly inspired the home-grown terrorist bombing by Timothy McVeigh in Oklahoma City, taking an additional 168 lives. There were investigations and reviews by the executive, legislative, and judicial branches of government, as well as by non-governmental scholars, journalists, protagonists, and others. Results are summarized in David B. Kopel and Paul H. Blackman’s *No More Wacos: What’s Wrong with Federal Law Enforcement and How to Fix It* (1997). A critical examination of federal government actions at Waco was presented in the Oscar-nominated/Emmy-Award-winning documentary, *Waco: The Rules of Engagement* (1997), by William Gazecki, Mike McNulty, and Dan

¹ With the addition of explosives to its jurisdiction, it is now BATFE. Also, BATFE was moved during the previous decade from the Treasury to the Justice Department.

² Gore Vidal, “The War at Home,” *Vanity Fair*, November 1998, p. 110.

³ Jacob Sullum, “The Fire Last Time,” *Reason*, May 1998, p. 52.

Gifford.⁴ What has been learned by and of the government since?

The Waco disaster represented just one of many ways in which the federal government and some state or local law enforcement agencies have been curtailing American rights and liberties in the name of “wars” against crime, drugs, and terrorism. Thus, when we wrote about Waco in 1997, our concluding chapter and first appendix were geared toward having “no more Wacos.” The reforms we proposed were based on numerous other law-enforcement abuses noted by us and others during the final decades of the twentieth century. So, in addition to looking at what may have been learned about Waco in the past twenty years, and whether law enforcement has changed, it is important to see whether law enforcement—for that matter, the U.S. Congress, the President, and his advisors—learned anything about how to fight crime without undermining the U.S. Constitution and killing innocent people.

So in this article, we first summarize information that was learned after the 1997 publication of our book. We then analyze how law enforcement, especially federal law enforcement, has or has not changed since Waco.

2. What Has Been Learned Since 1997?

It now seems certain that the FBI was determined to launch an attack on the Davidians’ home, no matter what. Two days before the final assault, while secretly planting the “bugs” that would enable them to learn of the planned fire, agents reportedly had the opportunity to capture Koresh but were told not to do so. In addition, the FBI apparently knew of a water shortage at the Davidians’ Mt. Carmel house that would soon have ended the siege, suggesting that the April 19 assault did not even shorten the siege by much.⁵

The FBI had always claimed that at no time during the fifty-one-day siege or the final assault did they use arms (other than CS chemical warfare gas) against the Davidians. But evidence was later developed indicating that the FBI had used two types of arms: firearms and incendiary pyrotechnic devices.

Regarding the firearms, FLIR (Forward-Looking Infra-Red) tapes of the action on April 19 showed flashes which experts interpreted as evidence of gun fire, including machine-gun fire. To some extent, the FBI could claim authorization for shooting at the Branch Davidians, since the Attorney General’s directive for the final assault called for increased use of force if the

⁴ David B. Kopel and Paul H. Blackman, *No More Wacos: What’s Wrong with Federal Law Enforcement and How to Fix It* (Amherst, NY: Prometheus Books, 1997); and *Waco: The Rules of Engagement*, directed by William Gazecki (Fifth Estate Productions, 1997).

⁵ Dan Gifford, “Waco Skepticism and Counter Skepticism,” *Skeptic* 7, no. 1 (1999), p. 31; David T. Hardy with Rex Kimball, *This Is Not an Assault: Penetrating the Web of Official Lies Regarding the Waco Incident* (Bloomington, IN: Xlibris, 2001), pp. 120-21; Kopel and Blackman, *No More Wacos*, p. 192.

CS gas attack that began that morning resulted in Davidian gunfire—a response expected apparently by everyone except Attorney General Janet Reno. The FBI continues to deny having resorted to gunfire, and “independent” reviewers continue to cover it up, but the surviving Davidians noted it as a reason that they were slow—and for many, unable—to leave the compound despite the misery caused by the CS gas and the danger of the tanks and fire destroying the structure.⁶

In 1999, it was revealed that spent cartridges for incendiary devices were found near the premises of the house used by the FBI during the siege.⁷ The FBI finally admitted that contrary to Attorney General Reno’s congressional testimony in 1995 (when she was accompanied by FBI officials who knew the truth and were there to feed her any necessary details), during the morning of the final siege, incendiary devices were fired at the Branch Davidians. The FBI probably accurately denies that the devices caused the fire. But, by 1995, it had been established that the FBI knew that the Davidians were planning, if attacked, to have flammable material spread out for eventual lighting by Koresh’s so-called Mighty Men. At best, such foreknowledge indicates a reckless disregard of whether the incendiary devices would ignite the Davidians’ flammable materials, even as tanks systematically destroyed the structure, closing off escape routes the Davidians attempted to use to flee the conflagration. Many dead bodies were found near exits that had been destroyed by the tanks.⁸

⁶ “Optics Expert Rebuts Waco Standoff Report on FBI Gunfire,” *Gun Week*, January 1, 2002, p. 12; Sullum, “The Fire Last Time,” pp. 52-53; Kopel and Blackman, *No More Wacos*, pp. 162 and 184 n. 298; Hardy and Kimball, *This Is Not an Assault*, pp. 59-60. While the initial autopsies revealed that several Davidians died by gunfire, there was no initial effort to determine the sources of the bullets found. Once the allegations of outside gunfire achieved credibility, an alleged refrigeration malfunction in the area where the bodies were stored damaged them to the point that further analysis was impossible; see Hardy and Kimball, *This Is Not an Assault*, p. 33; “Congress Panel May Test Waco Bullets,” *Reuters*, October 25, 1999; “Waco Prober Seeks FBI Firearms,” *Associated Press*, November 16, 1999; Lorraine Adams and David A. Vise, “Judge Orders Justice Dept., FBI to Reenact Last Day of Waco,” *Washington Post*, November 17, 1999, p. A9.

⁷ Adams and Vise, “Judge Orders Justice Dept., FBI to Reenact Last Day of Waco,” p. A9; Sullum, “The Fire Last Time,” pp. 52-53; Kopel and Blackman, *No More Wacos*, pp. 161-62, 196, and 219; Hardy and Kimball, *This Is Not an Assault*, pp. 113, 116-18, and 291-92; Edward Walsh and Richard Leiby, “FBI Tape Includes Tear Gas Decision: A Key Agent at Waco Approved Use of Pyrotechnic Cartridges,” *Washington Post*, September 3, 1999, p. A1; Richard Leiby, “FBI Reverses Position on Actions in Waco Siege; FBI Reveals Waco Munitions were Potentially Incendiary,” *Washington Post*, August 26, 1999, pp. A1 and A6-A7.

⁸ Leiby, “FBI Reverses Position on Actions in Waco Seige”; Richard Leiby, “Waco’s New Question: Who Knew? Two Days After Blaze, Information on Grenades was Withheld or Overlooked,” *Washington Post*, September 3, 1999, p. A16; David

Attorney General Reno announced that she was shocked to learn of the use of the incendiary devices,⁹ and promptly called for another “independent” review of her department. This review would be headed by former Senator John Danforth, who was reportedly also being considered as a possible Republican Vice-Presidential nominee, and thus anxious quickly to finish his review and clearly not interested in publicly siding with a sexual-predator-led violent “cult.” Danforth’s reported goal was to water down the 61% of the public that believed the government was at fault in Waco.¹⁰

Danforth’s top aide, chosen by Reno, was Edward Dowd, who, as a U.S. Attorney in Missouri, had apparently illegally—but with the Attorney General’s permission—used his office to campaign in favor of gun control on a state referendum,¹¹ a serious potential bias in a case that began as an effort to enforce federal gun laws.

Danforth and Dowd didn’t side with the Davidians. The review found nothing substantively untoward about the FBI’s actions, except for its failure in a timely fashion to reveal the use of the pyrotechnic devices. This lack of timely disclosure led to the prosecution of the whistleblower who eventually reported it, apparently because his whistle-blowing made the Department of Justice’s defense in the civil trial more difficult.¹²

Based on the FLIR tapes, the Danforth Commission also reviewed the allegations of shots being fired on the morning of April 19, but dismissed

Johnston and Neil A. Lewis, “Reno orders tape seized from F.B.I.,” *New York Times*, September 2, 1999, p. A1.

⁹ Filmmaker Mike McNulty questions her denial of prior knowledge, since he had previously sent her information about it. That she may not have been apprised of what he sent her might reflect more on her staff than on her. On the other hand, Jacob Sullum reported in a 1998 review of the 1997 film *Rules of Engagement*, that two incendiary devices had been recovered from the site. Sullum, “The Fire Last Time,” p. 54. If Reno had been genuinely surprised to learn of the devices in late summer 1999, she was clearly avoiding learning about the incident.

¹⁰ James Bovard, “The Latest, Greatest Waco Whitewash,” *American Spectator*, October 2000, pp. 28-29; Phyllis Schlafly, “Asking all the wrong questions,” *Washington Times*, July 27, 2000, p. A19; *Washington Times*, July 27, 2000, p. A19.

¹¹ “Danforth prosecutor should resign,” *Washington Times*, September 23, 1999, p. A20.

¹² Schlafly, “Asking all the wrong questions”; “Danforth prosecutor should resign,” *Washington Times*, September 23, 1999, p. A20; Bovard, “The Latest, Greatest Waco Whitewash,” pp. 28-31; Hardy and Kimball, *This Is Not an Assault*, pp. 93, 100-1, and 154-55; David A. Vise, “Waco Whistleblower Faces Indictment,” *Washington Post*, September 1, 2000, pp. A1 and A14; David A. Vise, “Davidian Raid Whistle-Blower Indicted on Obstruction Charges, November 9, 2000, p. A2; “Washington in Brief,” *Washington Post*, June 8, 2001, p. A5.

them, hiring an outside consulting firm to review the allegations. But the independent review was by a consulting firm dependent upon various federal agencies, including the White House, for its work. The tests were private, and the report concluded that no shots were fired by the FBI at the Davidians. Danforth also was unable to find a plan to demolish the building, even though that had long since been established. Other experts reported that over 200 shots were fired by the FBI on April 19.¹³

3. The Davidians' Civil Lawsuit

For years, some of the most important evidence was kept concealed. Much of the evidence was in the custody of the Texas Department of Public Safety, but officially under the control of the federal government. So persons seeking to look at the evidence were told by the state that the material wasn't under its control, so the state had no authority to allow access to the evidence. Persons going to the federal government were told that it didn't have the evidence in question. To documentary filmmaker Mike McNulty, this Catch-22 looked like a cover-up.¹⁴

The Davidians' civil lawsuit was also thwarted by the poor behavior of the federal judge who tried the case. The judge assigned to the Davidians' civil suit against the U.S. government was the same jurist who presided over the criminal trials of some of the surviving Davidians.

Judge Walter Smith had the advantage of being already familiar with the case, but the Davidians saw him as biased and sought his recusal, which he refused. Part of the bias consisted in the incongruous sentencing at the Branch Davidians' trial, resulting from the trial jury's misunderstanding of apparently rather shoddy—or biased—judicial instructions. The jury had acquitted the Davidians of the underlying felonies they were charged with using firearms to commit, and yet had convicted them of using machine-guns in the acquitted "crimes." As clearly established through later information uncovered by attorneys involved in the civil suit and supported by the documentaries, there was only one use of a machine-gun against the BATF's raiders, and its user, as BATF information showed, was quickly killed. In violation of the Supreme Court's *Brady* rule and other requirements that prosecutors reveal exculpatory information to the defense, perjured testimony was used to suggest that the

¹³ John C. Danforth, *Final Report to the Deputy Attorney General Concerning the 1993 Confrontation at the Mt. Carmel Complex, Waco, Texas* (2000), accessed online at: <http://upload.wikimedia.org/wikipedia/commons/8/85/Danforthreport-final.pdf>; Bovard, "The Latest, Greatest Waco Whitewash"; Hardy and Kimball, *This Is Not an Assault*, pp. 113, 116-17, 125-26, and 139; Richard Leiby, "The Man Who Knew Too Much; What really happened at Waco? Carlos Ghigliotti thought he had the answer, and now he's dead. Was he a victim of . . .," *Washington Post*, May 28, 2000.

¹⁴ Gazecki, *Waco: The Rules of Engagement*; Hardy and Kimball, *This Is Not an Assault*, pp. 78 and 91-92.

individual defendants in the criminal case had used machine-guns.¹⁵

Judge Smith sentenced some Davidians for using machine-guns in the commission of felonies they were acquitted of having committed. Eventually, the Supreme Court reversed these excessive sentences, unanimously holding that only a trier of fact (the jury) could make the determinations which Judge Smith had wrongly made in his sentencing decision.¹⁶

In the civil trial, Judge Smith could claim that he was being fair since he ordered a great deal of information be discoverable by the Davidians' various attorneys. The appearance was deceptive since Smith then declined to give the attorneys enough preparation time to evaluate the mass of material. This curtailment limited the time they were allotted in court so that little of the material could be offered into evidence. The judge also severely constricted the amount of time allotted the Davidians for presenting their case and their ability to use the testimony of expert witnesses. Unsurprisingly, Judge Smith dismissed the civil suit.¹⁷

4. David Hardy's Research

The year 2001 saw the release of another book summarizing the case against the government and its treatment of David Koresh and his Branch Davidians: *This Is Not an Assault: Penetrating the Web of Official Lies Regarding the Waco Incident*, by David T. Hardy with Rex Kimball. The title was based on the loudspeaker announcement to the Branch Davidians as the final assault on their home began on the morning of April 19; the title highlighted the ease of discovering the lies that the government told, quite literally loud and clear. Hardy and Kimball's book provides more evidence of the overly aggressive and seriously flawed initial BATF assault on the Davidians' Mt. Carmel home. To begin with, the helicopter chief and the ground command were initially unable to communicate since they were using different frequencies. The panicked effort for the helicopters to be involved leads to some evidence that the first shot was fired from the helicopters; earlier critics had found indications that the first shot was fired by BATF agents attacking the Davidians' dogs. One way or another, it appears that BATF fired first, contrary to its assertions that the Davidians were the aggressors. Hardy and Kimball's book also notes how members of the House

¹⁵ Kopel and Blackman, *No More Wacos*, pp. 240-42; Hardy and Kimball, *This Is Not an Assault*, pp. 74, 109, 200-1, and 213.

¹⁶ *Castillo et al. v. United States*, 530 U.S. 120 (2000). For more on the appeals, see Kopel and Blackman, *No More Wacos*, pp. 243-44; David K. Shipler, *Rights at Risk: The Limits of Liberty in Modern America* (New York: Alfred A. Knopf, 2012), pp. 118-26.

¹⁷ Hardy and Kimball, *This Is Not an Assault*, pp. 107 and 141-42; *Andrade v. United States*, 116 F.Supp.2d 778 (W.D. Texas, 2000).

committee investigating the incident were, like Danforth, not interested in criticizing government law enforcement or appearing to side with Koresh at a time when Republicans were hoping to take back the White House. The 1995 House Committee hearings, at which the Republicans attacked federal law enforcement and Democrats defended it, did not pay off in the 1996 elections. So when in 1999 the House Government Reform Committee said that it would investigate the new evidence about Waco, the Committee eventually belittled its own expert, Carlos Ghigliotti, who had found massive FBI shooting at the Davidians, preventing women and children from leaving Mt. Carmel. The House committee instead attempted to seize and destroy their expert's preliminary reports—a copy of which the expert had supplied to Hardy prior to the expert's unexpected death.¹⁸

5. Did the Government Learn Anything from Waco?

It is difficult to determine what lessons the government may have learned from the Waco incident. That there have been no more Wacos is due primarily to a diminished governmental interest in violently harassing odd-ball Protestant sects, “gun nuts” associated with right-wing “militia” movements, and the like. The hostility toward the due process of law has instead been associated with adding a new “war on terror” to the existing “war on drugs.” Waco assuredly taught no important government personnel that abusing constitutional protections accorded by the First, Fourth, Fifth, or Sixth Amendments was bad policy.

The Waco disaster began with a sloppy investigation, which nonetheless led to a warrant's being issued for Koresh's arrest, and for the seizure of evidence against him. The warrant was obtained far too easily. It involved old information from biased informants, rubber-stamped by a magistrate with little apparent understanding of what it meant. And the assault occurred essentially without warning—essentially an unapproved “no-knock” warrant service by means of a violent assault.¹⁹ Nothing about that has changed. Sloppily produced warrants are still generally accepted for no-knock searches, as are the results of the ensuing searches. Even if a warrant is invalid, Congress has, to some extent, curbed the exclusionary rule regarding useful evidence in terrorist cases. When a law enforcement officer searches improperly, the evidence is inadmissible, but if he can trick a judge into improperly issuing a warrant, the judicial branch has almost always found that satisfactory. As with other improper actions, one problem in even recognizing the extent of the problem is that if the unjustified search fails to produce

¹⁸ Leiby, “The Man Who Knew Too Much.”

¹⁹ One correction to our book: we incorrectly wrote that the eighty-car BATF convoy from Fort Hood to the city of Waco continued on to the Mount Carmel residence along with the cattle trailers which concealed the BATF agents. Kopel and Blackman, *No More Wacos*, p. 97.

evidence and thus a criminal action, the improperly searched party is not about to waste time suing about the improper warrant—and would be hard-pressed to succeed, since judges, unlike police officers, have almost total immunity against such suits.²⁰

There is some irony in the move toward allowing the issuance of warrants without any serious effort to determine whether probable cause has actually been found. And that is that the wars on crime, drugs, and terror have been accompanied by a steady increase in the ability of law enforcement to snoop without having a warrant. The 2013 revelations by Edward Snowden did not reveal a sharp break with past practices, but rather an intensification of practices which preceded the Barack Obama and George W. Bush administrations.

In our 1997 book, we noted plans in the mid-1990s to increase wiretaps by 130% by 2004, and also noted efforts to get information from credit card companies, financial reporting services, and the like without warrants. Around the time of Waco, Congress was expanding the abilities of law enforcement to snoop by requiring that telecommunications carriers make their systems wiretap-friendly, with the Federal Communications Commission giving the FBI even more power by expanding the mandate to broadband email and voice Internet providers.

Former requirements that intelligence gathering require “specific and articulable facts” to tie an individual to foreign powers or agents for foreign powers have been watered down so that the snooping is legitimate if relevant to an authorized investigation regarding terrorism or secret intelligence. The Foreign Intelligence Surveillance Act of 1994, as amended, has drastically expanded the power of the government to search websites, emails, and other documents, often with no particular tie to terrorism, but just some vague “significant purpose” in ordinary criminal investigations.²¹

Until very recently, Congress and the President have made it clear that they want to expand the ability of federal authorities to snoop without warrants, claiming that the existence of some arrests arising from a huge number of searches validates violation of traditional civil liberties. Since there is no need for the surveilled to be notified, it is unclear whether surveillance laws can ever be challenged, since there is minimal ability to prove standing to sue. Also undermining protections from unreasonable searches and seizures is that, for some terrorism cases, Congress has restricted the exclusionary rule.²²

²⁰ David K. Shipler, *The Rights of the People: How Our Search for Safety Invades Our Liberties* (New York: Alfred A. Knopf, 2011), pp. 128-29 and 141-45; Kopel and Blackman, *No More Wacos*, p. 301.

²¹ For titillation, that can include the emails of a retired general and his sometime biographer and mistress, for which criminal activity is easier to imagine than to find.

²² *Clapper v. Amnesty International USA*, 133 S. Ct. 1138 (2013); Kopel and Blackman, *No More Wacos*, pp. 247-48 and 313-14; Shipler, *The Rights of the People*,

We thought that statutes were needed to forbid spying on peaceful religious groups, and that undercover agents should be forbidden to entrap persons into committing crimes. Law enforcement has curtailed such efforts involving Mormons and some fundamentalist Protestant sects. But 9/11 gave law enforcement *carte blanche* to go after Muslims. There have been, to be sure, radical Muslims worthy of investigation—just as there have been radical Jews similarly worthy of investigation, like the late Rabbi Meir Kahane. But law enforcement has not limited itself to investigating them. Using social media, it has attempted to recruit them for criminal violence that, on their own, they may not have seriously contemplated, such as conspiring to bomb synagogues, subways, and financial and governmental buildings. Law enforcement has also spied on religious groups on the chance that radicals might act like the police and infiltrate such apparently innocuous things like Muslim clubs on college campuses despite a total lack of evidence that the groups are involved in any unlawful activities.²³

One lesson clearly not learned was the potential danger of inviting the military to assist in domestic law enforcement.

The Posse Comitatus Act (1878) has served to keep law enforcement efforts less militaristic. At Waco, military assistance, achieved with bogus allegations of the drug exemption from the Posse Comitatus Act, made both the arrest and siege into military operations, slighting concerns for innocent civilians. Even before foreign terrorist attacks succeeded horribly on September 11, 2001, efforts had been made in Congress to expand the drug-

pp. 141, 159-63, and 196-203; Robert Barnes, “Challenge to wiretap law divides Supreme Court: Can anyone every contest measure?: Secrecy creates a catch-22, lawyer says,” *Washington Post*, October 30, 2012, p. A3; Ellen Nakashima, “Senate votes to renew contentious surveillance Law: Americans’ privacy is debated: Warrantless searches cited in terror-related arrests,” *Washington Post*, December 29, 2012, p. A3.

²³ Kopel and Blackman, *No More Wacos*, pp. 39, 312, and 335; Matt Apuzzo and Joseph Goldstein, “New York Drops Unit That Spied on Muslims,” *New York Times*, April 15, 2014 (noting that the unit had never generated a single lead). While our main concern was governmental abuse, we also called for a revival of media support for freedom of religion. Kopel and Blackman, *No More Wacos*, p. 331. The media may have tried to support the freedom of religion of Muslims, and been largely indifferent to the religious freedom of small unusual Protestant groups. But in the conflict between freedom and equality, the media have generally belittled the religious freedoms of devout Catholics with respect to such issues as health insurance for birth control and abortion and of Catholic and conservative Protestant groups’ right to the free exercise of their religion related to the issue of same-sex marriage. More closely related to the lessons of Waco, just as the FBI limited press coverage of Waco by limiting where the press could be and their access to information—facilitating the abuses culminating in what looks a lot like murder—the Secret Service has limited free speech critical of the President by limiting where protesters can appear; Shipler, *The Rights of the People*, pp. 242-49.

trafficking exemption to a terrorist exemption as well. September 11 led to expanding the use of military if allegations include suspicion of foreign-terrorist operations. The claim is that the Posse Comitatus Act is not violated by such operations because counter-terrorism is a military rather than a law-enforcement operation—although the ensuing prosecutions are for ordinary Title 18 crimes.

Also being used for such law enforcement is the National Security Agency, where spying on Americans in America is legal in the minds of the government because the information used to justify the spying was seized overseas.²⁴

In conclusion, during the past two decades, a fair amount has been learned about how botched was the federal operation, from the outset of an investigation into fairly non-consequential gun-law paperwork problems, to what seems to many of us to have been a colossal crime by the FBI. (The precise crime and its perpetrators may be difficult to identify, but the FBI knew that an assaultive attack on the Branch Davidians would result in dozens of deaths, including of innocent women and children, and probably took steps to maximize the mayhem.)

Our proposals for improving law enforcement were based on the constitutional protections to be accorded not just the Koreshes and Branch Davidians of the country, but persons of all political and religious persuasions or lack thereof. The proposals were aimed at fulfilling the Magna Carta's goal of no freeman being "in any way ruined . . . save by lawful judgement of his peers or by the law of the land."

During the Waco siege, Steve Schneider had told FBI negotiators that "people here believe that that agency [the BATF] came here with actually the intention of murder"; on the twentieth anniversary of Waco, Senator Rand Paul was complaining that the administration refused to say that the government could not legally plot the assassination of an American on American soil.²⁵ In some ways, that is understandable. Neither the goals nor the proposals that we made to ensure that would not *again* happen, have been of any noticeable concern to federal law enforcement or to the legislative, executive, or judicial branches to which they are answerable.²⁶

²⁴ Shipler, *The Rights of the People*, pp. 27-28, 214, and 310 n. 54.

²⁵ Kopel and Blackman, *No More Wacos*, p. 429; Ed O'Keefe and Aaron Blake, "Senator holds long filibuster to oppose Obama's drone policy," *Washington Post*, March 7, 2013, p. A2.

²⁶ The authors would like to thank Vanessa Leggett, of the University of Houston, Downtown, for her co-authorship of an earlier version of this article.

Waco: An Incident Superseded

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1. Introduction

In 1995 Simon and Schuster published my account of the 1993 events at Mt. Carmel, *The Ashes of Waco*.¹ Following the exhaustion of its stocks, the book was picked up by Syracuse University Press, which has kept it in print. The book has become the primer for people who are interested in the bloody confrontation between the federal government and the followers of David Koresh, and I am still convinced that it deserves that status.

The work has not been without its critics. Those who apologize for the government's actions accurately sense that my sympathies were not with it, but have not questioned the facts I presented. And some of those who are themselves critics of the government's conduct complain not about the facts I cited, but about those I didn't record.

Both readings of my work seem logical to me. I charged the then-Bureau of Alcohol, Tobacco, and Firearms (ATF) and the Federal Bureau of Investigation (FBI) with ineptitude, arrogance, and negligence in their conduct of the February 28 raid upon Mt. Carmel and during the ensuing fifty-one-day siege, which ended in fire and in the deaths of children and other non-combatants; therefore, the Feds don't like the book. But I did not charge the government's agents with the intent to murder, or the murder of anyone; therefore, some fellow critics of the government think that my exposition falls short of the facts. Some of them, in research carried out after my book was published, found information that they take to mean that the federal government sent sharpshooters into Mt. Carmel's environs on April 19, and that these soldiers—Delta Force men, they say—intentionally felled a half-dozen of Mt. Carmel's residents. I cannot disprove that claim, but no evidence of it was available when my work went to press.

My assessment of the events remains unchanged, partly because I had never intended to raise a controversy so much as to present a minimal proof that manslaughter had occurred. But the book's longevity has surprised me. While I think that I did a workmanlike job of journalism in researching

¹ Dick Reavis, *The Ashes of Waco: An Investigation* (Syracuse, NY: Syracuse University Press, 1995).

and writing it, I have come to believe that its relevance is of another day. The nation for which I wrote the account has changed in a radical way, and that means that the issues raised by the book—which I will list—are no longer as vital as they were in 1995. A couple of them were mooted for practical purposes even before I put pen to paper.

2. Pedophilia

The most important of these charges, leveled in press conferences by federal authorities, was that David Koresh was a child molester. That allegation probably did more to win public sympathy for the assault and siege of Mt. Carmel than any other. Polls taken at the time showed that most Americans wanted the children “rescued” and Koresh jailed.

The facts were that he and his flock, according to their interpretation of the Christian Scriptures, believed that it was his duty to father some two dozen children by virgins. These offspring, they believed, were to sit in judgment over the rest of us during the period following the soon return of Christ. So convinced were they, that parents permitted their unmarried daughters to conceive children with Koresh. Local sheriff’s officers and child welfare investigators had looked into Koresh’s alleged pedophilia, but had been unable to turn up the complaining witnesses needed to bring charges of any kind. The federal government had and has no jurisdiction over pedophilia, and therefore any mention of it by its agents was inappropriate and essentially defamatory.

But that doesn’t mean that Koresh was innocent. It means that he should have been treated as innocent until proven guilty.

3. Freedom of Religion

During the Mt. Carmel events, Koresh and his followers were not only charged with complicity in and the commission of unlawful sexual acts involving minors, but also with cultism. Federal officials and pundits ridiculed them, for example, when they learned that sometimes at supper, the community of about 120 dined on popcorn by Koresh’s order. The picture drawn was that Koresh was an irrational rule-maker who, while always citing either divine inspiration or the Scriptures, ruled the lives of his faithful by caprice.

The facts were that the “Branch Davidians,” as the press named the group, were radical Christians in the tradition of the Seventh-Day Adventist Church, which has for some 150 years, ever since its founding, been regarded as harmless. SDA-ers are vegetarians, and popcorn suppers were celebrated even in the writings of church founder Ellen White. Those who lived at Mt. Carmel would have found nothing untoward about popcorn-based meals.

The facts are also that the First Amendment, which supposedly guarantees “freedom of religion,” says nothing about the difference between a cult and an ordinary church or synagogue, nor do its implementing laws and regulations. A “cult” is essentially a new or miniscule religious group, an outfit usually described as “not like my church.” Cults have always been

around, I suppose, and at one time included a group of less than 100 who followed a figure from Galilee notorious for having said, "If any man come to me, and hate not his father, and mother, and wife, and children, and brethren, and sisters, yea, and his own life also, he cannot be my disciple."²

Plainly put, cults are not illegal. But that doesn't mean that Americans enjoy "freedom of religion," because the relevant "freedom" is defined not by the faithful, whoever they might be, but by the law-making authorities.

Janet Reno, when she was a federal prosecutor in Florida, was presented with a case in which a devotee of Santeria was encouraged by his priest to decapitate a fellow worshipper who, the priest said, was possessed by an evil spirit.³ The devotee carried out his pastor's instructions. In court, he presented a "freedom of religion" defense. Had Koresh been arrested for pedophilia, like the Florida defendant, it is highly unlikely that he would have walked free.

The U.S. Constitution says that the government, the state, as political theorists call it, should not regulate the church. But the state, not the church, defines what constitutes both freedom and regulation.

Precedents to the "freedom of religion" issues that arose at Mt. Carmel had already been set in life, if not in law, many times before the assault of February 28, once as late as 1985, when municipal authorities in Philadelphia fire-bombed a residential block where members of the MOVE religion were residing. Eleven people, including five children and the group's founder, John Africa, died in the blaze. No great protests followed, probably because Africa and his followers were African-Americans who, in an urban setting, tried to practice a primitive lifestyle: they would not kill cockroaches, for example. If in the MOVE massacre, prejudice trumped the U.S. Constitution, the federal assaults of Mt. Carmel should have come as no surprise.⁴

4. Militarization of the Police

Most if not all Americans, though they approved of federal action at Mt. Carmel, were a bit troubled when during the siege they turned on the television, and saw military tanks patrolling the place. That seemed to be a novel and somewhat frightening use of military gear and military tactics against a civilian population. In 1993, we as a nation were merely on the cusp of the militarization of our federal police forces. Today, thanks largely to hysteria generated by the "wars" on terrorism and illicit drug use, almost

² Luke 14:26, King James Version.

³ *Church of the Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520 (1993).

⁴ See the Wikipedia entry for "MOVE," accessed online at: <http://en.wikipedia.org/wiki/MOVE>.

every small town in the United States has a SWAT team. Some jurisdictions now field tanks, and thanks to the National Security Agency, the computers of even kids of elementary-school age are now under remote surveillance. Video recorders are popping up everywhere, and soon some of them will be equipped with facial-recognition technology.

These developments follow well-worn tracks in our nation's history. Those we call the Founding Fathers believed that Republic and Empire were incompatible. That's why they looked askance at a standing military, foreign "entanglements," and the like. But their resolve didn't last long.

My book was dedicated to Sitting Bull, because I had learned that his death came in a gunfight with federal troops who had come to arrest him because he had joined the Ghost Dance movement, a religious rising among armed Native Americans—foreign nationals of a unique sort—who believed that when Jesus returned, he would coat the globe with new earth, burying whites beneath it. Sitting Bull was a nineteenth-century Koresh-figure, and with precedents like that, including those of the era's Mormons, Americans had long ago authorized the use of police power against civilian populations. Between 1947 and 1956, McCarthyites who cited "the Russian menace" renewed the tradition by making the propagation of Marxist doctrines a felony.

Even if it's not possible to pinpoint the moment in our drug and terrorism "wars" that has given the greatest impetus to infringements on what was once considered the American right to mind one's own business, or at least to the freedom from unreasonable searches and seizures, it is nevertheless sensible to say that the 2003 Iraq War played a significant role. In 2001 our leaders began to tell us that Saddam Hussein was as vain and dictatorial as, and even better-armed than, David Koresh, and that he was therefore an even greater threat to the rest of us. Though he was not himself accused of sexual crimes, the U.S. government billed his sons as rapists. In a word, Hussein was the Big Foreign Koresh, and our 2003 invasion of Iraq, his Mt. Carmel, was the Big-Time Waco.

But most Americans failed to rise in protest against that war, and today we are told that the attitude that we should assume toward its veterans is summed up in the phrase, "thank you for your service." The ATF and FBI certainly take that approach in dealing with their Mt. Carmel veterans, even at times styling them as "first responders." If critics of Mt. Carmel accede to those designations—and most of them do—it's probably because they haven't yet discovered the virtue of logical consistency.

5. Gun Rights

My chief surprise as the author of *The Ashes of Waco* was that most fans of the book were people who in that day called themselves "patriots" or "Constitutionalists," or were militiamen or members of the National Rifle Association. I welcomed their support, but was dismayed that the readership which I had in mind, liberals who professed to cherish the First Amendment, the civility of police forces, and the like, did not join the ranks of the

government's critics. For their part, Clinton-era Democrats, especially those in the U.S. Congress, held a line: nothing preventable had gone awry at Mt. Carmel, they said.

Over the years, I don't think that the readership of my book has changed very much—but the times have. David Koresh had predicted that the federal government would ban the manufacture of semi-automatic rifles, whereupon, he said, prices for existing semi-automatics would skyrocket. According to him, that was one of the reasons why he invested the Branch Davidians' money to purchase A-15 rifles. In 1994, Congress fulfilled Koresh's prophecy, and those guns remained under a ban for a decade.

But that prohibition expired and gun-rights advocates successfully fought off its renewal, even after the Newtown massacre of 2012.⁵ It does not seem that new restrictions on semi-automatics are an important item on the Congressional agenda today—as if gun-rights advocates have won the day.

But the old pattern, from foreign enemies to domestic oppression, has not gone on holiday. Today the United States is quite freely assassinating contemporary enemies—if not Indians or Mormons or Communists, then Islamic fundamentalists—from the sky, with drones. And a principle of political rule, if not of law, is observable in our past: technologies of control move from outside the polity inward.

For example, barbed wire was invented to control the movement of cattle. It is now used in internment camps and prisons. Military weapons and tactics were deployed against foreign enemies, the British, Mexicans and Indians, then against Mormons, but now the Mayberry PD has followed suit, sending SWAT teams into ordinary neighborhoods. It cannot be long before domestic police departments will deploy drone technology, initially, I'd guess, to combat drug lords and suspected small-time terrorists like the Tsarnaev brothers. At this point, most Americans are not likely to raise placards to protest drone policing because they do not think it will be aimed at them—just as they once thought that ninja ATF teams and tanks wouldn't be trained on Mt. Carmel.

If the noble purpose of the civilian ownership of firearms is to pose a barrier to tyranny, I ask myself, "What can that mean today?" The right to the ownership of light weapons by ordinary citizens may be secure, but what good are those weapons against a well-armed drone? It seems to me that the tussle between Liberty and Empire is nearly at its end—and it looks like Empire has already won.

⁵ See the Wikipedia entry "Sandy Hook Elementary School Shooting," accessed online at: http://en.wikipedia.org/wiki/Sandy_Hook_Elementary_School_shooting.

Articles

Plato and Aristophanes: Poets of Hope

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1. Introduction: Readers of Riddles

In the final scene of Plato's *Symposium*, Aristodemus opens a sleepy eye just in time to hear "Socrates driving [Aristophanes and Agathon] to the admission that the same man could have the knowledge required for writing comedy and tragedy—that the fully skilled tragedian could be a comedian as well."¹ In the twilight between waking and sleeping, slipping into the early dawn following a night of hard drinking and even harder talking, Aristodemus hears a Socratic riddle, delivered like an oracle from the lips of a man drunk with love or inspired by a god. Socrates speaks in riddles to the sweet but uncomprehending tragic poet, Agathon, and the comic poet, Aristophanes, while Plato's readers listen in, as much participants in the night's mysteries as are the characters in the dialogue.

Whether tragedies, comedies, or Plato's Socratic dialogues,² plays, like oracles, invite their audiences to be readers of riddles, and, like seekers of guidance at Delphi, partners in the paths to their own destinies. One is not given the answer, firm and comforting or even demanding and coercive, in Aristophanes's work or in Plato's. The oracle at Delphi rarely hands out unambiguous advice. Thinking of plays and dialogues as awakening human consciousness, as setting into motion the creativity and introspection of the present, these productively ambiguous forms hold up mirrors to their audiences. One could take the reflections they show as straightforward affirmations of "what is" in our human-made cultural lives. But, mirrors can

¹ Plato, *Lysis. Symposium. Gorgias*, trans. W. R. M. Lamb (Cambridge, MA: Harvard University Press, 1925), 223d4-6.

² In the *Poetics*, Aristotle mentions the Socratic dialogues when he is discussing plays as belonging in their own category. Yet, he still puts them into the discussion of the poets-makers. Aristotle, *Poetics*, trans. W. Hamilton Frye (Cambridge, MA: Harvard University Press, 1946), 1447b.

also reflect the light in ways hitherto unexamined and so can reflect to us what could be (or, “what Is,” if we consider the phrase from a Platonic perspective).³

In *Have You Been to Delphi?* Roger Lipsey suggests that when one went to the god at Delphi for guidance, one was challenged to “complet[e] the oracle.”⁴ That is, one was turned inward, challenged to search beyond oneself through self-knowledge. The oracle was a puzzle to awaken the critical and creative powers of the petitioner,⁵ as Socrates’s were after Chareophon’s legendary visit to the oracle. While I think both Plato and Aristophanes had intentions and were purposeful in their work, I experience their work as in a sense oracular. Plays and dialogues offer a challenge and a puzzle, awakening my critical and creative powers as a reader.⁶ When I consider them side by

³Aristotle makes a similar distinction when he discusses the difference between historians and poets. The distinction is not between the use of prose or verse but “that one tells what happened and the other what might happen” (1451b). Part of the puzzle of the dialogues, though, is about what “is” means. Plato deals with the “is” of human contingencies, but seems also to point to the “Is” of the ordering of the cosmos as a pattern for the ordering of our souls and politics. The second “Is” is something he seems hopeful that we will find in ourselves, and it also is the motivation for the search.

⁴ Roger Lipsey, *Have You Been to Delphi? Tales of the Ancient Oracle for Modern Minds* (Albany, NY: State University of New York Press, 2001), p. 29.

⁵ I hesitate even to separate those two ideas. It seems to me a modern distinction.

⁶ The different understandings of Aristophanes’s intentions are, in the main, outside the scope of this article. I tend to agree with A. M. Bowie, who contends that we can never know with certainty what the comic poet intended but that trying to understand as much of the cultural context in which the plays were composed, performed, and received—“the ‘grammar’ of Greek culture”—can open avenues for understanding; see A. M. Bowie, *Aristophanes: Myth, Ritual, and Comedy* (Cambridge: Cambridge University Press, 1993), p. 5. Yet, Old Comedy was known for its political and social commentary; G. E. M. de Ste. Croix argues in his *Origins of the Peloponnesian War* (London: Duckworth, 1972), p. xxix, that we can know Aristophanes’s intentions. Malcolm Heath gives an overview of the debate in his *Political Commentary in Aristophanes, Hypomnemata* (Göttingen: Vandenhoeck & Ruprecht, 1987). Using Plato as his primary ancient source, Heath argues that Socrates’s reference to Aristophanes as he defends himself against what he calls the older accusers (*Apology* 18-19) is inconclusive. De Ste. Croix and Dover take Socrates’s comments as evidence of Aristophanes’s hostile intent, while Heath argues that Plato could just as well have been commenting on audience misunderstanding (Heath, *Political Commentary in Aristophanes, Hypomnemata*, pp. 9-10). Heath takes the *Symposium* as better evidence that Plato did not consider Aristophanes to be hostile either to Socrates or to philosophy. Heath can find no evidence outside of the play that Aristophanes intended to harm Socrates (*ibid.*, pp. 11-12) and sees Plato’s “inclusion of Aristophanes as an active member of the Socratic circle [to be in accord] with the known facts” (*ibid.*, p. 11). For example, Diogenes Laertius, in his “Life of Socrates,” cites Aristophanes’s

side, I feel compelled to examine my life and my cultural context, or maybe to consider the constitution of soul and society, as John Sallis writes in his discussion of Plato's title, *Politeia*.⁷

Aristophanes, Plato, the oracle—each is a poet, a maker of realities—and in each audience members can find a pattern for re-evaluating their lives, for being better than they are. From the murky night of the *Symposium*, from the inspired place of sleeplessness, wine's or love's drunkenness, audiences at a play, like petitioners at Delphi, are transported. We are sent forth into our everyday lives to complete Plato's riddle on comedy and tragedy, as Socrates went about his usual business after a long night's festivities before going home to sleep.

2. Like a Scene-Shifting Periact in the Theater

If we shift our attention away from Socrates as the main character or concern, and instead focus that attention on ourselves, then the oracle begins to become clear. If human goodness and compassion are our leading characters, our leading lights, then both Aristophanes and Plato become poets of hope, in the sense that they seem to believe their audiences capable of rising to the best in ourselves. I read the riddles of the texts as if the authors take for granted that their audiences are capable of leaving the performances empowered to seek human excellence as a practice of living. With this revolution in consciousness, we audience members *could* imagine a better world into existence.⁸ Aristophanes's comedy can point us in that direction from below, mirroring a pattern best avoided. In Plato's hands, tragedy and comedy might take us to that same place, now from above, mirroring the human excellence inborn in each soul and from below through his ample scenes of self-deprecatory laughter. Comedy and dialogue are now on the

extolling Socrates's wisdom as evidence that "the Comic poets, who in the act of ridiculing him give him high praise"; see Diogenes Laertius, *Lives of Eminent Philosophers*, trans. R. D. Hicks (Cambridge, MA: Harvard University Press, 1959), p. 27. Philip Walsh, too, gives an overview of the debate, from Gomme in the 1930s, who believes Aristophanes had political views but that these, practically, do not influence our understanding of the plays, through MacDowell, who contends that the plays' entertainment value does not diminish the advice audiences might glean from them. Philip Walsh, "A Study in Reception: the British Debates over Aristophanes' Politics and Influence," *Classical Receptions Journal* 1 (2009), pp. 55-72. As with oracles and Platonic dialogues, there is something both exciting and daunting about being challenged to interpret the experiences of the works and to take stock of one's own life in light of their suggestions.

⁷ John Sallis, *Being and Logos: Reading the Platonic Dialogues* (Indianapolis, IN: Indiana University Press, 1996), p. 313.

⁸ Sonja Tanner highlights the importance of imagination both for poets and philosophers; see Sonja Tanner, *In Praise of Plato's Poetic Imagination* (Lanham, MD: Lexington Books, 2010).

same side,⁹ leading us away from the tragedy of ordinary human failures of generosity and kindness.

In the *Poetics*, Aristotle encourages a shift from a singular focus on the “Socrates question,” when he writes that comic poets “construct their plots out of probable incidents and then put in any names that occur to them. They do not, like the iambic satirists, write about individuals” (1451b).¹⁰ And, Aristotle says, “comedy . . . is a representation of inferior people, not indeed in the full sense of the word bad . . . the comic mask, [being] ugly and distorted [is] not painful” (1449a). Using Aristotle’s *Poetics* as a lens through which to view *The Clouds*, we can see that the play is not primarily about the life of the historical Socrates. Instead, Socrates’s life lends itself to caricature so that his seems a reasonable name to insert as a characteristic name representing all sorts of other figures on the Athenian stage. As Aristotle suggests, comedy works in distortions. Every character in *The Clouds* wears the twisted comedic mask, but through the fun-house mirror of obscenities and ribald humor, social and political satire is hardly excluded. Exaggerated,

⁹ Lisa Wilkinson examines *charis* as a value perhaps more pervasive and important to the Greek world than a focus on the more familiar *agon* often obscures. Although rhapsodic performances of Homer and other poets were attached to competitions, Wilkinson “identif[ies] Greek ‘oral poetic performance’ as an essentially non-*agonistic* practice, and [she] suggest[s] that it is this practice more than any contest that inspires the type of social unity required for genuine *demokratia*”; see Lisa Wilkinson, *Socratic Charis: Philosophy Without the Agon* (Lanham, MD: Lexington Books, 2013), p. 37. Extending her argument to the performance of plays like the *Clouds*, which were also attached to competition, it occurs to me that part of what makes Aristophanes a poet of hope is the idea that his audiences were smart enough to see his work as encouraging carefully engaged citizenship. Similarly, she suggests that rather than reading the Platonic dialogues as inherently *agonistic*, as many scholars do (see her chap. 4), one could read Plato’s Socrates as non-*agonistic*. Wilkinson writes that Plato’s Socrates “is simultaneously a ‘stranger’ and a ‘gift,’ he is like and unlike those to whom he speaks, he does and does not belong. His *charis* is reciprocated by those who vote to acquit, encouraging the conversation to continue. His *charis* is not reciprocated by those who operate on a different account of the value of citizenship” (Wilkinson, *Socratic Charis*, p. 130). Plato seems to me hopeful enough that his audiences might make the choice to go the route of *charis* rather than not. Yet, the choice is ours, which again suggests Plato’s hope in our abilities to discern.

¹⁰ In a note to his translation of Aristotle, *Poetics* (p. 36 n. a), Frye suggests that Aristotle was discussing New Comedy with this remark. Yet, I still find the idea instructive, in the context of Aristotle’s distinction between history’s “what has happened” and poetry’s “what might happen.” No question, Socrates was a real person and Aristophanes’s character bore that name, yet it seems to me that Aristophanes’s play can give an audience insights into the shifts in their own culture, with the character of Socrates serving as a vehicle for this. Similarly, many of Plato’s characters were historical figures; yet, in Plato’s hands, they also stand in for a variety of human types. We might see ourselves reflected there, either as a model to emulate or to avoid.

ludicrous dialogue and action do not preclude oracular riddles from being completed.

In his introduction to *Aristophanes: Myth, Ritual, and Comedy*, A. M. Bowie writes, “one might say . . . that comedy holds up a miraculous mirror to the audience, which does not simply reflect, but refracts and distorts in a kaleidoscopic manner.”¹¹ A careful reading of Plato’s discussion of *mimetic* arts in the *Republic* might also lead one to a similar conclusion about the dialogues. In Book X of the *Republic*, Socrates says to Glaucon, you could be a creator of all things “most quickly if you should choose to take a mirror and carry it about everywhere. You will speedily produce the sun and all things in the sky, and speedily the earth and yourself and the other animals and implements and plants and all the objects of which we just now spoke.” In Glaucon’s answer, we get confirmation that Socrates is not speaking in earnest. He says, “‘yes,’ . . . ‘the appearance of them, but not the reality and the truth’” (596e).

Although Arthur Danto, among others, seems to have taken this passage as evidence for a Mimetic Theory of art,¹² I am unable to read the dialogues as simple mirrors of Plato’s world. Neither am I convinced that Plato dismissed *mimesis* categorically. On the simplest level, he is clearly presenting us with characters; the dialogues are often *mimetic*. And in her compelling study, *In Praise of Plato’s Poetic Imagination*, Sonja Tanner writes, “*mimesis* alone does not distinguish philosophy from poetry.”¹³ Plato’s mirrors are more complex, as are comedy’s. They may make visible something once so common as to be taken for granted; they may, too, give a glimpse of another model for living, like the “scene-shifting periact in the theatre” (*Rep.*, 518c)—the prism with different scenes painted on its different faces, to give audiences a glimpse of different scenarios at a play.¹⁴

Socrates’s philosophical life began in prophecy that shifted the course of his and his interlocutors’ lives. When the Delphic oracle told Chaerephon that no man is wiser than Socrates,¹⁵ Socrates spent the rest of his

¹¹ Bowie, *Aristophanes: Myth, Ritual, and Comedy*, p. 15.

¹² Arthur Danto, “The Artworld,” *Journal of Philosophy* 61 (1964), pp. 571-84.

¹³ Tanner, *In Praise of Plato’s Poetic Imagination*, p. 21. Tanner argues that those who make *mimesis* the central distinguishing feature between poetry and philosophy consider two definitions of *mimesis*. Poetry’s is an imitation of the sensible while philosophy’s is of the intelligible. Yet, Tanner concludes that “because philosophy and poetry participate in *mimesis* in both of these senses[, *m*] *mimesis* alone does not distinguish philosophy from poetry” (ibid., p. 21).

¹⁴ Plato, *Republic*, vol. I, books 1-5, trans. Paul Shorey (Cambridge, MA: Harvard University Press, 1930), p. 134 n. c.

¹⁵ Plato, *Apology, Euthyphro. Apology. Crito. Phaedo. Phaedrus*, trans. Harold North Fowler (Cambridge, MA: Harvard University Press, 1914), 21a8-9.

life badgering his compatriots, nagging and pursuing and talking, finally completing the oracle and deciding that it meant little about the man Socrates. Instead, Plato's Socrates fades from view as an individual and becomes a character in a larger human drama, standing in for all human beings. In the twisted comedy of human life, Socrates holds up a mirror for us all, concluding:

The oracle means this: 'Human wisdom is of little or no value.' And it appears that he does not really say this of Socrates, but merely uses my name, and makes me an example, as if he were to say: 'This one of you, O human beings, is wisest, who, like Socrates, recognizes that he or she is in truth of no account in respect to wisdom.' (*Apology*, 23a-b)

It is as if the Delphic god were a comic poet, who created the plot of our strange human lives along some bizarre lines of probability and then inserted a characteristic name. Socrates is a fine choice to stand in for all of us, both because he stands out and also because he insists always that his life is about the betterment of all of Athens. If we let Socrates slip into the background, as Socrates himself urges us to do, and focus instead on the audience who represents us, then we are further on the way to completing the oracle of the dialogues—and of *The Clouds*.

During the late fifth century, when Aristophanes first presented his play, natural philosophers and sophists were relative newcomers on the Athenian scene. And, as Marie Marianetti suggests in *Religion and Politics in Aristophanes' Clouds*, Aristophanes also took the "opportunity [in *The Clouds*] to caricature the cult-based, religio-philosophical views of the Pythagoreans," the "mystery cults, with the exception of the Eleusinian mysteries, [being] foreign in origin, style, and spirit."¹⁶ Aristophanes represents all three of these groups in the singularly outrageous character of Socrates, whom we first meet reflected in his Pondertorium students studying things under the ground bent double, in order that they might simultaneously study the heavens using "arse-stronomy,"¹⁷ and who makes his own appearance in the play suspended from a hook, the better to "merge [his thoughts] with the similar atmosphere of thin air!" (230-31). Multi-talented, and therefore doubly or triply hilarious and dangerous, the character Socrates initiates Strepsiades into the Thinkery with what is perhaps a parody of the

¹⁶ Marie Marianetti, *Religion and Politics in Aristophanes' Clouds* (New York: Olms-Weidmann, 1992), pp. 43-44.

¹⁷ Aristophanes, *The Clouds*, trans. Peter Meineck (Indianapolis, IN: Hackett, 2000), pp. 185-95.

initiation into a Pythagorean-like mystery cult,¹⁸ and the Thinkery is no doubt the home of duplicity and deceit, father and son promised training in lying but powerful rhetoric, to win their arguments at all costs, despite their dimness, if the fee is right.

Strepsiades, Twister, and his son Pheidippides, Spare the Horses, bear characteristic names, their characters standing in for conflicts between fathers and sons, for citizens worried about debt and trying to worm their way out of it. The two characters are exaggerated and outrageous, but the audience all knew the type, maybe even having played the part themselves.¹⁹ The character named Socrates, too, can be seen as a type, representing challenges to Athenian society, precisely because Socrates the man was well known for his strange appearance and for his eccentric role challenging his contemporaries not to play Strepsiades on the stage called Athens. He was no traveling scholar or con man from a distant city; he was Athens's own homegrown gadfly, a part he played with great energy his whole long life. Ancient audiences and present-day readers seem prone to let the father and son drop from view, when, or maybe because, they show us the worst in ourselves. Aristophanes's play is a gadfly, stinging us into self-recognition; it seems easier for audiences, then and now, to focus on blaming or lionizing the elusive Socrates instead of looking into more mundane mirrors that reflect closer to home.

Douglas MacDowell points out that Martha Nussbaum "has maintained that Aristophanes' portrayal of Socrates is less inconsistent with Plato's than has generally been supposed and that it is largely correct."²⁰ Nussbaum argues that Socrates may well have been involved in Natural Philosophy, and, at any rate, in the *Apology* Socrates says he has no reason "to cast dishonour upon such knowledge" (19c6-8). And the Socratic method presented in Plato takes the same form as the method Strepsiades learns at the Thinkery. MacDowell continues, "the difference (an all-important difference, though Strepsiades does not see it) is that the Platonic Socrates refutes statements which are *apparently* true, whereas the Aristophanic Socrates refutes statements which are *actually* true."²¹ MacDowell is right. This makes all the difference in the world, as Plato himself had his character, Glaucon, remind us.

¹⁸ Marianetti, *Religion and Politics in Aristophanes' Clouds*, p. 45.

¹⁹ Douglas M. MacDowell, *Aristophanes and Athens: An Introduction to the Plays* (New York: Oxford University Press, 1995), p. 128.

²⁰ *Ibid.*, p. 132. The article from which he paraphrases is Martha Nussbaum, "Aristophanes and Socrates on Learning Practical Wisdom," *Yale Classical Studies* 26 (1980), pp. 43-97.

²¹ MacDowell, *Aristophanes and Athens: An Introduction to the Plays*, p. 133.

3. A Play of Appearances and Realities

In a play of appearances and realities, Plato presents exaggerated characters in Book II of *The Republic*, one representing the just person, who in all ways seems unjust, and the other playing the unjust person, who in all ways seems just.²² Even if one had Gyges's ring and could become invisible, the truly just person would be just. In a sense, Plato's Socrates has such a metaphoric ring, appearing as the often unpleasant, never elegant, always impoverished, unshod pursuer of people and wisdom while embodying justice.²³

Plato's character who appears just also has a cover, in order to act invisibly for personal gain. For this character can and does act with impunity, hiding behind the mask of justice, Thrasymachus-like, to benefit the stronger and to harm the weaker. Plato constantly reminds his readers that in each soul is justice, in each person the ability to be turned toward the Good, through turning "the organ of knowledge . . . around from the world of becoming together with the entire soul, like the scene-shifting periact in the theatre, until the soul is able to endure the contemplation of essence and the brightest region of being" (*Rep.*, 518c8-11). His Socrates no longer takes center stage when we take Plato's injunction to focus on our own lives, to shift our own souls to the Good. Still, Nussbaum makes a fair point, not because the two Socrates characters look so much alike, but because the two poets might inspire audiences toward the same goal.

Ancient audiences, though generally able listeners to and judges of oratory,²⁴ failed to see the character of Socrates as a type, although in hindsight his name seems an obvious and brilliant choice. Kenneth Dover even suggests that Socrates the man may have been too well liked when *The*

²² Plato, *Republic*, trans. Shorey, 360e1-361d4.

²³ In *Harry Potter and the Deathly Hallows*, the final book of J. K. Rowling's series, Albus Dumbledore explains the unique power of Harry's cloak of invisibility, one of three "hallows." The other two hallows include the elder wand (a wand so powerful that it can never be defeated, and so has left a trail of bloody destruction through history) and the resurrection stone (which can be used to recall the dead to a sort of half-life). Dumbledore recognizes that as a young man he sought the stone and the wand but not the cloak, except that it would complete the collection of hallows. Looking back on his life, he recognizes that he didn't think he needed the cloak, because he could make himself invisible without it. He also recognized that he had a weakness for power that might have bordered on the tyrannical. Symbolized by the second and third hallows, this power over others nearly always led to violence and misery. The cloak offers power of a different sort, because, as Dumbledore reminds Harry, its "true magic is that it can be used to shield and protect others as well as its owner"; see J. K. Rowling, *Harry Potter and the Deathly Hallows* (New York: Scholastic, 2009), p. 716.

²⁴ K. J. Dover, *Aristophanic Comedy* (Berkeley, CA: University of California Press, 1972) p. 113.

Clouds was first produced at the Great Dionysia of 423 B.C.E. for the judges to give first prize to a play appearing to lampoon the man. Dover writes, "Socrates, according to Plato (*Laches* 181b), had acquitted himself very bravely at the battle of Delion the previous summer, and . . . it is conceivable that the spring of 423 was just the wrong time to attack Socrates."²⁵ Although Dover is offering one explanation for *The Clouds*'s third-place finish, he is also offering an explanation for Aristophanes's use of Socrates's name in the play. Since Socrates acquitted himself so well, and because he was a well-known, if eccentric, Athenian, 423 B.C.E. might have been the perfect time to insert the name Socrates into a play that was not really about Socrates at all. Although Socrates's friends and admirers saw Socrates as defender of Athens always, through his philosophical exhortations to the just life, current public opinion could also have seen Socrates as defender of Athens from outside threats.

For Plato's Socrates, defending Athens always assumed that Athenians were capable of reflecting on their own lives and, once understanding virtue, living virtuously. Plato's Alcibiades quotes Aristophanes to himself in the *Symposium* in order to make plain what everyone, including Aristophanes, already knew: At Delion, says Alcibiades, "I had an even finer view of Socrates than at Potidaea—to use a phrase of yours, Aristophanes . . . —'strutting like a proud marsh-goose, with ever a sidelong glance,' turning a calm sidelong look on friend and foe alike . . ." (*Sym.*, 221a7-8; b1-5). Aristophanes's audience should have been able to see the character Socrates as standing in not for himself, except in obvious physical and social habits, but for a variety of intellectuals common in fifth-century Athens. That is, some of them, at least, seem to have looked into the Aristophanic mirror straight, taking the reflection they saw there as a report of both what is and what ought to be. But it is possible to look into that mirror and catch a glimpse of another reality. With Socrates fairly certainly not representing himself, audiences could be freed from a focus on him in order to be able to see the dangers of Strepsiades's behavior, both for their own personal lives and for the life of their city. They should have been able to leave the theater less inclined to cheat their neighbors or to value wealth and reputation above the common good. They should have been more discerning about appearances and realities, knowing that their local eccentric meant them only well and that they had the power to shape their own political and social realities.

Plato's presentation of a character named Aristophanes in the *Symposium* contains no hint of bitterness or vengeance, as poets and philosopher share a discussion shrouded in the mysteries of night, love, and wine. Heath comments on the closeness of the symposiasts and cites Plutarch's report of Socrates's good-natured response to Aristophanes's comic abuse. Heath writes, "for the victim to react, as the Socrates of Plutarch's

²⁵ *Ibid.*, pp. 119-20.

anecdote reacts, with amused equanimity, could be seen as an ideally appropriate reaction to such non-hostile abuse in the theatre. . . .”²⁶ Plato’s Aristophanes’s speech brings to life comically distorted mythical “double people” not to raise the issue of whether they “actually existed.” Instead, those round and speedy people, who managed to challenge the gods and bring us an especially satisfying and comic metaphor for love, tell us a truth about ourselves. Dover suggests, “by presenting the story of Agathon’s party as a story told by Apollodorus at second hand many years after the event Plato is clearly warning us that he wants us to judge it by its quality and utility (as we would judge a myth), not by its relation to fact.”²⁷

That, after all, is one way to judge the *Clouds*. Plato’s Socrates in the *Apology*, while in one way obviously standing for himself, also does not stand for himself but as a model for human wisdom. Likewise, we might also see Aristophanes’s Socrates as standing not for himself, but as representing Sophists, Natural Philosophers, and leaders of newly introduced cults. An audience might, if it is self-reflective enough, see in both depictions of Socrates a warning about scorning the truth for personal gain. We are also capable of seeing that character as a direct mirroring of the historical Socrates, something of which Plato’s Socrates was aware in his defense and which played some part in the condemnation of the historical man.

In the *Symposium*, Plato writes a comic role for Socrates in Alcibiades’s speech. The Socrates about whom Alcibiades speaks has the distorted appearance and bullying ways of Marsyas the satyr and is as seductive. Alcibiades says of Socrates, “his talk resembles the Silenuses that are made to open. If you chose to listen to Socrates’ discourses you would feel them at first to be quite ridiculous; on the outside they are clothed with such absurd words and phrases—all, of course, beneath the hide of a mocking satyr. . . . But when these are opened, and you obtain a fresh view of them by getting inside, you will discover that they are the only speeches which have any sense in them” (*Sym.*, 221e1-222a7). Beneath the Silenus-like comic mask, one finds “images . . . divine and golden . . . fair and wondrous” (*Sym.*, 217a1), and a pattern for all to follow who would avoid the life of a Strepsiades. Only in the presence of this Socrates-satyr, one whom Plato has just characterized as Love itself, Love being between Plenty and Poverty, always barefoot, always enchanting, always appearing strangely twisted like a comic mask, and always pursuing wisdom and justice, Alcibiades feels shame. Only then does Alcibiades want to reform, to play the noble part he is well capable of staging.

As the two portraits Socrates paints of the just and unjust person suggest, Plato seems to be hopeful that his audiences are capable of choosing

²⁶ Heath, *Political Commentary in Aristophanes, Hypomnemata*, p. 26.

²⁷ Dover, *Aristophanic Comedy*, p. xx. See Heath, *Political Commentary in Aristophanes, Hypomnemata*, p. 11 n. 11, for a skeptical response to Dover’s assertion.

and even of choosing well about justice and virtue, about beauty and goodness, about the constitution of our lives together. If one is able to tear oneself away from the figure of Socrates in *The Clouds*, and instead look at the lives of Strepsiades and his son not as models to emulate, but as exemplary of the kind of life to avoid, Plato and Aristophanes start to look as if they are comrades rather than adversaries. Each presents the same challenge to their countrymen: lift up the distorted masks covering Alcibiades's shame and be better than you are, be the people you are capable of being.

4. Midnight's High Noon: Descents and Ascents

In Er's myth at the end of the *Republic*, Lachesis reminds us that we have choices, and, in that reminder, shows us our responsibility. She says, "Let the one who gets the first lot choose first. . . . Virtue has no master; as he honors or dishonors her, each will have more or less of her; the blame is to him who chooses, god is blameless" (617d-e). The story suggests that choice is in some ways neither free nor easy. As Socrates contemplating the Delphic oracle thought it impossible for Apollo to lie (*Apology*, 21b), the philosopher desires that ultimate freedom—avoiding wickedness (*Apology*, 39b)—without having the option of choosing otherwise. For the other "choice" would be a kind of slavery to tyrannical avarice. Yet, between the divine and the incurably tyrannical, Lachesis suggests, are most of us, with more or less virtue, with many choices still to make.

Lachesis's words are at "the dead center of the myth," its "dramatic high noon."²⁸ They are also at dawn after a conversation beginning the night of the Bendideia. The descent and ascent in Er's myth recall the dialogue's many descents and ascents: Socrates's trip to the Pireus, Gyges's ring, the cave, the rise and fall of regimes, the journey up and down the divided line. At the "dead of the night's high noon,"²⁹ at the dialogue's center,³⁰ Socrates

²⁸ Andrew German, "The Philosopher and the Tyrant," manuscript, presented at the Ancient Philosophy Society conference (San Francisco, CA), April 2012, p. 2.

²⁹ To borrow from Gilbert and Sullivan's "Chorus of the Ancestors" in *Ruddigore*.

³⁰ I calculated the dialogue's numerical center crudely using a word processor to count characters, which, nevertheless, came out to very nearly the same place in the dialogue as John Bremer, *On Plato's Polity* (Houston, TX: Institute of Philosophy, 1984). Bremer renumbers the dialogue using "Bremer numbers" based on a division of the dialogue into 240 equal units of 750 syllables each, based on a reading (out loud) time of three minutes; see *ibid.*, p. 44. Based on this renumbering, he identifies this passage as the numeric center of the dialogue (at end of Bremer 120 and beginning of Bremer 121), at the point where he notes that "Glaucou . . . tires of speaking of war and demands that Socrates address whether or not the polity that has been described is possible and, if so, how" (*ibid.*, p. 48). Soon after, Socrates raises the third wave of political power and philosophy coming together in the same place in order for justice to live both in people and the polity (*ibid.*, p. 49; *Rep* 473c-d). In the chapter titled "The *Republic's* Third Wave," Jacob Howland notes that an "indication of the importance of the third wave is provided by the fact that it breaks at the exact center of

urges his companions toward the mystery of *aporia*, in which “the soul would then be puzzled, would look for an answer, would stir up its understanding, . . . and turn . . . around towards the study of that which is” (524e). In other words, in Plato’s looking glass, Socrates attempts to replace one sort of unbridled lust, the tyrannical lust of greed and power, with erotic passion for the mysteries of learning, for wisdom.

One of the most compelling things about Plato’s writing is the way in which he uses nearly the same words to mean entirely different things. When Meno defines virtue as “desire for beautiful things and the power to acquire them” (77b), he means something very different from Diotima, who says that the lover becomes *eudaimon* through a desire for and attainment of beautiful and good things (204d-205a), through “wanting to possess the good forever” (206a). For Diotima, lovers desire the good, and “this kind of love . . . is common to all human beings” (205a). Meno’s definition betrays an unbridled lust for power to rule over others (73d) and acquisitiveness. Diotima’s reveals an unquenchable *eros* for wisdom and Beauty, inquisitiveness empowering the soul to “catch sight of something wonderfully beautiful in its nature” (*Symposium* 210e-211a). When Meno says Socrates is a torpedo fish, stinging him into confusion, he shows how far he has hobbled his own soul, how his power and wealth bind rather than free him. By contrast, his slave is inspired by the torpedo fish, the *aporia* causing him to remember not particular facts of geometry, but the nature of his own soul. In his unpublished study of the *Meno*, John Bremer writes, “Socratic memory is the creative act of learning. That is the mystery.”³¹ Bremer continues, “The responsibility is ours and the dialogue is like a mirror in which we see ourselves; if we don’t like what we see, then we must try, and try hard, to practice *anamnesis* so that the soul remembers its own nature.”³² Socrates pushes Meno, pushes us to become lovers, to remember the soul’s power to glimpse something eternal, like the slave boy’s moment of recognition of the square on the diameter.³³

the text as measured by Stephanus pages”; see Jacob Howland, *The Republic: The Odyssey of Philosophy* (New York: Twayne Publishers, 1993), p. 633. Eva Brann, too, highlights the importance of the central books (V-VII) and, in them, Glaucon’s education; see Eva Brann, *The Music of the Republic: Essays on Socrates’ Conversations and Plato’s Writings* (Philadelphia, PA: Paul Dry Books, 2004).

³¹ John Bremer, “Plato’s Meno and the Mystery of Learning,” unpublished manuscript, May 2011, p. 29.

³² *Ibid.*, p. 31.

³³ In the mystery at the heart of philosophy, Plato also hints at The Mysteries in his many images of descent and ascent. See, for example, Howland’s discussion of the Bendideia as an imitation of initiation into the Eleusinian Mysteries in the descent into and ascent from Hades in each, and the openness of the initiates to being unsettled and to considering new vantage points from which to understand and live in the “everyday” world (Howland, *The Republic: The Odyssey of Philosophy*, pp. 46-47). Bremer, too,

Andy German notes that “the tyrant is eros incarnate (573b6-7) simply because, in his case, eros no longer needs the pretense of recognizing the legitimacy of external limits.”³⁴ It is instructive to note the “all-consuming *eros*” of tyranny and philosophy, which, as German says, Plato also associates with madness.³⁵ But there is madness and there is madness. There is a consuming passion and a passion for consumption. Plato paints us a picture of the philosopher as *eros* incarnate in the *Symposium* (203c-d). The two portraits share nothing but the words used to describe them. There is the philosopher’s all-consuming *eros* that makes the soul burn brighter in the light of the Good and its offspring, the sun (506e). And there is the tyrant’s frenzy for material goods beyond what is necessary for a comfortable and healthy life. The tyrant, as Thrasymachus suggests, seeks to enslave the population for his or her own benefit. The philosopher exhorts one and all to reject self-made enslavement. It is curious and amusing that German imagined the child-eating tyrant to have been a “mild-mannered bank teller,”³⁶ for it is those who deal with money in Socrates’s city of artisans who are least capable (*Rep.*, 371d). Yet, the ordinary citizen who chose a life of tyranny was, upon reflection, horrified by his choice (*Rep.*, 619b). Plato sees in him and in each of us, the possibility of the soul blazing with the consuming *eros*, born from *aporia*, for the Beautiful and the Good.

For it is philosophical *eros* that might free the prisoners bound at the bottom of the cave, spending their days hearing and seeing the shadows cast by political factions and traders in greed. Those prisoners in the cave have their necks and legs bound. Unlike the incurably tyrannical in the Myth of Er, who have bound hands, feet, and heads (615e), the prisoners in the cave still have a choice. They are not gagged; their hands are free. They have the power to speak to each other, to undo their bonds, to turn their heads and bodies toward the sun and the Good. So, although German claims that Socrates has a “fatal attraction to tyrannical types,”³⁷ another possibility is that he sees, even in Meno, even in Thrasymachus, even or especially in Alcibiades, something

in his interpretation of the *Meno*, draws a connection between Demeter and her search through Hades for Persephone and initiation into the Mysteries and the slave boy’s search through his soul upon encountering the *aporia* (Bremer, “Plato’s Meno and the Mystery of Learning,” pp. 17-18). The slave boy’s freedom of human creativity (something sleeping deeply in Meno, enslaved by his love of power and by his greed) awakens during his contemplation of the square on the diameter, diameter and Demeter playing a similar role in Bremer’s analysis (*ibid.*, p. 20).

³⁴ German, “The Philosopher and the Tyrant,” p. 4.

³⁵ *Ibid.*, p. 4 n. 4.

³⁶ *Ibid.*, p. 4.

³⁷ *Ibid.*, p. 1.

still human, still able to recall “the power to learn, [which] is present in everyone’s soul” (*Rep.*, 518b-d).

Eros and *philia*—as Socrates mentions in the *Lysis*—shatter all conventional limits, in the sense of justice being only a reluctantly entered political agreement and not an activity or power of the individual living together with others in the *polis*. The conventional limits recognize humans as too willing to prey upon each other, especially if they can do so undetected and unpunished. When Socrates says in the *Lysis* that he “would rather possess a friend than all Darius’ gold, or even than Darius himself” (211e), he recognizes that the human being is fundamentally something those conventional limits fail to understand. Friendship and *eros* are not tools for using and abusing others or even reluctant agreements neither to abuse or use; rather, they are ways we help to lift each other up, to have the flash of recognition of the power of our own souls.³⁸

German claims that “the Er myth presents an almost unrelievedly grim scene.”³⁹ His conclusion, “except (perhaps) for philosophers, . . . everyone falls through the trap door into Tartarus,”⁴⁰ reinforces that grim reading. Yet Plato writes ascents as beautiful and powerful as the descents, precisely because the two are mutually informing and assisting; the descent into mystery and darkness is as powerful as the ascent into light. Plato sends aid to those heading for tyranny, because they are in the most danger. German understands the Er story as one of damnation, saying, “all lives eventually reduce to two, and except for the philosopher, everyone goes to hell.”⁴¹ But Plato keeps sending Socrates, hoping like hell that when the trap door opens, no one is standing on it! But even that is the wrong language. There is no trap door, except the one we make for ourselves. And, at dawn, Plato’s Socrates ends another night’s mysteries with hope, saying, “we’ll believe the soul is . . . able to endure every evil and every good. . . . Hence, both in this life and on the thousand-year journey we’ve described, *eu prattomen* [may we fare or do well]” (621c-d).

5. The Fully Skilled Comedian Could Be a Tragedian as Well

It is in ancient and present-day audiences’ failures to consider how we might both do and fare well that the tragedy of the larger drama of both

³⁸ In the *Lysis*, Socrates compares friendship to a cup of wine that a father values precisely because the wine can save his son from poison. Friendship and the wine become extrinsic goods, valuable for their power to give aid to and receive aid from others (*Lysis*, 219d-220b) in the journey of a thousand years back to ourselves (*Rep.*, 621d).

³⁹ German, “The Philosopher and the Tyrant,” p. 2.

⁴⁰ *Ibid.*, p. 8.

⁴¹ *Ibid.*

Aristophanes's and Plato's Athens (and of our own time) begins to unfold. As Aristotle explains in his *Poetics*, tragedy, like comedy, "tends to give general truths while history gives particular facts" (1451b). Furthermore, tragedy "represents incidents arousing pity and fear, . . . pity for . . . undeserved misfortune, fear for the [misfortune of the] man like ourselves" (1453a). That is, the tragic character is "not pre-eminently virtuous and just, and yet it is through no badness or villainy of his own that he falls into the misfortune, but rather through some flaw in him" (1453a). Clearly, watching an evil character fall would not move an audience to pity, for, whatever the virtues of enjoying such a thing, such a fall would seem to be deserved. Even more importantly, the audience would not feel fear, as the way to avoid such a fall would be obvious. Aristophanes's Socrates seems to deserve his great misfortune by the end of the play. The audience, also a character in the play, mistakenly understood this to mean that Socrates was not a person like themselves or like the man Socrates, who was known and even admired in 423 B.C.E., but a willful and vicious destroyer of society. The fall of such a man would hardly seem tragic.

For, as Aristotle continues, the change in tragedy is "from good to bad fortune, and it must not be due to villainy but to some great flaw in such a man as we have described, or of one who is better rather than worse" (1253a). Plato's Socrates is not a tragic figure, then, for although he lost his life, he did not lose his integrity, and seems to think that his lot is perhaps not so terrible as living badly would have been. "It is not hard to escape death; it is much harder to escape wickedness," he says in the *Apology* (39a9-11), and would have impoverished his own condition by leaving Athens or quitting philosophy. Neither is Aristophanes's Socrates a tragic figure. He is presented as victimizing Strepsiades, so if he comes to a bad end, the audience could perceive that as deserved; if he profits from his vice, he is so much less the tragic figure.

Including Aristophanes in the small group of characters discussing the intertwining of comedy and tragedy at the end of a dialogue on love's power to move the soul toward wisdom and justice, one might see a tragic figure in both *The Clouds* and the Platonic dialogues. This figure is audience, jury, citizen, ordinary person, not Socrates. In Aristophanes's comedy, this same tragic figure lurks in the form of the audience, later turned jury, citizen, ordinary person. This audience character wears a Strepsiades or Pheidippides mask, but if the audience were to lift the mask, they would see not a professional actor's face, but a mirror looking back at them through their own eyes. And in Plato's work, the audience is always present, always encouraged to lift the masks of Athenians who pretend to wisdom for the sake of personal gain or public praise, and to see there not dim-witted Meletus, easy to blame, not pompous Meno, for whom (as a slave-holder) "virtue" includes ownership even of another person but not of the power of his own faculties, not dangerous and charming Alcibiades, easy to hate, admire, or even pity, but a mirror, reflecting us back at ourselves through our own eyes.

It is the audience—ancient and contemporary—ordinary people of no great malice and of no great compassion, who often fail to see ourselves in comic mirrors that dramatize the worst in us or in mirrors that show us the best we could be. We instead prefer to turn away or to see the ancient Athenians reflected, while not noticing that we are standing right behind them. If we change, if we strive for the betterment of all, not only ourselves, we learn the comedy's lessons. If we fail, we are the tragic figures, who harm ourselves not only by suffering others' malice and greed, but especially by harming others, even unintentionally. One could see Aristophanes and Plato as concerned in the main about the well-being of their home, of Athens. And Socrates is their own, loved or hated. The "incidents [which] seem dreadful or rather pitiable," continues Aristotle, are "when these calamities happen among friends" (1453b).

Lest we come too quickly to the conclusion that Aristophanes and Plato point fingers of blame at their audiences, at us, and therefore remove the tragic component of fall through error or frailty, both writers seem to have had great confidence in their audiences' abilities to understand, discern, and to change. In this great confidence is hope that if we do understand the right way to live, we will quite naturally put it into practice. Nearly no one, in Plato's view, is an Alcibiades, who, seeing what ought to be done, flees from it, embracing a consciously chosen life of vice.

It is not too much of a stretch, perhaps, to find this same hopeful view of his audience in Aristophanes. Daphne O'Regan argues that the first version of the play, which won only third prize at the 423 B.C.E. City Dionysia, seems not to have relied on coarse scatological humor and assumed a subtle audience. O'Regan writes, "imagining his audience to be smart and sophisticated, Aristophanes had discarded many of the obscene and violent aspects of conventional comedy in favor of purely verbal wit."⁴² Written in response to his failure to win first prize, Aristophanes's second version, the text of which survives, includes much more ribald humor. But even in its cruder form, or especially in its cruder form, the play incorporates the Athenian audience into itself as perhaps the most important character. Instead of simply resigning himself to the need to give in to public tastes, Aristophanes mercilessly skewers his audience in the second version, saying through the Chorus: "I thought you were an intelligent audience, I thought that you would truly enjoy this, the most intellectual of my comedies. . . . But look what happened. I was utterly defeated, thwarted by those other vile, despicable hacks" (521-25).

The original version of the play seems not to have included Pheidippides beating his father or Strepsiades setting his torch to the Pondertorium roof. MacDowell suggests "that, when the Athenians saw Strepsiades triumphing as a result of his adherence to the sophists, they

⁴² Daphne O'Regan, *Rhetoric, Comedy, and the Violence of Language in Aristophanes' Clouds* (New York: Oxford University Press, 1992), p. 5.

thought that the play implied approval of sophistry . . . Aristophanes seemed to them to be recommending dishonesty, false rhetoric, and—worst of all—atheism.”⁴³ Aristophanes and Socrates were painted with the same brush, accused of corrupting others and of atheism. Behind that mistaken appearance are two men warning against these very things. If we think of Strepsiades as representing ordinary citizens, his triumph in the original play was a false triumph. Instead of recommending such behavior to his audience, Aristophanes could plausibly have been enjoining them, and us, to heed the Delphic inscription “Know Thyself,” and then to change.

With the hindsight of thousands of years of history, contemporary audiences, too, can read the play’s revised ending to show the dangers of both dishonesty and also of vengeance and violence. Plato’s Socrates argues at his trial that if he corrupted the citizens around him, he would not only risk harm to himself from their corrupt behavior but harm to the entire city as well. Vengeance and violence, then, are not an antidote to dishonesty, lack of respect, and false rhetoric; rather, they grow from those corrupt sources.

6. Changing the Currency

Diogenes the Cynic, influenced by Socrates and a contemporary of Plato, visited the oracle at Delphi for advice after the exile of his father, who, according to Lipsey, had “debased [the state] coinage to his own advantage and was found out.”⁴⁴ Left in charge of the mint, Diogenes faced the same temptation as his father, to reduce the percentage of precious metal in the city’s currency and to sell the surplus for his own gain. Diogenes took his temptation to the oracle at Delphi, who “urged him to change the city’s currency (*politikon nomisma*).”⁴⁵ As Lipsey reminds us, “*nomisma* means not only coinage and currency but also custom and usage.”⁴⁶ The oracle is Diogenes’s to complete: either change the coinage for personal benefit or change his way of life to be a better person and citizen.

When an audience goes to the oracle of Aristophanes’s *Clouds* or Plato’s dialogues, that audience can read the same message there in either of the two ways Diogenes considered. The audience at its worst can take Strepsiades as a model for personal gain through duplicity and spite, thus sowing the seeds of blame and retribution. Nussbaum seems to suggest this view when she writes:

⁴³ MacDowell, *Aristophanes and Athens: An Introduction to the Plays*, p. 146.

⁴⁴ Lipsey, *Have You Been to Delphi?* p. 130.

⁴⁵ *Ibid.*, p. 131.

⁴⁶ *Ibid.*

The Clouds . . . presents us with a picture of private hedonism impervious to reason and even to sympathy. These men simply do not *care* about anything but their own satisfactions when it comes to a choice. And lest we too quickly feel ourselves superior to them, the *Clouds* insists that we members of the audience are no different. We are all just *euryproktoi* [“wide-assed”] waiting passively for pleasure.⁴⁷

But given the other possible way to complete Diogenes’s oracle, this is too easy, a betrayal of Aristophanes’s belief in our abilities to change the currency in the second possible reading of the oracle. It seems that Aristophanes is providing not just a reflection, but a challenge to us to recognize how Strepsiades-like behavior warps and distorts the soul. This is a challenge the audience, and we, often fail to meet. In order for the playwright to be angry with the judges and the audience for failing to understand his play and the warnings there, he had to assume that audiences, then and now, have the ability to rise to the challenge. Socrates, too, relied on this assumption. His life of philosophy, trying to complete the Delphic oracle’s prophecy, was not a declaration of rhetorical war against Athens, but rather an assumption that the people of Athens were on the same side as he was. We are not supposed to come away from *The Clouds* having our behavior reinforced—*euryproktoi*, an abusive epithet in the play and hardly one to be embraced. Nussbaum is right; we ought not to feel superior to the audience. Instead of learning the wrong lines, playing the wrong part, and doing ourselves real harm, we can change the currency, change the custom. My response to Plato and Aristophanes is not that they think all their audiences and I are objects of scorn. There seems at least some space in each author’s work for instruction and self-reflection. Thousands of pages devoted to deriding their audiences would seem to me both a swindle and a waste of good talent and careers. Plato and Aristophanes seem, through their words, to be more generous than that.

An audience at its best could come away from *The Clouds* laughing horrified laughter at the portrait just painted of itself, and, with a bit of self-deprecatory laughter, set about acting differently in the theater of Athens so as to increase security for all. An audience at its best would hardly see the burning of the Thinkery with living people trapped inside as exemplary behavior. This, too, is an exhortation to change the currency, for as Plato’s Socrates says repeatedly, as one harms another, so one harms also oneself. O’Regan notes, “in a sense, [Plato’s] Socrates’ fate fulfills Strepsiades’ threat to Pheidippides. The crime for which he is ‘tried’ is that of offense against the state, which carried the penalty of the barathron or house razing.”⁴⁸ If the

⁴⁷ Nussbaum, “Aristophanes and Socrates on Learning Practical Wisdom,” p. 95.

⁴⁸ O’Regan, *Rhetoric, Comedy, and the Violence of Language in Aristophanes’ Clouds*, p. 200.

Platonic Socrates's "school" was all of Athens, Aristophanes's *Strepsiades*, in his vengeance rather than triumph in the second play's ending scene, harms not only the characters Socrates and Chaerephon, but even more, razes his own home in the form of destroying both his own and his city's moral integrity. This is precisely Socrates's message in the last scenes of the *Apology*. The play's triumphant first ending leads to the second vengeful one. For, from greed and self-interest come vengeance and retribution; they are not opposites, but instead grow from the same corrupt source.

It is mistaken, then, to say either that Aristophanes failed, even though his first *Clouds* did not win him first prize, or that Socrates failed, because his defense did not win him acquittal. At his trial Socrates, of course, represented himself. But he, like the Socrates in Aristophanes's play, the Socrates in the Pythian riddle, and the Socrates in Plato's dialogues, also represents the concepts of integrity, caring more for truth than public opinion, and the best that Athenians could be. As J. Redfield suggests, "comedy weakens the control of the performers over their audience, and thus increase[es] the power of the people."⁴⁹ Similarly, Socrates's public philosophy and Plato's record of it increase the power of the people. Of course, this power is a double-edged sword. On the one hand, it increases the power of the people to change, to change the currency of society, to become better than we are. On the other hand, it increases the power of the people to do harm, to use the images and arguments as weapons of vengeance. In any event, Aristophanes and Plato are poets of hope in their unflagging faith in the abilities of their audiences to rise to the challenge, or they would have had no reason to engage in public *poesis*, risking the second possibility of comedy for the promise of the first.

7. Poets of Hope

Plato's Socrates's philosophical life ended, as it began, in prophecy. At the end of his life, Socrates becomes the oracle, saying:

And now I wish to prophesy to you, O ye who have condemned me; for I am now at the time when men most do prophesy, the time just before death. And I say to you, ye men who have slain me, that punishment will come upon you straight-away after my death, far more grievous in sooth than the punishment of death which you have meted out to me. For now you have done this to me because you hoped that you would be relieved from rendering an account of your lives, but I say that you will find the result far different. Those who will force you to give an account will be more numerous than heretofore; men whom I restrained, though you knew it not; and they

⁴⁹ J. Redfield, "Drama and Comedy: Aristophanes and Some of His Rivals," in *Nothing to Do with Dionysus?* ed. J. J. Winkler and F. I. Zeitlin (Princeton, NJ: Princeton University Press, 1990), p. 331.

will be harsher, inasmuch as they are younger, and you will be more annoyed. For if you think that by putting men to death you will prevent anyone from reproaching you because you do not act as you should, you are mistaken. (*Apology*, 39 c-d)

At the end of that life, he again completes the oracle to show that he has suffered no tragic fall, even while he faces the cup of hemlock. Again, the oracle is not primarily about the elusive yet everywhere-present Socrates. When Socrates takes his final exit, we are left to complete his parting oracle: he or she has lived well, who, like Socrates, refuses to bow to peer pressure or threats from the mob, but holds to integrity in the face of retaliatory fear. We would do well to act on Alcibiades's shame, and to be moved to give an account of our lives (*Sym.*, 216a6-7).

Plato's readers and beloved contemporaries are ordinary. We are often foolish but are not especially great or terrible people. At this time of stress in our own day, we have choices to make similar to the ones that Socrates's compatriots faced. What is the ordinary citizen to do? There is the risk of a mob mentality, or of hunkering down to take care of oneself alone. Or, in times of crisis, ordinary citizens might read the riddle of an ancient series of dramas, and realize that we can complete the oracle of Aristophanes's play and the prophecies of Socrates differently this time around. Comedy and tragedy point us to this conclusion, one showing the distortions if we fail, the other showing the ennobling if we succeed. For we are characters in the ongoing play, standing not only for ourselves but for the best a society might be. One way, then, to read our role is: "a society is tragic, which, like Socrates's, puts fear and the wealth of the few above the well-being of the many." Aristotle tells us, "since tragedy is a representation of men better than ourselves we must copy the good portrait-painters who, while rendering the distinctive form and making a likeness, yet paint people better than they are" (1454b). Aristophanes and Plato give us the chance to rise to the best in us, challenge us to plumb the depths of our being to find the golden and divine that Plato suggests has been there all along. We are the tragic figures if we fail. But we have the ability and opportunity to work against that role, to recast ourselves, to see ourselves in Aristophanes's mirror and not turn away from its hopeful challenge.

Portraits of Egoism in Classic Cinema I: Sympathetic Portrayals

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1. Introduction: Egoism—Still Interesting After All These Years

Egoism is a relatively neglected ethical theory in contemporary moral philosophy. Despite the fact that two of the greatest modern philosophers, Thomas Hobbes and Friedrich Nietzsche—along with other more recent philosophers—have advanced egoism in a philosophically sophisticated way, egoism is usually just briefly presented as that which ethics is meant to overcome, or simply dismissed as not worth discussing. This is, however, by no means the case in the behavioral and social sciences. The notion that human beings in particular (and animals generally) are essentially self-interested creatures informs most of economics, and much of psychology, history, political science, and sociobiology. Sociology alone seems to share the contemporary philosophic dismissal of egoism.

Moreover, egoism is often explored in motion pictures. In this series of three articles, I want to look at some of the ways egoism is portrayed in some classic pieces of cinema. Egoistic characters are in fact quite commonly shown in movies, including in a lot of mediocre ones. However, I have chosen films that are considered by film critics to be among the finest films ever produced, and ones in which the egoism of one or more of the leading characters is an essential part of the structure of the film. I will try to show how these films explore and implicitly evaluate or critique egoism.

In this first article, I will look at two classic war films in which egoism is portrayed benignly.¹ In the next article, I will examine a pair of movies in which egoism is given a more malign face. In the final article of the series, I will look at a pair of films that offer a more Nietzschean perspective on egoism.

¹ *Stalag 17*, directed by Billy Wilder (Paramount Pictures 1953); *The Bridge on the River Kwai*, directed by David Lean (Horizon Pictures 1957).

2. Varieties of Egoism

In order to understand egoist philosophy correctly, it would be useful to rehearse some pertinent conceptual analysis from philosophy and psychology.

One major distinction, perhaps the crucial one, is between psychological egoism and ethical egoism.² *Psychological egoism* is the view that all actions of any person (or optionally, any animal) are done solely out of self-interest, that is, are aimed at maximizing the best results for that person. Psychological egoism is—as the name implies—a theory of behavioral science, an empirical claim about the cause of behavior.³ *Ethical egoism* is the view that the morally right action for any person is whatever leads to the best results for that person.

By the “best results” we mean the best balance of overall good long-term consequences (of the action) over bad ones. Both of the qualifiers—“overall” and “long-term”—are important to understanding this ethical perspective. So, for example, while my drinking excessively on a given occasion may maximize my pleasure for the moment, the pain I experience the next morning will very possibly make the choice on balance, overall, not maximally pleasurable. And very likely, drinking heavily over the long term will certainly not maximize my pleasure, since I will likely develop major health problems, with all of the attendant pain and the threat to longevity they bring.

This example raises another important point. We need to note that egoism of either variety presupposes a theory of “non-moral” worth, that is, some account of what counts as “good consequences.” A theory of non-moral worth—often termed a theory of happiness—is a view about what things are ultimately desirable, as opposed to instrumentally desirable (i.e., desirable as a tool to get something else). For example, to most people, money is instrumentally, but not ultimately, desirable; they seek out money not because they desire it in itself, but because it enables them to buy things that are desirable in themselves. Hobbes was a hedonist; for him (as well as for many other philosophers over the millennia), the one and only thing desirable in the end is pleasure (and the only thing ultimately undesirable is pain).

² For a more extended discussion of this distinction, and the topic more generally, see the “egoism” entry in the Stanford Encyclopedia of Philosophy, accessed online at: <http://plato.stanford.edu/entries/egoism>.

³ A common distinction with regard to psychological egoism is between *somatic egoism* and *genetic egoism*, in keeping with the “selfish gene” hypothesis first popularized by Richard Dawkins (in his *The Selfish Gene* [New York: Oxford University Press, 1976]), and underlying much of the sociobiology of the time. That is, one can hold that all animals act to preserve and propagate their genes. This would explain why animals will often sacrifice their lives to aid their offspring or other kin (“kin selection”), rather than just try to extend their own individual lives. However, this distinction is unimportant here.

However, egoism (either psychological or ethical) and hedonism are conceptually distinct. An egoist need not be a hedonist; Nietzsche, for example, considered power (or perhaps artistic creativity) as the most important ultimately desirable thing. And a hedonist need not be an egoist, utilitarian philosopher Jeremy Bentham being just one of many examples of moral theorists who put forward non-egoist hedonist ethical theories.

To understand properly the egoist perspective, it is also important to be clear that egoism involves more than the trivial claim that everyone acts (or should act) to “maximize their preferences.” That claim is obvious—indeed, tautological—if one is talking about rational choice or intentional action generally. Under this view, someone who chose voluntarily to spend his life helping the poor for no compensation would still automatically be classified as an egoist. But egoism is the claim that all of any person’s preferences are (psychological egoism) or ought to be (ethical egoism) ultimately *self-regarding*.

The word “ultimately” is crucial here, and allows us to distinguish between overtly selfish egoism and “enlightened” egoism. The idea here is that even the most devoutly egoistic person could be *instrumentally* other-regarding, that is, help others to gain their friendship which will likely be of future help in achieving the agent’s own ends. In other words, an enlightened egoist feels that he needs others to truly maximize his own happiness, and so addresses their desires accordingly. But he would do this not out of ultimate concern for other people as ends in themselves, but as tools for his own benefit. He is an *enlightened egoist* in that he realizes that working with others is ultimately the best way to benefit personally.

Regarding psychological egoism again, it is useful also to introduce a variant of it, one that philosopher Gregory Kavka calls “predominant egoism,” or what I prefer to call *default egoism*. By contrast, let us call the view implicit in standard psychological egoism *complete egoism*. Default egoism is the view that while humans are typically capable of acting truly altruistically (i.e., being ultimately other-regarding), such behavior is very relatively rare—usually confined to situations in which the cost to the agent is very small, or where those who benefit are the agent’s own family or friends.⁴ Yes, a man or woman will sacrifice for family, country, or God—but nowhere nearly as often as he or she will act out of self-interest. Acting out of self-interest is the “default mode” of human action.

I should note two last major philosophically analytical points. For one thing, conceptually, a person could hold ethical egoism without holding psychological egoism. That is, one could hold that even though it is possible for a person to behave altruistically, he or she shouldn’t. But on the other

⁴ Default egoism often dovetails with genetic egoism (defined in note 2 above): on those rare occasions a person acts genuinely altruistically, it is almost always for his or her relatives, i.e., individuals sharing the agent’s DNA, or people such as close friends or fellow soldiers (with whom one bonds as if they were siblings or other kin).

hand, if one is a psychological egoist, it seems automatically to follow that no other ethical theory besides ethical egoism is tenable. After all, if a person absolutely cannot be genuinely altruistic, then it would be odd to say that he should be, in the way that it would be strange to say that I am acting immorally because I haven't ended world poverty today. I couldn't possibly end world poverty single-handedly, so blaming me for this failure is indefensible, if not simply nonsensical.⁵

This leads to another type of egoistic theory, namely, *rational egoism*. This is the view that an act by any agent is rational if and only if it leads to the best results for the agent. Under this view, it isn't unethical to behave (ultimately) altruistically—it is just irrational. Of course, the rational egoist—just like the ethical egoist—need not hold psychological egoism, which is a rather difficult theory to defend empirically (if not conceptually as well).

It is useful to distinguish “egoism” in the sense we are using it here from four other concepts. “Egoism,” as we understand it, is either a description of what causes (or is the reason for) our actions (our behavior), or what should (or morally ought to) cause our behavior. It is a philosophic description of (or prescription for) our ultimate reasons or motives for action. The other concepts we will define and contrast are concepts more employed in psychology than philosophy. The first two are personality *traits*, while the second two are personality *types*.

First, “egotism”—while it is often colloquially used synonymously with egoism—should be distinguished from it. *Egotism* is a type of behavior, specifically, a conceited (arrogant, haughty, or boastful) manner. It is akin to *vanity*, the excessive desire to appear attractive or desirable. While an egoist (someone who always acts to maximize his self-interest) might behave egotistically, or display vanity, he might well not. That is, the egoist might think, for example, that arrogant behavior would alienate possible allies who could be useful to furthering his ends, or again, for example, that being vain would make him the target of the envious, and thus hurt him in the long run.

Conversely, an egotist need not be an egoist. I might want to help others, sincerely and ultimately, but view myself as being of superior intellectual or moral virtue, and act accordingly. That is, I might be *paternalistic*, meaning that I want to help other people while considering them too stupid or infantile to help themselves.

The second personality trait often conflated with egoism is cynicism. *Cynicism* is the trait, attitude, or mindset of being distrustful of the motives and beliefs of other people, or their integrity and sincerity. Cynicism typically manifests itself in scornful remarks, such as “Yes, he appears generous, but he is really just trying to butter her up the better to bed her down!” Now, just as

⁵ The key premise in the underlying argument here is a principle of meta-ethics: “ought implies can.” That is, to say that person P ought to do action A is to presuppose that P is physically able to do A.

an egoist need not be an egotist, and an egotist need not be an egoist, so an egoist need not be a cynic, and a cynic need not be an egoist.

Let's start with the first claim. A psychological egoist could well view anyone who professes concern for others or appears honest, say, as being genuinely sincere, but simply acting in an enlightened way. Yes, the other person sincerely wants to help others, because he knows that it will pay off for him overall in the long run. Yes, the other person is honest, because the reputation of being honest pays off overall in the long run—honesty is the best business policy if you want to stay in business for a long time. And an ethical (or rational) egoist who is not a psychological egoist could well believe that another person is truly and ultimately other-regarding, yet that it is not ethical (or not rational). For instance, he might view the other person as being paternalistic, and thus harming not just himself but those to whom he is acting paternalistically.

Conversely, conceptually, a cynic need not be an egoist. He could be genuinely other-regarding and believe that other people are as well, but after being repeatedly deceived, defrauded, or taken advantage of, he might come to suspect the motives of other people generally (or suspect in particular a loved one who turned out to be insincere or untrue). To borrow a line from an old rock tune, he might “have his eyes hurt open.” We should also note that just as paranoids sometimes have real enemies, cynics are sometimes just realistically recognizing hypocrisy in others.

Third, we ought to distinguish egoism from narcissism (as a personality disorder). A *narcissist* is someone who is excessively self-absorbed. Using the Mayo Clinic definition, a narcissist (meaning someone with the just-named personality disorder) “is characterized by dramatic emotional behavior, which is in the same category as antisocial and borderline personality disorders.”⁶ Symptoms of this personality include: feelings of superiority, fantasies about power and fame, egotistical bragging, craving for admiration, being insensitive to others' feelings, feeling that people should go along with your choices, setting grandiose goals, expressing contempt for those you view as inferior, inclination to be jealous of others (and suspecting others of being jealous of you), inclination to be hurt easily, and being domineering. It also includes manipulating others for one's own ends; whereas an enlightened egoist will work with others, a narcissist will manipulate them—that is, exploit their emotions (or psychological mechanisms) to make them do what they otherwise might not do. Manifestly, narcissism can be viewed as an extreme form of either complete or default egoism.

On the other hand, however, an egoist (either psychological or ethical) need not have *any* of these feelings or traits. We can illustrate this point analogically. While a glutton is an extreme form of someone who enjoys

⁶ “Narcissistic Personality Disorder,” accessed online at: <http://www.mayoclinic.com/health/narcissistic-personality-disorder/DS00652>.

food, one can enjoy food and yet not be a glutton. So for one thing, to be an ethical egoist, one has to be willing to see everyone else be egoists as well—universalizability just seems to be a bare minimum requirement even to call a theory an ethical theory. And again, an egoist focusing on his own self-interest need not at all feel superior, brag, set grandiose goals, or what have you.

Fourth, just as we distinguished egoism, rightly understood, from the personality type termed narcissism, we especially need to distinguish it from the mental disorder (or pathological personality type) called psychopathy (or sociopathy). A *psychopath* (or *sociopath*⁷) is a person who can be charming on the surface, but is in reality: self-centered in the extreme, dishonest (often to the point of criminality), desirous of attention and social dominance, low in fear or high in tolerance for danger, impulsive, totally lacking in empathy, incapable of feeling guilt, callous and predatory in his interpersonal relationships, unable or unwilling to take responsibility for his own actions, and a manipulative liar.⁸ While most psychopaths are not violent or even criminal, something like one-fourth of all incarcerated criminals are psychopaths. Psychopathy, like narcissism, can be viewed as an extreme form of egoism, but a very extreme form. Conversely, however, an egoist clearly need not have any of these personality traits, any more than he need have the characteristics of egotism or narcissism. But then again, an egoist might. We will see that while some of our films do not portray egoists as narcissists or psychopaths, some do.

With these concepts defined, let us look next at some of the views of egoism that some of the great filmmakers have given us.

3. The Egoist as Survivor

Let us start with two superb war movies that help us to visualize the difference between a psychological egoist and a default egoist. These films are *Stalag 17* and *The Bridge on the River Kwai*. Both star the estimable actor William Holden (1918-1981),⁹ and I suspect that this casting was not accidental.

⁷ I use these two terms synonymously, as is commonly done—see, e.g., the Wikipedia entry on “Psychopathy,” accessed online at: <http://en.wikipedia.org/wiki/Psychopathy>. But we should note that some psychologists distinguish the two concepts; see, e.g., Jeannie Marie Kerns, “Sociopath Vs. Psychopath: There is a Difference,” accessed online at: <http://voices.yahoo.com/sociopath-vs-psychopath-there-difference-1906224.html>. I use both terms interchangeably with “antisocial personality disorder.”

⁸ Scott O. Lilienfeld and Hal Arkowitz, “What ‘Psychopath’ Means,” *Scientific American*, December 1, 2007, accessed online at: <http://www.scientificamerican.com/article.cfm?id=what-psychopath-means>.

⁹ Holden’s birth name was William Franklin Beedle, Jr. All details of his life are from his IMDB biography, accessed online at: <http://www.imdb.com/name/nm0000034/bio>.

To explain this last remark, let me distinguish between two sorts of actors: plastic actors and persona actors. A plastic (or pliable) actor is one who tries to act his or her assigned character as limned by the screenwriter and envisioned by the director. The actor conforms to the script's character completely. The best plastic actors—one thinks here of Claude Rains and Joseph Cotten, for example—"disappear" into the character, and can believably play any role, often playing markedly different characters in different films (a lovable oaf in one, say, and a vicious killer in another).¹⁰ A persona actor is one who usually informs each character he or she plays with his or her own projected personality or identity (or a consistently projected personality, which may not be his or her actual personality). Examples of persona actors would include Humphrey Bogart and Jack Nicholson.

Holden was a persona actor: his projected personality (and I suspect his real one) was one of an intelligent, thoroughly self-interested, aloof man with a cynical sense of humor. This was crucial to his portrayals in the movies under discussion.

In *Stalag 17*, Holden brilliantly portrayed an egoistic prisoner of war named J. J. Sefton, being held in a German POW camp during World War II. (Indeed, his performance won him the Oscar for Best Actor.) Based upon a play written by two ex-POWs, the movie opens on Christmas Eve, 1944.¹¹ The camp holds POWs of various nationalities, including Russian women POWs, but the action takes place primarily in the American compound, containing hundreds of downed American airmen. Two of the prisoners, Manfredi and Johnson, attempt to escape through a tunnel the prisoners dug, but German guards are waiting for them on the other side and shoot them dead. The other prisoners realize at this point that there is an informant, a "stoolie," among them.

Sefton is quickly the target of suspicion, for several reasons. First, he is cynical about escape attempts (indeed, he seems generally cynical), telling the other prisoners that the odds are against any of them succeeding, and "what if you escape, make it back to the United States, they ship you to the Pacific, you're shot down again, this time you're in a Japanese prison camp." Second, he is a very sharp trader, indeed. He has amassed a footlocker full of valuable merchandise, or at least valuable to the average POW—candy, cigarettes, silk stockings, and so on—from his trading with both fellow prisoners and the prison guards as well. This arouses envy in his fellow prisoners—he tells them defensively at one point that they all trade just as he

¹⁰ We should not confound "plastic actor" with the commonly used descriptor "character actor." A "character actor" is an actor who specializes in playing odd or unusual characters. While some character actors are plastic actors, others are persona actors.

¹¹ The plot summaries, casting, production details, and other information for all of these movies are all readily available on IMDB.com, filmsite.org, TCM.com, and Wikipedia.com.

does; he is just a little sharper at it. Third, he had bet against Manfredi and Johnson succeeding, and won from the other prisoners a lot of cigarettes.

The next thing about which the informant tips off the guards is the location of a radio that the prisoners have been hiding (and using it to follow the war news on the BBC). The prisoners, having witnessed Sefton over in the women's compound (he had bribed the guards to be allowed the visit), come strongly to believe that he is the informant. At this point, the newest prisoner (Lieutenant Dunbar)—who had earlier told the prisoners how he had sabotaged a German train carrying ammunition (by tossing a book of matches with one lit into it)—is arrested by the guards. As it happens, Sefton knows Dunbar—Sefton had met him in the pilot training program (which Dunbar passed, while Sefton had failed) and knows that Dunbar is from a wealthy family. The arrest infuriates the other prisoners, who are now absolutely convinced of Sefton's guilt, and punish him with a savage beating. Sefton, enraged that the other prisoners have not only misjudged him, but have beaten him up in punishment, decides to discover who the real informant is.

Sefton hides in the barracks during an air raid (really, a bogus air raid which allows the Germans to talk with their informant), and hears the informant talking to Sergeant Schulz (Sig Ruman), one of the guards. He not only discovers the informant's identity—it is none other than the ultra-pure and heroic-looking head of security for the prisoners, Price (played with aplomb by Peter Graves)—but discovers as well the means of communication. Price has been tipping off the German guards by placing messages in a hollowed-out chess piece on the chess-board in the barracks.

Sefton tells his only friend and assistant Cookie that he suspects that the informant is not a turncoat American, but that the Germans have planted one of their own as a spy—perhaps a former German-American who grew up in America but returned to Germany to side with the Nazis. So if he just exposes Price, the Germans will just plant Price in another camp. The situation requires craftiness, a trait which Sefton has in abundance.

This leads to the denouement. The next day (Christmas day), the prisoners—having discovered that Dunbar will be shipped to Berlin by the SS for interrogation (and presumably execution)—decide to rescue him. They stage a distraction; Dunbar is rescued, and hidden in the camp's water tank above the latrines by the head of the Allied prisoners, Hoffy (Richard Erdman). Hoffy refuses to tell anyone—not even Price—where Dunbar is hiding. The Germans search unsuccessfully for Dunbar, at which point the German camp commander, Colonel Von Scherbach (played beautifully by the outstanding German émigré director Otto Preminger) promises simply to raze the camp.

At this point, the prisoners decide that they must help Dunbar escape the camp. Price volunteers to help Dunbar get out, whereupon Sefton exposes him as a spy. He convinces the other prisoners that Price is the spy by tricking him with a question about the time of the attack on Pearl Harbor—Price replies with 6 p.m., which was not the time of the event in Cleveland (where

Price claimed to be from), but *was* the time of the attack in Berlin—and by pulling out of Price’s pocket the hollowed-out chess piece.

The prisoners, now aware that they have been duped, seize Price. To their surprise, Sefton announces that *he* will help Dunbar escape—because, he makes clear, he now thinks that the odds are better for success, and (he frankly notes) if he succeeds in rescuing Dunbar, he expects that Dunbar’s wealthy family will reward him—both perfectly good egoistic considerations. When night comes, the prisoners tie tin cans to Price, and throw him out into the yard. As Price runs about, trying to free himself from the noisy cans, the guards gun him down, which creates the diversion needed for Sefton to get Dunbar out of the tank and cut through the barbed wire around the camp.

The movie ends here. We, the viewers, never learn whether the protagonists succeed in escaping Germany. That is, we never know whether the egoist’s calculations work out for him. In a moving scene, the movie closes with Cookie whistling “When Johnny Comes Marching Home Again.”

What sort of egoist is Sefton? The best description would be a psychological and a rational one. He is focused on his own survival, and he uses his wits to achieve that goal, and live as well as he can in the difficult circumstances. But he is certainly not an egotist—he doesn’t boast at all about his skills. Nor is he a narcissist—he doesn’t manipulate, envy, or attempt to dominate the men around him. Even less is he a psychopath, lying, cheating, or manipulating people with no feeling. He simply trades with them, employing no coercion or fraud. This is exemplified by his treatment of Dunbar: Sefton tells him in no uncertain terms that if he (Sefton) succeeds in rescuing Dunbar, he will expect to be rewarded. And he can form working relationships. With Cookie, for example, he is fair and even protective—Cookie’s behavior indicates that he is either shell-shocked or otherwise mentally disturbed.

The second movie also centers on a WWII POW camp, again starring William Holden. The movie—*The Bridge on the River Kwai*—is not just an excellent war movie; it is one of the greatest films ever made, winning a then-record seven Academy Awards, including Best Picture, Best Director, and Best Actor.

The story is loosely—very loosely—based on the construction of the Burma-Siam railway by the Japanese Imperial Army. The Japanese used American, British Commonwealth, and Dutch POWs, as well as forced civilian labor. 13,000 of the POWs and upwards of 100,000 civilians died during the construction. In particular, the fictional story is about the real building of a bridge over the Mae Klong.¹²

The movie opens in a Japanese POW camp in western Burma, one containing mainly British Commonwealth prisoners, with some Americans. We meet one of the chief protagonists, an American prisoner USN

¹² See the Wikipedia entry for “The Bridge on the River Kwai,” accessed online at: http://www.en.wikipedia.org/wiki/The_Bridge_on_the_River_Kwai.

Commander Shears (William Holden, in another fine performance). We watch with Shears as a new group of British prisoners, led by the second main protagonist, Lt. Colonel Nicholson, march into the compound. They are whistling the stirring “Colonel Bogey March” (the music score for this movie won an Academy Award as well). Nicholson is played perfectly by the ultimate persona actor, Alec Guinness, in arguably the finest performance of his distinguished career—a performance that won him the Oscar for Best Actor. Emerging from his office to meet the new prisoners is the third main protagonist, the camp commandant Colonel Saito—played equally magnificently by the legendary silent screen actor Sessue Hayakawa, who was nominated for the Best Supporting Actor Oscar for his performance in this movie. A battle of personalities immediately breaks out when Saito tells the assembled prisoners that their assigned work is to complete the building of a bridge over the Kwai River, and that the British officers are to work alongside the enlisted men. Nicholson replies that the Geneva Conventions forbid this. Saito doesn’t respond.

The next morning, as the men march off, Nicholson orders his officers to stay, which enrages Saito, who slaps Nicholson and threatens him with summary execution. Here the British medical officer Major Clipton (James Donald) steps in, and Saito decides instead to force the British officers to stand in the hot sun. Later in the evening, he puts Nicholson in a small, corrugated steel box called “the oven,” to languish without food and water, and puts the officers in the punishment hut.

What we discover is that Saito is himself in a difficult position. He must finish the bridge under a tight deadline. And if he fails in this task, Saito will be obligated to commit ritual suicide (seppuku, or “hara-kiri”). However, the project is way behind schedule for several reasons: the Japanese engineers have placed the bridge in a bad location (with bedrock too far down for the supports to rest on it), the ill-motivated prisoners are working as slowly as they can get away with, and the prisoners are covertly sabotaging it wherever they can. This is precisely what the prisoners ought to do, because the railway will allow the Japanese to better supply their troops, extend and solidify their empire all the more, and in so doing, kill or capture all the more Commonwealth soldiers. Saito gives in, using the excuse of celebrating the Japanese victory in their 1905 war with Russia to grant a general amnesty. With this, two major plot twists occur, which will eventually set up the dénouement.

First, when Nicholson inspects the bridge, he also observes the behavior of the prisoners. He decides that for the good of their morale, they should now—to put it bluntly—collaborate with the enemy. Over the protests of his officers, he orders his engineers to help build a “proper” bridge. It is important here to note that Nicholson doesn’t seem to be motivated egoistically. While his contest of wills with Saito may well be to a large extent personal, his devotion to his officers and men—as well as his principles—seems quite sincere. He is indeed other-regarding in his preferences here, so much so that it leads him to collaborate.

Shears, by contrast, is certainly some kind of egoist. We see this early on in the film, where Shears trades a lighter he has taken from a corpse (he is on burial detail, burying the prisoners that die in the camp) for some time in sick bay. Also, after burying one of the prisoners, he gives a cynical “eulogy,” which leads the viewer to think that the death was essentially pointless.

In the second plot twist, Shears and two other prisoners attempt an escape. The others are shot dead, but even though Shears is wounded, he manages to make it to a village, and the villagers help him get to safety. While he is recuperating at Mount Lavinia hospital (in Sri Lanka), and making time with an attractive nurse, the film’s fourth major protagonist appears. Major Warden (played superbly by Jack Hawkins), who heads up the commando forces, asks Shears to volunteer to be part of a commando team that will go back and destroy the bridge. Shears does what any good egoist would do, and refuses, revealing that he is not an officer at all, but just an ordinary sailor who donned the uniform of a dead officer to get better treatment as a POW. However, Warden not only knows this already, he uses it as a threat (impersonating an officer is a major crime in the military). Shears gives in, and agrees to go along. (Warden, realizing that Shears is being coerced to join the team, gives him a concession—Shears will be given the “simulated” rank of major.)

We then return to the Japanese POW camp, where we see Nicholson pushing his men to finish the project—even to the point of now allowing the British officers to work, if the Japanese officers will work as well. Saito agrees, and we see that the two have developed some kind of bond—if not a friendship, then a collaborative partnership—centered on the completion of the bridge (which Nicholson now views as a kind of monument to the British Army, and perhaps himself as well).

We cut back as the commandos are parachuted in. One dies in the landing, and in a later skirmish with a Japanese patrol, Warden is injured. This forces a major change in Shear’s role. He and the other healthy commando team member—Canadian Lieutenant Joyce (Geoffrey Horne)—have to help carry Warden on a stretcher, with the help of some Thai village women and the village chief.

Together, the team finally reaches the bridge. That night, while the Thai villagers and Warden wait on the hill above the river, Shears and the Canadian plant explosives on the bridge, taking care to place them below the water line to hide them. But in the morning the commandos discover that the water level has dropped, revealing the wiring from the detonator to the explosives.

The dénouement occurs when Nicholson and Saito decide to do a final inspection of the bridge, as a Japanese troop/munitions-train approaches. (The train is to inaugurate the opening of the bridge by being the first train to cross it.) Nicholson sees the wire, he calls it to the attention of Saito, and they go down to inspect. Nicholson starts to pull up the wire to see where it leads, which prompts Joyce to come out from hiding and kill Saito. Nicholson,

showing how strongly his priorities have shifted, holds Joyce back from the detonator, and calls for help from the Japanese guards, even as Joyce explains to him that they are an Allied commando unit. The Japanese kill Joyce, and when Shears swims across the river to push the detonator trigger (which shows how strongly *his* priorities have shifted), he also is shot. As he lies dying, Nicholson—recognizing him as the shallow egoist from the camp—says, “You?” to which the dying Shears hisses, “You!” Nicholson then has a change of heart, exclaiming “What have I done?” At this point, Warden, on the bluff above the scene, fires a mortar round, which wounds Nicholson, who staggers over to the detonator, and as he dies, collapses on it, setting off the charges. As the bridge is destroyed, the Japanese train tumbles into the river.

In the final moving scenes, we see Warden try to get the Thai women ready for them all to flee. However, the women—who form a kind of Greek chorus here—shrink from him in horror, having witnessed him mortaring his own crew below. Warden tells them defensively that he had to do it to make sure that the men couldn’t divulge information to the Japanese. We also see Clipton—the medical officer who is the voice for civility and humanity in the film—on the bluff on the other side of the river, exclaim as he watches the death and destruction below, “Madness! . . . Madness!”

This is a film that works at every level—the visual, the literary, and the philosophic. It is spectacularly filmed; the director, David Lean, was legendary for his cinematographic vision. The characters and dialogue are compelling, and the film raises some interesting questions about the nature of heroism and (for that matter) collaboration.

However, for present purposes, I simply want to ask, what kind of egoist is Shears? I think that the answer is that while Sefton (of *Stalag 17*) is a psychological egoist—an egoist throughout the film—Shears is a default egoist. His behavior, both in the camps and in the hospital, is straightforwardly egoistic. But after Warden is shot, Shears moves into taking charge of the mission, and dies valiantly trying to destroy the bridge. The exceptional position he is in produces his exceptional behavior. Put another way, his egoism is defeated by his devotion to destroying the bridge—whether that devotion comes from latent patriotism, psychological entrenchment in the completion of the mission, or just a hatred of his former captors, we cannot really tell.

In both of these fine films, egoism is portrayed, if not favorably, then at least not as a wicked wellspring of action. The egoist is not egotistical, vain, narcissistic, or psychopathic. Here it helps that both films feature the handsome and charismatic William Holden. (It is a simple psychological fact that people associate moral worth with physical appearance, a point to which I will return elsewhere.) It also helps that in both films, the egoist is a soldier trying to survive in the extremely hostile environment of a fascist enemy POW camp. Certainly, in both films, the egoist is portrayed as cynical (see Appendix). Yet he harms no one, and betrays no one—indeed, he finds the spy and rescues the endangered prisoner in the first film, and helps to

complete the commando mission in the second. He is surely no villain—indeed, he *acts* heroically, even if his *motive* is egoistic.

The true “villains” in the movies are the men who at first appearance seem to be the greatest other-regarding heroes: Price, the all-American “security” chief who turns out to be a German spy devoted to aiding an evil regime; Nicholson, who so identifies with (first) his men and (then) the bridge he helped the Japanese to build that he winds up by (initially, at least) helping the Japanese to save it, at the cost of the lives of some of the Allied soldiers (including the man he had dismissed as a shallow egoist); and Warden, the equally duty-bound head of the commandos who is all too willing to blow his men to pieces to keep them from divulging information to the Japanese.

The essential difference between Warden and Shears is illustrated beautifully by a piece of dialogue. When Warden and his crew parachute in to start their mission, recall that Warden is injured. Warden then orders Shears to leave him behind and complete the mission with Joyce, knowing of course that he won’t be able to rescue him afterward. This provokes Shears to bark out at Warden, “I’m not going to obey that order. You make me sick with your heroics. There’s a stench of death about you. You carry it in your pack with you like the plague. Explosives, L-pills¹³ . . . They go well together, don’t they? With you, it’s just one thing or the other: destroy a bridge or destroy yourself. This is just a game [to you, Warden]—you and Colonel Nicholson. You’re two of a kind, crazy with courage, for what? How to die by the rules—when the only important thing is how to live like a human being!”

In the next article of this series, I want to turn to a couple of classic films that present egoists with major personality disorders.

Appendix

It might be useful here to compare the cynical and egoistic character Sefton, with another famous cynical character from another war film that transcended its genre (the “war romance”), the classic *Casablanca* (1942).¹⁴ I refer here to that film’s main protagonist, Rick Blaine (played superlatively by Humphrey Bogart, who was nominated for the Best Leading Actor Oscar for his performance in the movie). I want to thank my former student, Phuc Le, for posing the question to me as to whether Rick Blaine, so obviously cynical, should also be considered an egoist.

¹³ “Lethal pills” are pills that a captured agent should take to kill himself rather than reveal important information under torture.

¹⁴ I won’t review the movie in detail, as it is very likely familiar to the reader, and is well discussed in the TCM.com entry, accessed online at: <http://www.tcm.com/tcmdb/title/10/Casablanca>, as well as the Wiki entry, accessed online at: [http://en.wikipedia.org/wiki/casablaca_\(film\)](http://en.wikipedia.org/wiki/casablaca_(film)).

In brief, the movie opens in 1941 in the Moroccan city of Casablanca. The city is nominally under the control of Vichy France, but is increasingly under the control of the Nazis. The city is one of the remaining places where refugees from Europe have a chance to escape to freedom. The film centers on Rick, the owner of Rick's Café Americain, which we see immediately is the most important night spot in the city (and has an illegal casino in back).

One night, Rick's acquaintance Ugarte (exquisitely played by the eminent character actor Peter Lorre)—admits to Rick that he possesses two "letters of transit" that were stolen from some German couriers. Rick agrees to hide them (even though this puts him at great personal risk), although he shows disgust when Ugarte tacitly admits that he had a hand in the murder of the couriers. Subsequently, the police (under the supervision of the genially corrupt prefect of police Vichy Captain Louis Renault) arrest Ugarte, who cries out to Rick to help him. Rick watches as he is hauled away, and to the rebuke of an onlooker, makes the seemingly egoistic comment, "I stick my neck out for nobody." (But of course, in even taking the letters from Ugarte, he was sticking his neck way out for the man.) Louis is wonderfully acted by persona actor Claude Rains, who was nominated for the Best Supporting Actor for his work in this film.

Shortly after this, the famous Czech resistance leader Victor Laszlo (elegantly acted by Paul Henreid) enters with his wife Ilsa (bewitchingly portrayed by Ingrid Bergman). Laszlo has come to buy the letters of transit for his wife and himself, but is too late. We learn in a flashback that Rick and Ilsa had been lovers in Paris two years before (while it was still a free city, and while Ilsa wrongly believed that her husband was dead). The two (Rick and Ilsa) were preparing to flee, as the Germans were closing in on Paris. We learn in passing that Rick is wanted by the Gestapo. Yet at the last moment, as he is waiting for her on the train out of the city, she sends a goodbye note instead. He is visibly crushed.

Returning to the present, that evening Rick is trying to cope with the sudden appearance of Ilsa (which breaks his heart again) by getting drunk. Ilsa tries to explain why she couldn't come with him in leaving Paris, but in a drunken rage he insults her. The next evening, after Rick allows Laszlo to conduct the orchestra in a rousing rendition of *La Marseillaise*—to drown out the Nazis' singing—the Nazis order Rick's Café to be shut down. Later, as Laszlo attends a local Resistance meeting, Ilsa has a chance to explain her actions to Rick, and tells him that he will now have to do the thinking for both of them.

Rick then orchestrates a clever way out. He arranges for Victor to get the letters, and for Louis to arrest Victor in the act of taking possession. But Rick double-crosses Louis, and arranges it so both Ilsa and Victor escape (because he realizes how important Victor's mission is and how much Ilsa means to Victor). As the couple boards the plane, Rick has to shoot the head of the Gestapo in Casablanca, Major Strasser (admirably acted by Conrad Veidt). Louis, after some hesitation, tells the police who have arrived to round

up “the usual suspects.” The movie closes with Rick and Louis leaving together to join the Free French forces to fight the Nazis.

What are we to make of Rick? Does his cynicism betoken egoism? I think not. First, while Rick is cynical during most of the movie, we see that his cynicism ends when he discovers that Ilsa did what she did in Paris because she found out that her husband was in fact alive, and that she still loves Rick.

More to the point, everything we learn about Rick in the film shows that he is no egoist. First, he ran arms for the Ethiopians fighting the fascist Italian army, and fought with the loyalists fighting the fascists in Spain. (He dismisses this self-deprecatingly by saying that he was well-paid to do this, but the cynical Louis reminds him that the fascists would have paid him even more.)

Second, while he loved and loves Ilsa, in the end he makes her leave with her husband for the greater good. (He makes to her the famous remark that “the troubles of two individuals don’t amount to a hill of beans” in this great battle against fascism.) Note that he risks death in arranging their escape.

Third, he obviously has a close friendship with his pianist Sam (wonderfully played by Dooley Wilson) and many of the employees in his café. These are no mere friendships of convenience, as we see when he makes sure that when his rival Ferrari (head of the local criminal underground) takes over the café, those friends will be taken care of well. (Ferrari is memorably portrayed by veteran character actor Sidney Greenstreet.)

Fourth, faced with a Romanian couple desperately gambling at his roulette table to get enough money to buy their exit from Casablanca, he lets them win (and so sustains a personal loss of income).

Fifth, in the end, he leaves with Louis to fight the fascists again.

Finally, the whole message of the film—not a subtext, but really the *leitmotif*—is the need for personal sacrifice for the goal of defeating evil. It is unlikely that an egoist would be the hero of such a piece.

So Rick is no egoist. His temporary cynicism is a manifestation of disillusioned ideals and a broken heart, not—as is Sefton’s cynicism—of egoism. Rick not only sticks out his neck for others, he does so repeatedly, risking his life each time. His friend Louis even comments at one point that he suspects that Rick’s cynicism is a pose, and that Rick is a romantic at heart. And Laszlo tells Rick at one point (when Rick makes a cynical remark about the world being put out of its misery), that he sounds like a man trying to convince himself of what he doesn’t really believe in his heart.

In fact, after *Casablanca*, during the period of his greatest popular and artistic success, Bogart made a number of films now considered classic cinema in which he played the hero as cynical on the surface because of past disappointed ideals, but who faces evil when the need arises. These films include: *To Have and Have Not* (1944); *The Big Sleep* (1945); and most importantly, *Key Largo* (1948).

Review Essays

Review Essay: Eugene Garver's *Aristotle's Politics: Living Well and Living Together*

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1. Introduction

Even amidst the renaissance of Aristotelian studies in the past fifty years or so, the *Politics* has attracted less philosophical attention than the *Nicomachean Ethics*. The reason for this disparity is not far to seek: the *Politics* seems significantly more culture-bound than the *Ethics*, and so less relevant to life in modern, pluralistic nation-states than in pre-modern, culturally homogeneous city-states. Hence even those who have invoked Aristotle to critique the dominant modes of modern political thought and practice have tended to focus on the *Ethics*, drawing from the *Politics* only a few ideas about human beings as naturally political animals and justice as the common good. The *Ethics*, it is widely held, continues to speak to us in detail, but the *Politics* has less to teach us. In the third and final installment in his study of Aristotle's practical philosophy, Eugene Garver seeks to reverse this conventional judgment.¹ The previous volume maintained that the central ideas of the *Ethics* are more foreign and less attractive than often supposed. The book under review, which can be read independently of the others, argues that the *Politics* remains valuable for us today precisely because the many glaring differences between Aristotle's world and our own help us "better to see ourselves by contrast" (p. 16). Garver explores frequently overlooked tensions in the work and refuses to accept easy solutions, but he keeps his sights set on how reading Aristotle "can help us think through our own problems" (p. 14). The result is a challenging and refreshingly distinctive treatment of the *Politics*. I will argue that several of Garver's main claims are mistaken as interpretations of Aristotle, and I will suggest that the *Politics* has at least as much perennial relevance on the more orthodox interpretation I prefer as on Garver's alternative. Nonetheless, though this book ought to arouse disagreement in any thoughtful reader of Aristotle, it consistently

¹ Eugene Garver, *Aristotle's Politics: Living Well and Living Together* (Chicago, IL: University of Chicago Press, 2012). His earlier books are *Aristotle's Rhetoric: An Art of Character* (Chicago, IL: University of Chicago Press, 1994) and *Confronting Aristotle's Ethics: Ancient and Modern Morality* (Chicago, IL: University of Chicago Press, 2006).

provokes a reassessment and clarification of one's own views. Anyone with a serious interest in Aristotle's practical philosophy will therefore benefit from reading it.

2. Overview of *Aristotle's Politics*

One of the central questions that animates the book is how political philosophy can be *practical*. How, that is, can abstract theorizing about how people might best live together provide any guidance to concrete, particular political action? One possibility is suggested by a plausible interpretation of what the *Ethics* says about practical wisdom (*phronēsis*): the task of practical philosophy is to achieve an articulated understanding of the best way of life for human beings, and the task of practical wisdom is to bring that understanding to bear on the often bewilderingly complex circumstances of action. On this view, there is a considerable gap between practical philosophy and practical deliberation. Because of this gap, and because much of the task of living well is a matter of acquiring virtues of character through the habituation and training of our non-rational desires, practical philosophy has a limited role in living well. Even if a philosophical understanding of the good is necessary for living well, it will tell us very little about what we should do and it will not do much to enable us to do it; for that, we will need the virtues of character and practical wisdom. Since Aristotle tells us that political expertise (*politikē*) and practical wisdom are the same disposition (*NE* VI.8, 1141b23-24), we might expect a parallel account of the relationship between political philosophy and political action. Yet, as Garver emphasizes, this is not at all what we find in the *Politics*.

Instead, Aristotle lays out a program for what political expertise should be able to do: it should be able to give an account not only of the political arrangement or "constitution" (*politeia*) that is absolutely best without qualification, but also of the arrangement that is best suited to most communities in most circumstances, of the arrangements that are best for certain kinds of communities in certain kinds of circumstances, and even of the arrangement best suited to any given goal, whether or not it is the best achievable in the circumstances (*Pol.* IV.1, 1288b10-39). Each of these "four kinds of best" (p. 4) is the focus of a distinct mode of inquiry that approaches politics from the perspective of one of Aristotle's four causes: inquiry into the best without qualification is oriented toward the final cause of politics; inquiry into the best possible in specific circumstances begins with the material cause and "organizes political inquiry around the best that can be made out of given material"; identifying the best constitution suited to most communities requires understanding "a formal cause that can organize almost any material, any kind of people"; and the study of what Aristotle calls the best "relative to a hypothesis" is the search for the efficient causes that will promote any posited goal (p. 6). The *Ethics* seems to restrict its vision to the best life without qualification, offering no account of what is best for most people, what is best under specific circumstances, or what will promote any given aims. Practical wisdom may enable its possessor to deliberate well about all

of these questions, but it is evidently not the task of practical philosophy to answer them. Hence, Garver concludes, political philosophy is *more practical* than ethics, because it does not need to leave so much to the discretion of practical wisdom. Political philosophy has more guidance to offer the statesman than ethics has to offer us as individuals.

This division of political philosophy into four kinds of inquiry that study four kinds of “best” is fundamental to Garver’s reading of the *Politics*. He observes that each of these four approaches has been prominently treated as *the* self-sufficient method of political theorizing. His examples are “the utopian or Platonic best, . . . the strategic Machiavellian best on a hypothesis, . . . the *Federalist* project of a stable constitution without reliance on virtuous politicians, and the approach exemplified by Montesquieu of arguing that different peoples are suited to different kinds of government” (p. 7). One of Aristotle’s strengths is that he not only finds a place for all of these inquiries, but allows each to complement the others, yielding “a more complete understanding” (p. 8). So for Aristotle the study of how to preserve any given sort of political regime is not the amoral enterprise that it is for Machiavelli, because the best means of preserving even the most corrupt regime is to moderate its excesses to bring it as close as possible to promoting the common good. So too, Aristotle’s best constitution avoids the practical irrelevance of much utopian theorizing because it enables us to see the connection between the absolute best and the other kinds of best. Instead of leading us to regard non-ideal politics as a disappointing failure to achieve the ideal, the integration of utopian theorizing into a more comprehensive philosophy enables us to understand “what is truly political about our ordinary political activity” (p. 212).

In his conclusion, Garver lays out five “themes” that he sees recurring in the *Politics*, each of which is “a different way of exploring the complex interrelations between ethics and politics, between living well and living together” and which is also a way “of connecting Aristotle’s political problems to our own” (p. 214). Though this summary is placed at the end of the book, it can be recommended as a second introduction, since it serves well to illustrate the unity of the preceding six chapters. Each of the themes is a set of questions. The first is: What is the alternative to living as a political animal? As Aristotle has it, every human being who is not radically disabled is such as to flourish fully only in political community. Yet many people who are not radically disabled do not live in political communities. What are the alternatives that they prefer instead? The second, related, theme is: What is so fulfilling about expressing one’s nature as a political animal? What is valuable about ruling and being ruled in turn instead of opting for one of the alternatives? Those alternatives are despotism and slavishness, ruling others as though they were slaves or living like a slave by preferring pleasure and wealth to what is truly good. Garver’s Aristotle does not believe that his audience will be tempted by slavishness, but he does think that despotism is a serious problem for them. For those of us living in advanced capitalist societies, however, the problem is, Garver thinks, precisely reversed. As he

puts it, “people engaged in trade and moneymaking try to please their customers, and so choose the pleasant over what is truly good. . . . [P]eople who organize their lives around acquiring wealth are slavish, even if not slaves, because to aim at wealth is to aim at satisfying the ends of people other than oneself” (p. 22).

But if we are to reject slavishness, why should we prefer sharing in rule with others over ruling them despotically? As Garver sees it, Aristotle’s answer to this question varies along with the perspective he takes on politics in different modes of inquiry. At times it seems that people’s *de facto* equality makes permanent rule impractical; at others, it is that no single individual is sufficiently virtuous to rule well. Often, most citizens are not virtuous enough to want to rule and be ruled in turn for its own sake. In that case, Aristotle argues that the middle class, lacking the vices induced by poverty and excessive wealth, will be virtuous enough to be willing to rule without wanting to rule permanently; in non-ideal constitutions, citizens can be brought to regard a system of shared rule as a way of sharing the burdens of sustaining the conditions that enable them to pursue their own private good. Fully virtuous people see ruling and being ruled as choiceworthy for its own sake, because they see that “ruling over equals is a better, a more fulfilling, activity than ruling over unequals” (p. 189). Since virtue must sustain the conditions that enable its successful expression, the virtuous person who values ruling over equals will rule in a way that preserves rather than undermines his equality with others, and so will allow them to rule in turn without seeing this as a loss or sacrifice on his part. But only the fully virtuous can adopt this point of view consistently and make it authoritative over their action, and the widespread achievement of this degree of virtue by citizens requires the shared system of moral education that Aristotle recommends only when he operates in utopian mode. The ideal of political rule as a good in itself is therefore of less practical import than many have thought, since Aristotle’s utopian designs are not presented as a model that we should seek to approximate in non-ideal conditions, and the Aristotelian statesman will not aim to inculcate this kind of virtue in his citizens (p. 204). Yet the ideal retains a crucial practical dimension, because shared rule over equals is a key component of success in even the least optimal political conditions, and the ideal serves to remind us that political rule is noble and good even in such circumstances.

Questions about the value of political rule raise further questions about the relationship between the virtues that make a good human being and those that make a good citizen. Those questions are the focus of Garver’s fourth theme, and answering them is complicated by the issues raised in his third, namely, why is there a plurality of constitutions, even of good constitutions? Garver’s Aristotle does not fit the standard view of the difference between modern liberal thought and ancient political philosophy. On the standard view, ancient political philosophers endorsed a single conception of the good and saw the task of politics as promoting the good so conceived. Liberal theories, by contrast, prioritize the right over the good and

search for a single political solution to problems posed by the plurality of reasonable conceptions of the good. On Garver's view, Aristotle's approach is straightforwardly perfectionist only in Books VII-VIII, which take up the inquiry into the absolute best. The other modes of inquiry do not attempt to approximate the absolute best, and in fact do not require any detailed knowledge of the good life. The theory of political justice in Book III does not appeal to any substantive conception of the good, and so makes the right prior to the good. One of the *Politics*'s greatest achievements is its discovery that constitutions can be better than their citizens, so that political excellence does not depend on moral excellence. Aristotle's sensitivity to the requirements of stability and his concern to identify the best political arrangement that is actually possible for most existing communities lead him to develop constitutional proposals that anticipate modern liberalism by producing "a full separation of ethics and politics" (p. 219).

But Garver's Aristotle is not a modern liberal in ancient disguise. In particular, his conception of political justice is considerably narrower than most moderns would accept, and he gives it a much smaller role. In politics, justice is strictly a matter of the distribution of offices, and not of honors or wealth: "justice is concerned with how rulers are selected, not what they do once they are ruling" (p. 124). The most important virtue for rulers is not justice, but moderation. Unlike the *sophrosynē* of the *Ethics*, which governs bodily appetites, political moderation consists in countering the tendency toward destabilizing extremism among people with partial conceptions of justice. One of the book's most insightful passages is Garver's discussion of how political leaders can practice moderation without presenting the appearance of weakness and compromise. He cites an unexpected analogy: Jackie Robinson's success in making it apparent that his refusal to retaliate against racially motivated insults and abuse was not an expression of cowardice, but of courage and self-restraint (p. 154). Similarly, the successful statesman must work to make his concern for stability appear to others as the noble commitment to political friendship and harmony that it is.

Garver's final theme is the pervasive concern with which I began: How can political philosophy be practical? On the one hand, the book's detailed exploration of Aristotle's four modes of political inquiry answers that question in a variety of ways. On the other, Garver ends on a more pessimistic note, suggesting that the practicality of political philosophy is inversely proportional to the value and importance of politics: "If politics is about winning, or about coordination, maybe things will be predictable enough for there to be a science. But if politics has something to do with living a good life, political philosophy making a practical contribution to our lives will be far more difficult. Only at a few critical places does Aristotle promise that political philosophy will tell the statesman something that he doesn't already know" (p. 229). It might be tempting to respond to this depressing prognosis with an appeal to the intrinsic value of philosophical understanding. But Aristotle insists that practical philosophy is supposed to

make a difference to how we live our lives. Can it do that even if Garver is right about its limited prospects for effecting political change?

3. Assessment of Aristotle's *Politics*

There is much to disagree with in Garver's interpretation of Aristotle and his relationship to modern politics. Since a catalogue of disagreements would be nearly as long as the book itself and of interest mainly to specialists, I will concentrate instead on four broad, related claims: (1) that only the inquiry into the best constitution makes the good prior to the right; (2) that justice is given virtually no place in Books II, VII, and VIII, while the central books concentrate only on a narrow conception of justice; (3) that an understanding of the good life is only politically relevant in the best constitution; and (4) that the best constitution is in no way a model for approximation. I take all four of these claims to be false; seeing why they are false will shed some light on how political philosophy can be practical.

Aristotle's discussions of justice in the *Politics* explicitly depend on the broader theory laid out in *Nicomachean Ethics* V. That text is sometimes obscure, but the main lines of the theory are clear enough. Aristotle distinguishes between what he calls justice as lawfulness and justice as equality or fairness. Justice as equality admits of further divisions into justice in the distribution of goods, the rectification of wrongs, and reciprocity in exchange. Justice as equality is a part of justice as lawfulness, but not the whole. "Lawfulness" misleadingly suggests adherence to positive law, but the central idea of justice as lawfulness is instead the promotion and preservation of the common good.² There is a common good in every community, from the simplest exchange of commodities to the polis itself, but because the political community embraces and controls all other forms of community, the political common good is paradigmatic. The polis has this special status not because it is the largest form of community or because it is not a part of any other community (neither is true), but because a political community is essentially one that aims at the well-being or flourishing of its members, and this goal is necessarily superordinate to all others. Good political communities promote the flourishing of their members well, and in particular promote the good of all of their members without compelling some to serve the interests of others without receiving proportionate benefit in return. As Aristotle pithily puts it, "the political good is justice, and this is the common good" (III.12 1282b16-17).

Strictly speaking, then, Aristotle cannot coherently make the right prior to the good. Discussion of justice is always discussion of the common

² There are many interpretive disputes about the relationships among these varieties of justice, but my argument here does not depend on any particular view of those relationships. I here follow, in broad outline, Fred D. Miller, Jr., *Nature, Justice, and Rights in Aristotle's Politics* (Oxford: Oxford University Press, 1995), chap. 3, and Richard Kraut, *Aristotle: Political Philosophy* (Oxford: Oxford University Press, 2002), chap. 5.

good, and discussion of justice in politics is discussion of what promotes and protects the shared pursuit of the good life. Of course, it is arguably incoherent to suppose that the right *could* be prior to the good in the sense of not depending on the good for its content and justification. Presumably, Garver does not intend to deny the formal priority of the good to the right, but instead to maintain that Aristotle reaches substantive conclusions about justice without relying on substantive premises about the good. In his favor, such substantive premises are not prominent outside of Books VII and VIII, and yet the conclusions about justice that Aristotle reaches are not merely formal. But those conclusions do in fact inherit the abstract and schematic character of the conception of the good on which they depend, and Aristotle's arguments help themselves to substantive premises about the good more often than may initially be apparent.

The central argument of the second half of Book III is that justice requires that political offices be distributed according to merit rightly conceived. The meritocratic conception of justice is opposed to what Aristotle calls the democratic and oligarchic conceptions. The democratic conception assigns authority equally to all citizens on the grounds that they are all equally free, while the oligarchic conception awards offices unequally on the basis of wealth (III.9, 1280a7-25). Aristotle agrees that freedom and even wealth are relevant grounds for sharing in authority, but only insofar as they contribute to the common good. Since the virtues of practical wisdom and justice make a more decisive contribution, they are the most important determinants of merit in the context of politics (III.9, 1281a2-10, 12-13 1283a14-42). Individuals and groups merit permanently preeminent positions of authority only if they are better able to promote the common good of the city than any other group would be. Hence a narrow aristocracy or even a monarchy can be just, but only if the monarch or the aristocrats meet this rather stringent criterion (III.13, 1284a3-8, 17 1287b41-1288a6).

This argument, so far as it goes, does not depend on any view of the content of the common good. Garver therefore has grounds for claiming that the argument operates in abstraction from the good. But abstraction is not isolation or separation. What we get is not a complete theory of justice, but a framework for assessing claims about justice in specific circumstances. Actual assessment will depend on a more robust understanding of the content of the common good. Moreover, Aristotle explains mistaken conceptions of justice as products of mistaken views about that content. Democracy treats freedom, and oligarchy wealth, as the primary goal of politics. These views of the goal depend for their plausibility on widely shared conceptions of the good that give pride of place to pleasure, luxury, and "doing what one wants." (III.9, 1280a6-28; cf. V.10, 1311a8-15, VI.2, 1317a40-b16). Aristotle rejects the democratic and oligarchic views of justice because he rejects the conceptions of the good on which they depend. His own alternative is vague, but determinate enough to rule out his rivals. His theory of justice therefore depends on a substantive and controversial conception of the good.

If Garver unduly minimizes the role of the good in Book III, he likewise understates the role of justice in Books VII-VIII. It is true that *distributive* justice is not prominent there, because the best constitution will successfully educate its citizens for virtue, and so they will all alternate in ruling equally. But distributive justice is only one part of justice as lawfulness, and appeals to virtues other than distributive justice do not imply that justice in that broader sense has fallen out of consideration. Justice as lawfulness covers all of the virtues in their other-regarding aspects, so that when Aristotle discusses moderation and generosity as the virtues concerned with property, he should not be understood as maintaining that property falls outside the scope of justice. The distribution of property in the best constitution is one of the main concerns of Book VII, which argues that land ownership should be equal and that each citizen should own one plot of land near the center of the city and another near the borders, because by this arrangement the dangers of military invasion will be more equitably spread among the citizens (VII.10, 1330a9-24). Similarly, Book II argues in favor of private property on the grounds that private ownership will better support the citizens' virtue and produce more beneficial results (II.5, 1262b37-1264a5).

Garver is right to emphasize that these are not considerations of distributive justice. Aristotle evidently does not regard the assessment of existing property distributions in terms of distributive justice as a fruitful task for political philosophy. His reason for this is not obvious, but here is a plausible suggestion. If someone's existing property has been acquired through injustice, then it falls under what Aristotle calls corrective justice to restore that property or an appropriately equivalent value to the victim of the injustice. If the property has not been acquired unjustly, there is no question to be asked about the distributive justice of its *possession*. Aristotle applies the notion of distributive justice primarily to acts of distributing some unallocated goods. Yet the argument of Book II in favor of private property is, in effect, an argument against regarding property as a common asset to be distributed and redistributed directly by the city. Questions of justice arise instead about the *use* of the property. Its use falls under the general conception of justice as lawfulness, and in particular under that part of it which is constituted by the other-regarding dimensions of generosity. People should use their wealth for the common good of the city as well as for the good of their closer friends and relatives.

The use of property might even fall under the scope of specifically distributive justice to the extent that it is guided by considerations of merit. As Garver helpfully observes, Aristotle's conception of merit in the distribution of political authority is *forward-looking* rather than *backward-looking*; a person merits a share of authority proportionate to the good he can do with it, not in proportion to what he has already done (p. 90). There is reason to think that Aristotle regards forward-looking considerations as relevant to the distribution of property as well. According to Book II, the Carthaginians make wealth and virtue jointly necessary for holding office on the grounds that ruling well requires leisure from work and freedom from

financial need, and hence is possible only for the wealthy. Aristotle responds that they ought to adopt measures to ensure that those with the requisite virtue will have the requisite property (II.11, 1273a22-35). Whether or not these considerations strictly amount to considerations of distributive justice, it is plain that both the distribution and the use of property fall under the broader concept of justice as lawfulness. While this makes for intriguing differences with modern ideas of distributive justice, it is misleading at best to claim that the *Politics* treats the use of property “not as a question of justice at all” (p. 54).

Justice as lawfulness also plays a crucial role in Books VII-VIII because the argument gives a fundamental role to the value of justice *for the just agent*. Ruling others despotically, subjecting their interests to one’s own and denying them a role in the deliberation and decision-making that govern their lives, is ignoble and hence bad for the person who does it (VII.3, 1325a16-b23). Justice comes into play here not only insofar as concern for the common good guides the design of political institutions, but insofar as seeking to live with others on terms of equality and mutual benefit is itself a component of a good life. Aristotle is thus able to show that distinctively political rule can be of value to both the ruler and the ruled, because it aims at the common good of a community of equals, creating and sustaining the conditions in which each of those members is best able to flourish.

Garver writes eloquently about this dimension of Aristotle’s argument (pp. 188-90), and he is right that we can appreciate this point and bring it to bear on practical deliberation in non-ideal contexts without accepting any of the institutional arrangements that Books VII-VIII go on to endorse. But he overstates the gap between the defense of political rule and the elaboration of the institutional structure of the best constitution. The value of ruling politically is only one part of the good life that those institutions are designed to promote. The best constitution will enable and encourage all of its citizens to live in a way that expresses their intellectual, emotional, and practical capacities in a robust and integrated fashion. Political rule is crucial for realizing this goal, but it is neither the whole nor even the primary part of it. That distinction goes instead to the leisured pursuits of literary and artistic culture. Garver observes that Aristotle does not endorse a public program of education designed to foster this culture outside of Books VII-VIII. But the thick conception of the good life that is the aim of the best constitution may allow utopian theorizing to be more practical than he takes it to be.

In the real world, efforts at political improvement are constrained by the demands of stability. Stability is by no means sufficient for a good constitution, but it is necessary; a city beset by destabilizing conflict is unable to achieve the common good. Among the conditions imposing limitations on improvement is the existence of a plurality of conceptions of the good. Many people prefer the pursuit of pleasure, freedom, wealth, or domination to the life of intellectual and practical excellence. Unlike many liberal thinkers, Aristotle does not regard these alternative views as reasonable or inherently worthy of respect, and he supposes that political authority may rightly seek to

shape citizens' character and even compel them to act in accordance with the demands of virtue. But he does not naively advocate coercive moral education as a viable solution to the problem. One of the statesman's tasks is "to introduce an arrangement of such a sort that people will easily be persuaded and be able to share in" (IV.1, 1289a2-4). Stability and justice both require that the citizens be persuaded to support the constitution willingly, and not merely compelled.

Typically, the statesman cannot simply implement the institutions of the best constitution, even gradually, because neither persuasion nor coercion will successfully bring the citizens to support them adequately. It does not follow, however, that there is no sense in which the best constitution provides a model for approximation. To promote the common good is not to promote what the citizens take to be good, but what is actually good for them. The account of the best constitution is supposed to show us what the full achievement of that task would look like. As such, it can guide judgment and decision in non-ideal contexts without supplying a recipe for its achievement or a set of institutional means that can produce the desired end equally well in any context. To borrow Aristotle's medical analogy, a theoretical model of perfect bodily health can guide medical practice even when the best achievable falls far below the best without qualification. Ultimately, it is only by relation to the best without qualification that we can identify which sub-optimal alternatives to prefer.

Garver seems to acknowledge this much when he writes that "much of the interest in the *Politics*, especially in Books IV-VI, comes in seeing Aristotle develop political forms of moderation that insure stability and at the same time move the constitution as close as possible to promoting the good life, so that aiming at stability does not become an amoral variant on *raison d'etat*" (p. 224). But surely understanding what the good life is and the principles of justice embodied in the best constitution can help guide our reforms of existing constitutions not by giving us policy proposals for gradual implementation, but by showing us what a fortunate city aimed at promoting a correct conception of the common good would look like. Like a good physician, the statesman can aim to approximate the model's achievement of the goal without imitating its means of achieving it.³ Ideal theory thereby has more practical relevance than simply reminding us that politics is worthwhile even in dismal circumstances.⁴

³ For a similar understanding of what he calls Aristotle's "gradual approximism," see Fred D. Miller, Jr., "Aristotelian Statecraft and Modern Politics," in *Aristotle's Politics Today*, ed. Lenn E. Goodman and Robert B. Talisse (Albany: State University of New York Press, 2008), pp. 13-32.

⁴ I am grateful to Eugene Garver for comments on a draft of this review.

Review Essay: Mark D. Friedman, *Nozick's Libertarian Project: An Elaboration and Defense*

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A recent trend in libertarian thought has been a move away from anarcho-capitalism or minarchy in favor of a more interventionist and redistributive state, whether in a left-libertarian “Georgist” vein or in a more Rawlsian “social justice” direction. In contrast, Mark Friedman’s purpose in *Nozick's Libertarian Project* is to advance a minarchist natural-rights libertarianism in the light of Robert Nozick’s contribution and the critical literature it has spawned (p. 2).¹ Friedman’s book has received only one review prior to this one.² That review misrepresents Friedman and is flimsy, flippant, and distastefully hostile. I attempt to do better here.

In chapter 1, Friedman expounds and defends Nozick’s explanation of the ground of natural rights in features of persons that distinguish them from other beings. In Chapters 2 and 3, he explains and develops Nozick’s entitlement theory of justice and defends it against objections, mostly from egalitarian conceptions of “social justice.” Some of his arguments depend upon intuitions which are not shared by all, and to that extent seem circular; and he tends in places to emphasize desert instead of entitlement. However, he seems to say enough to dispose of objections raised by G. A. Cohen, Barbara Fried, Loren Lomasky, Thomas Nagel, Michael Otsuka, Hillel Steiner, Peter Vallentyne, Jonathan Wolff, and others. In Chapter 4, he offers a two-part argument for the legitimacy of the minimum state. In Chapter 5, he explains the libertarian thesis that liberty requires private property, which he illuminatingly illustrates with historical surveys of England, Germany, and Mexico. He also criticizes the extensive government interventions in American economic life since the New Deal. In the final chapter, he defends natural-rights libertarianism against the objections of David Friedman, Jonathan Wolff, Will Kymlicka, and Peter Railton, respectively, to the effect that

¹ Mark D. Friedman, *Nozick's Libertarian Project: An Elaboration and Defense* (New York: Bloomsbury Publishing, 2011). Page references to this paperback edition are in parentheses in the text.

² Matt Matravers, “Mark D. Friedman, *Nozick's Libertarian Project: An Elaboration and Defense*,” *Notre Dame Philosophical Reviews*, November 22, 2011, accessed online at: <https://ndpr.nd.edu/news/27410-nozick-s-libertarian-project-an-elaboration-and-defense/>.

- its conception of rights is implausibly stringent,
- it requires the state to stand by as needy people starve,
- it fails to ensure that all have the resources needed for the effective exercise of autonomy, and
- it cannot deal adequately with negative externalities.

He makes several proposals to permit minimal compulsory redistribution in some circumstances, invoking value pluralism and a right to self-preservation. There is much in Chapters 2, 3, 5, and 6 that is worthy of detailed discussion, but here I focus on Chapters 1 and 4, concerning natural rights and the state.

In *Anarchy, State, and Utopia*, Nozick says that a “moral side-constraint” is not a goal or something to be maximized; rather, it restricts the goals we may pursue and the means by which we may pursue them. A side-constraint expresses the fact that people may not be used in the specific way that the side-constraint excludes. Nozick claims that side-constraints reflect the fact that people exist as different individuals with separate lives. He suggests that the best explanation of the fact that morality contains side-constraints will appeal to features of persons that entail this *partial* libertarian side-constraint:

(p) it is (normally) impermissible to use a person merely as a means for the benefit of other persons.

The parenthetical “normally” signifies that it might be permissible to use a person as a means for the benefit of others “to avoid catastrophic moral horror.” The *full* libertarian side-constraint, which also prohibits paternalistic aggression, needs an additional argument. Nozick says that anyone who rejects (p) must deny that morality contains side-constraints, propose a different explanation for them which does not entail (p), or show that Nozick’s explanation does not entail (p).³

We can illustrate the point with an example from natural science. We begin with the fact that the planets move around the sun. For more than two centuries, the best explanation of that fact was Isaac Newton’s theory. Newton’s theory entails not only that the planets move around the sun, but that they move around the sun in near-elliptical orbits. Anyone who rejects the proposition that the planets move around the sun in near-elliptical orbits must deny that the planets move around the sun (as did Aristotle, Ptolemy, and others), propose a different explanation which does not entail near elliptical orbits (as did Einstein, if we count rotating near-ellipses as not being near-

³ Robert Nozick, *Anarchy, State, and Utopia* (Oxford: Blackwell, 1980), pp. 29-34.

elliptical), or show that Newton's theory does not entail near-elliptical orbits (which has not been done). The fact that Einstein's explanation is better than Newton's shows the weakness of Nozick's type of argument: so-called "inference to the best explanation" is invalid. Still, if the features of persons to which Nozick appeals do explain the fact of side-constraints better than any other explanation that has been proposed so far, and if they entail (p), then it will be true that (p) follows from a theory which is currently the best explanation in its field. Unfortunately, Nozick's explanation is sketchy.

Nozick dismisses some traditional explanations for side-constraints in terms of things like rationality, free will, and moral agency; however, he thinks that these may closely be related to the attribute of persons that explains side-constraints. Nozick's discussion⁴ is obscure, but it seems that he takes that attribute to be this:

(M) the ability to regulate and guide one's life in accordance with some overall conception one chooses to accept.

How would it follow from the fact that a being has (M) that she ought not to be used as a means for the benefit of another? Nozick suggests that a being with (M) might be one which can have, or strive for, a meaningful life, and that the concept of meaning seems to straddle the "is-ought" divide. He admits, though, that this does not answer the question and he says that he hopes to grapple with these issues on another occasion.⁵ In short, his proposed explanation is so sketchy that it entails neither the partial libertarian side-constraint nor any other.

Friedman gives the label "rational agency" to the combination of (M) with the three attributes of rationality, free will, and moral agency, which it presupposes (p. 18). He reconstructs Nozick's argument as follows (pp. 20-22).

- (1) Persons enjoy a special moral status: their individual interests are entitled to great moral weight.
- (2) The special moral status of persons renders them morally inviolable: there are side-constraints on how they may be treated.
- (3) Persons are rational agents.
- (4) Persons are inviolable because they are rational agents.

⁴ Ibid., pp. 48-49.

⁵ Ibid., pp. 50-51.

- (5) Persons have a right to exercise their rational agency without interference, subject only to the equal rights of other rational agents.

Therefore,

- (6) the use of force or coercion against innocent persons (those not engaged in aggression or fraud against other persons) interferes with their rational agency and is therefore morally impermissible.

I have for simplicity's sake suppressed qualifications about non-adults and persons with impaired cognitive capacity.

Friedman's argument for (1)-(4) runs as follows. Our ordinary moral thinking recognizes that there are constraints on using persons merely as means for the benefit of others, even where the gain for the others is greater than the loss for those sacrificed. For example, we think it wrong to kill a man and harvest his organs to save five other people. In contrast, routine sacrifice of animals for the sake of other animals or persons, even to the extent of killing them for food, is permissible. The contrast must be explained in terms of an attribute of persons which is not possessed by those animals which are not persons. Friedman considers a number of possible attributes but rejects them for one reason or another. He says that the process of elimination leaves him with the attribute of rational agency, which he claims is the best explanation for the contrast, though, unlike Nozick, he sees moral agency, rather than (M), as the attribute that does the explanatory work (pp. 22-26).

It is worth clarifying this first part of Friedman's argument, and what it shows, before proceeding to the second part. The side-constraints on persons recognized in our ordinary moral thinking are weaker than (p): they do not rule out *all* uses of some people merely as means for the benefit of others. For example, many people see nothing wrong with redistributive taxation and some see nothing wrong with a period of compulsory military service. Furthermore, our ordinary moral thinking recognizes side-constraints on animals, which prohibit those uses of them for our benefit which are cruel. So the contrast between persons and other animals to which Friedman appeals in his argument for (1)-(4) concerns those "middling side-constraints," weaker than (p), but stronger than those which people generally think apply to animals. We can note that our ordinary moral thinking allows these middling side-constraints to be overridden in some circumstances, for instance, if we have to kill a person to save one million. If we accept Friedman's process of elimination (which I do not discuss), we are left with rational agency as a property that distinguishes persons from animals. However, it does not follow from this that rational agency is the *best explanation* for the overridable middling side-constraints on persons. It follows only that the two are correlated: whenever we have one, we have the other. As the statisticians put it, "correlation does not prove causation." The only way to show that it is

rational agency that *explains* overridable middling side-constraints is to produce the explanation. That requires an intelligible connection, ideally a relation of entailment, between the two properties, or failing that, a theory which affirms rational agency to be the ground of overridable middling side-constraints which also entails consequences that are in some way independently testable and which survive the tests (e.g., the theory may enable the solution or an illuminating re-statement of problems other than those it was designed to solve).

Friedman's argument for (5) and (6) is intended to supply the explanation. For, if the rational agency of persons entails (p), it will explain why persons are protected by overridable middling side-constraints (in the same sort of way that, if Newton's theory entails that the planets move around the sun in near ellipses, it explains why the planets move around the sun). Friedman makes several attempts to derive (p) from rational agency. In the first he argues for premise (5), that it seems obvious that the application of force or the threat of force against innocent persons (those not engaged in aggression or fraud) will interfere with the exercise of their capacity for rational agency, from which we would like to conclude that all other persons are morally required to refrain from such interference (p. 26). However, this restates his conclusion, (6), which is supposed to be derived from (2)-(5); it cannot, therefore, without circularity, be used to argue for (5). Perhaps this should be interpreted as a parenthetical remark rather than as part of the argument.

He next presents a quotation from Nozick's *Philosophical Explanations*. I have numbered the sentences for ease of reference.

[1] If your basic moral characteristic of being a value-seeking individual includes weighting values in free choice . . . then [2] being responsive to this characteristic and to the originative value you possess will involve respecting your autonomy. [3] Within this domain it will be impermissible for others even to force you away from the bad or less good toward the best; [4] doing so would be anti-responsive to your capacity as a weighter of values. [5] Thereby is a right to personal liberty delineated.⁶

Friedman rightly complains that proposition [2] does not seem to follow from proposition [1]: "even granting that it is our rational agency that confers value upon us, *why* are *other persons* required to respect our autonomy?" (p. 27) He makes two attempts to plug the gap, neither of which appears satisfactory. The first invokes Kant's dictum never to use a person merely as a means. However, Kant's dictum *is* (p), so to appeal to it in an argument *for* (p) is entirely circular. Friedman elaborates as follows:

⁶ Robert Nozick, *Philosophical Explanations* (Cambridge, MA: Belknap Press, 1981), pp. 500-501.

- (i) The special moral status of rational agents is rooted in their autonomy (this is a variation on Friedman's premise [4]);
therefore,
- (ii) appropriate deference requires that they be permitted to live the life they choose, so long as they do not infringe the equal rights of others (this is a variation on Friedman's premise [5]);
therefore,
- (iii) the use of force or coercion against persons in order to accomplish some extraneous goal is a morally inappropriate response to the value of autonomy, and is therefore impermissible (this is a variation on Friedman's [6]).

However, the transition from (i) to (ii) just mirrors Nozick's transition from [1] to [2], which Friedman has acknowledged to be deficient. We still have no explanation for why a person's rational agency or autonomy imposes restrictions on the behavior of others. Friedman adds that this little argument assumes the truth of premise (4), that persons are inviolable *because* they are rational agents. However, we recently saw that Friedman's argument for (4) showed only that rational agency and overridable middling side-constraints are correlated. We are looking to this second part of his argument to provide the *because*.

Friedman's second attempt (pp. 27-28) to plug the gap between Nozick's [1] and [2], or his own (i) and (ii), appeals to impartiality (or Kantian universalizability). He says that people who accept (4)—that persons are protected by overridable middling side-constraints because they are rational agents—may not demand respect for their own autonomy while denying equal respect to other persons (because to do so would not be impartial). But what about people who do *not* accept (4)? Friedman is supposed to be explaining *why* rational agency grounds side-constraints; he must address his argument to those who doubt or deny (4), not only to those who already accept it. Furthermore, he concedes that many people who do accept (4) will be egalitarians of one kind or another who construe "autonomy" so that it is consistent with some redistributive measures. So, even by addressing his argument to people who accept (4), he will still not get them to (p). He says that such egalitarians will need to articulate a principled distinction between acceptable and unacceptable forms of redistribution, and that he will argue in Chapters 2 and 3 that it is impossible convincingly to draw such lines. However, he draws such lines himself in his Chapter 6. So, this argument falls apart: Friedman has still not explained how rational agency grounds (p) or other side-constraints on persons.

A second problem with Friedman's and Nozick's type of argument is that, even if it could be made to work, it would yield the wrong side-constraint. Friedman's (5) claims that we have a right to exercise our rational agency without interference, and his (6) says that what is wrong with the use of force or coercion is that it interferes with another's rational agency. Nozick's argument is concerned to show that we are required to respect a person's autonomy or free choice. However, a constraint on interfering with persons' exercises of rational agency, autonomy, or free choice, does not amount to (p). Consider the following examples.

- (e1) Joe has just bought a beer for himself, which he intends to drink. I pick it up and drink it. Joe does not notice what I have done until he sees me put down the empty glass.
- (e2) I see that Joe intends to ask Annie for the next dance. Before he does, I ask Annie to dance and she accepts.
- (e3) A runaway train threatens to kill five workers on the track. Joe and I are on a bridge over the track, between the train and the workers. Joe is a very heavy man. I push him off the bridge into the path of the train, thereby stopping the train and saving the five workers.⁷

In each example I interfere with Joe's exercise of his rational agency, his free choice, and his autonomy, preventing the execution of his plans for his immediate or long-term future. However, only in (e1) and (e3) do I use Joe merely as a means for the benefit of others. In (e1) I use him for my benefit (though without using force or threat). In (e3) I use him for the benefit of the five workers (and I also use force against him). In (e2), in contrast, I do not use Joe as a means at all. Some interferences with rational agency, autonomy, or free choice do not use a person merely as a means. Furthermore, while (e1) and (e3) are normally regarded as morally impermissible, (e2) is not. Some interferences with rational agency, autonomy, or free choice are morally permissible. In short, it seems that focusing simply on exercises of rational agency, autonomy, or free choice will not get us to (p) or to side-constraints that mark the bounds of permissibility. Examples similar to (e2) are familiar both to Nozick⁸ and to Friedman (pp. 44-46), but each fails to see that something additional to, or perhaps instead of, a person's capacity for autonomy/free choice/rational agency is required to explain libertarian side-constraints.

⁷ Example (e3) comes from Judith Jarvis Thomson, "The Trolley Problem," *Yale Law Journal* 94, no. 6 (1985), p. 1409.

⁸ Nozick, *Anarchy, State, and Utopia*, pp. 262-64.

It should be noted that, while Nozick sometimes⁹ formulates the partial libertarian side-constraint as (p), he often¹⁰ formulates it as: it is impermissible to sacrifice one person to benefit others. He seems to treat the two formulations as interchangeable. However, they are not. If sacrificing someone means killing him, the two formulations are plainly different; but Nozick does not use “sacrifice” in that sense. If “sacrifice” is not used in that sense, it seems too vague or metaphorical. For example, in (e2) I clearly do not use Joe merely as a means, but I do (in some sense) sacrifice him for my benefit. He had an interest, perhaps a keen one, in having that dance with Annie, yet I denied him that for the sake of my own interest in having that dance with Annie. I therefore suggest that (p) is the better formulation of the partial libertarian side-constraint.

How can we improve upon Nozick’s and Friedman’s arguments from rational agency to (p)? I can only sketch an answer here.¹¹ First, Nozick’s (M) suggests the *dogmatic rationalist*, or “self-authorship,” idea that persons somehow discover by pure reason who they are and then live their lives accordingly. We replace (M) with the *critical rationalist*, or “self-discovery,” conception of the distinguishing attribute of persons. In the case of an animal which is not a person, the best life that it can lead is determined by its biology. The animal normally tries to live a life of that kind by acting in accord with its biological instincts and the culture, if any, that it acquires from its local conspecifics. In contrast, a person is a creature who has language and self-consciousness, who can therefore formulate in words her inherited beliefs, theories, attitudes, practices and such like, and subject them to critical scrutiny. This *critical rationality* enables her to ask herself: What sort of life will fulfill me? The only way she has of discovering the answer to that question is by conjecture and refutation: she must form a hypothesis about what kind of life will fulfill her and then test that hypothesis by trying to live that life. She may learn, possibly quite quickly, that her conjecture is mistaken: it becomes clear to her that she cannot live, or cannot live well, in the kind of life she has chosen, either because she is not good at it or because it does not satisfy her. In such circumstances, her conjecture is refuted and she has to learn some lessons from the mistake and then make another guess about who she is and then set off to test it empirically.¹² Second, we hypothesize that

⁹ For example, *ibid.*, pp. 30-31 and 46.

¹⁰ For example, *ibid.*, pp. 31, 34, and 45-46.

¹¹ For more details, see Section III of Danny Frederick, “Voluntary Slavery,” *Las Torres de Lucca* 4 (June 2014), pp. 115-37, accessed online at: http://www.lastorresdelucca.org/index.php?option=com_k2&view=item&id=145:la-esclavitud-voluntaria&Itemid=24&lang=en&Itemid=23.

¹² Compare Nozick, *Anarchy, State, and Utopia*, pp. 312-17, on experimental communities.

the point of human morality is the flourishing of the human community, which is a function of the fulfillment of individual human persons. *Third*, we infer that morality requires that persons have extensive freedom to experiment with types of life so that they can seek to discover what will fulfill them. *Fourth*, we note that people will be free to experiment with types of life effectively only if they are permitted to acquire private property and are reasonably safe from being used merely as a means for the benefit of others. *Fifth*, we conclude that morality requires (p). Which exceptions to (p) are allowed by the “normally” qualification it includes, is a matter for further argument, but the work of free-market economists suggests that far fewer exceptions are permissible than are allowed by the overridable middling side-constraints generally recognized in contemporary Western societies.

In Chapter 4, Friedman discusses and rejects a number of attempts, including Nozick’s, to show that the state is legitimate. He offers a new argument in two parts. The first part, concerning the state’s provision of national defense, draws on George Klosko.¹³ It can be summarized as follows. A community that is unable to defend itself against external aggression risks a moral catastrophe. However, a defense service provided commercially would founder on the free-rider problem: people who do not pay for the service would still get its benefits, so all would have an incentive not to pay and the service would be under-provided, if provided at all. In consequence, a community can avoid the risk of moral catastrophe only if there is an agency providing for its defense which is able to compel those citizens who are unwilling to pay for it. Now, the point of side-constraints is to protect rational agency, but they will not do that without national defense and there will not be national defense without compulsion to pay for it. Therefore, such compulsion is necessary if side-constraints are to fulfill their function, in which case, the side-constraints must allow an exception for that purpose. The argument will generalize to other forms of compulsion that are necessary to secure our rational agency. However, any such compulsion is subject to a fairness condition. Thus, Friedman formulates *the libertarian principle of fairness*: “if the benefits and burdens of cooperating with the state in a programme necessary to secure our rational agency are fairly distributed, then all rational agents are morally obligated to participate.” This argument, unlike Klosko’s, is not suited to legitimize state provision of such public goods as cleaner air or basic scientific research; for, while such goods may improve our standard of living or extend our life expectancy, they are not required to protect us from violations of our rational agency (pp. 86-95).¹⁴

¹³ George Klosko, *The Principle of Fairness and Political Obligation*, 2nd ed. (Lanham, MD: Rowman & Littlefield, 2004); George Klosko, *Political Obligation* (Oxford: Oxford University Press, 2005).

¹⁴ For an approach that is in some ways similar, see Eric Mack, “Nozickean Arguments for the More Than Minimal State,” in *The Cambridge Companion to Nozick’s Anarchy, State, and Utopia*, ed. Ralf Bader and John Meadowcroft (Cambridge: Cambridge

Friedman's argument can be viewed as a Kantian argument against the anarchist. The full libertarian side-constraint that prohibits using a person merely as a means to benefit another or as a means to benefit himself is "practically inconsistent" or impossible to realize, because it precludes the state, thereby precluding national defense, thereby practically ensuring that there will be violations of the full libertarian side-constraint. The only way to make the full libertarian side-constraint practically consistent is to include an exception for national defense and other services necessary to secure our rational agency, subject to the fairness condition. The argument might recall the doctrine that Nozick labeled a "utilitarianism of rights,"¹⁵ according to which we are to violate side-constraints where, but only where, doing so reduces the number or severity of violations of side-constraints overall. There is an important difference, however. Friedman's argument does not legitimize scapegoating or killing one to save five, because the benefits and burdens would not be shared fairly: in the libertarian principle of fairness, the "our" in "secure our rational agency" should be taken to refer to *all* of us.

The second part of Friedman's argument for the minimal state concerns its provision of internal security. He says that the argument for the legitimacy of a minimal state's providing tax-funded national defense does not carry over to a minimal state's monopolizing the domestic security services (law-enforcement, adjudication, and punishment), because the problem of free riders in the latter case is not acute (people can to a large extent be excluded from receiving the service if they do not pay) (p. 96). The main problem is, instead, to explain the legitimacy of outlawing rival protective associations and independents who enforce their own rights. Friedman's explanation is that "the citizenry of a state governed by the rule of law have collectively foregone the opportunity to employ their individually preferred legal procedures" (p. 99). This might sound as if the citizens have made a compact to give up their rights to defend themselves in their own way. Friedman avoids that falsehood by construing "collective foregoing" in terms of a culturally fostered adherence to the rule of law. Drawing on Friedrich Hayek,¹⁶ Friedman says that the requisite collective foregoing obtains if and only if there is a moral tradition subscribed to by the majority of the community according to which laws must be abstract (or impartial), must not affect particular people or groups disproportionately without their consent, and must apply equally to the legislators. In addition, state compulsion should satisfy the libertarian principle of fairness (pp. 96-98).

University Press, 2011), pp. 89-115. See also Dale Murray, "Review Essay: Ralf M. Bader's Robert Nozick and Ralf M. Bader and John Meadowcroft's (ed.) *The Cambridge Companion to Nozick's Anarchy, State, and Utopia*," *Reason Papers* 34, no. 2 (October 2012), pp. 184-95.

¹⁵ Nozick, *Anarchy, State, and Utopia*, pp. 28-29.

¹⁶ Friedrich Hayek, *The Constitution of Liberty* (London: Routledge, 1960).

It is difficult to see how such a community tradition of the rule of law amounts to a collective foregoing of the opportunity to employ individually preferred legal procedures. It requires only that a majority of the community subscribe to the tradition. How do the remainder partake of the collective foregoing if they do not even agree with the tradition? Even if *everyone* agrees with the tradition now, what is to stop some people from changing their minds about it? Furthermore, even those who do adhere to the tradition as specified, need not agree that the laws should be enforced by a single agency. The existence of a tradition of the rule of law does not amount to the required “collective foregoing.” Friedman says: “unlike in Nozick’s invisible hand narrative, those living in a society substantially governed by Hayek’s rule of law are *justified* in rejecting legal procedures and punishments employed by outsiders, even if they are formally the ‘same’ procedures” (p. 98). But the alternative legal procedures are *not* employed by outsiders. Some may be employed by members of the society who are critical of the rule-of-law tradition. Others may be employed by members of the society who endorse that tradition but who disagree with the majority about which procedures should be employed to enforce, adjudicate, and punish. Friedman’s argument for the legitimacy of a minimal state’s monopolizing domestic security services seems a failure.

It is curious that Friedman goes through this unsuccessful detour concerning “collective foregoing,” because it seems that the libertarian principle of fairness can get him to his conclusion directly. It is not, as with national defense, that the free-rider problem makes taxation necessary; it is rather that having competing agencies for internal security is likely to lead to internecine feuding, or that permitting independents to operate their own justice procedures would generate too great a risk of violations of side-constraints. If side-constraints do not permit an exception for state monopoly provision of internal security, they will not fulfill their function of securing our rational agency. This type of argument legitimizes *all* types of state compulsion which are necessary to reduce the overall number or severity of incursions into side-constraints, provided the fairness condition is satisfied; and it will involve a balancing of the incursions due to compulsory protective services against the (likely) incursions they protect against. It should be clear that Friedman’s argument, thus modified, for the legitimacy of the minimal state’s providing national defense and internal security, is consistent with the critical-rationalist defense of broadly libertarian side-constraints sketched above.

Friedman’s book is a serious attempt to defend and develop Nozick’s work. It is ambitious, well-informed, packed full of arguments, and attacks problems from different angles and with varied solutions. His solutions and his arguments are not always successful, especially where they depend upon appeal to contested intuitions, but when they fail, they are usually instructive. The book is clearly written and remarkably compact. It is an enjoyable and enlightening read.

Review Essay: Al Gini and Alexei Marcoux's *The Ethics of Business: A Concise Introduction*

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Those who teach introductory business ethics with some regularity often find that choosing an appropriate text is difficult. To be blunt, many business ethics texts have a tone of skepticism toward (if not downright suspicion of) the very institution they seek to analyze ethically. The result is often analogous to what one might expect of a text on the philosophy of sex and love written by a religious celibate.

There is now a nice little text that doesn't suffer from that flaw. *The Ethics of Business*, by Al Gini and Alexei Marcoux (hereafter, Gini/Marcoux), is a spirited and insightful introduction to this widely taught subject.¹

In the first chapter, the authors discuss both the layout of the text and their perspective in writing it. They point to James Rachels's classic short text (*The Elements of Moral Philosophy*²) as a model. Just as Rachels tried to define what ethics is about and sketch a "minimal" conception of morality (which he defined as an effort to guide your conduct by reason), Gini/Marcoux want not to survey the burgeoning field of business ethics, but to define the field and sketch a minimal conception of how to do business ethically.

The authors trace the origins of the field to Raymond Baumhart's text, *An Honest Profit: What Businessmen Say about Ethics in Business*.³ While the field of business ethics grew in a way Baumhart never imagined, the authors approve of his original idea of putting the focus on *individuals* rather than *institutions*.

Parenthetically, I am not sure that this is the best approach. The institution of business, like that of the family or government, is very much defined, shaped, and constrained by the specific legal and economic structures which actors in that institution are constantly considering in decision making.

¹ Al Gini and Alexei Marcoux, *The Ethics of Business: A Concise Introduction* (Lanham, MD: Rowman & Littlefield, 2012).

² James Rachels, *The Elements of Moral Philosophy* (New York: McGraw-Hill, 1986).

³ Raymond Baumhart, *An Honest Profit: What Businessmen Say about Ethics in Business* (Boston, MA: Holt, Rinehart, and Winston, 1968).

In other words, business activity is like a game in one major sense: it is conducted in accordance with rules, rules generally not set by the players in the game.

Gini/Marcoux then note that their book differs from other ethics texts. The authors note that most contemporary texts almost exclusively discuss big business, as if every business ethics student will be a top executive at a Fortune 500 company. The authors nicely point out that most businesspeople work at small businesses, and that the principles of business ethics should be applicable to businesses of all sizes.

In this the authors are correct, but it would have been useful if they had made two further points here. To begin with, not just “most” businesses are small, but virtually *all* of them are. Looking at the federal Small Business Administration’s (SBA’s) data, there were roughly 28 million businesses in the U.S. in 2010.⁴ Under the SBA definition of “small business” (one employing fewer than 500 employees), about 99.7% of all American businesses are small—27.9 million small businesses, versus less than 20,000 large firms. Small business creates nearly two-thirds of all net new private sector jobs. More strikingly, in firms that produce a high number of patents (fifteen or more over four years), small firms produced about sixteen times the patents per employee than large firms did.

Moreover, a point that the authors don’t make is that failure is the norm in business. Again, citing the SBA’s own data, only about half of all new businesses survive for five years or more, and only a third survive for ten years or more.

Gini/Marcoux also make the point that the typical business ethics text is reformist in tone, that is, it usually pushes various policy prescriptions for regulatory and legal changes to control business activity. As the authors note, this suggests to the student the bizarre message that business is inherently immoral and needs profound reform. (This is usually reinforced by case studies—such as Enron—of wickedly bad business behavior.)

But there is a more important reason to be wary of the reformist *weltanschauung* of the typical business ethics text: “reform” invariably means “reform by government.” There is a Hegelian cast of mind informing most business ethics texts that views business as the realm of unfettered egoism, while government is the realm of disinterested altruism. This view was always naive, but after the extensive work done by economists in what has come to be called “Public Choice Theory” (not mentioned in any business ethics text of which I am aware, even the one under review), the view is *empirically* simply untenable. Government is no less a realm of self-interest than business is itself.

The authors add that rather than dwelling on moral dilemmas in business (often with no resolution offered), they want to set out “action-guiding principles”—principles that seek to tell us what we ought to do—as

⁴ Accessed online at: http://www.sba.gov/sites/default/files/FAQ_Sept_2012.pdf.

opposed to principles of justification of why we should do it. And those action-guiding principles should not have to rest upon any single ethical theory.

Moreover, rather than take a “topical” approach (examining, say, first worker rights, then worker responsibilities, then ethical issues in production, then in marketing, and so on), the authors aim at examining the moral features of business generally. So, for example, they have a chapter on trust and truth in business, which is an issue that arises no less in the human resources department than in the marketing and sales departments.

Having set out their general perspective, Gini/Marcoux then take up particular issues. In Chapter 2, they take up the fundamental question of what “business” is.

They point out that “business” is a noun—a business is an entity, a *firm*. But “business” is also a verb—it refers to an activity, and that it is more useful first to focus on the activity. Just as a hospital is an entity supporting medical activity, a firm is an entity supporting business activity. “Doing business” they define most centrally as executing exchange transactions, that is, the act of trading.

But business activity is not limited merely to engaging in exchange transactions. Not all trading opportunities are obvious and immediate. They often have to be sought out, like finding a convenient store or (more creatively) identifying a potential market, that is, a potential demand for a product not yet invented or well known. Not only is creativity involved in inventing new products or services, but it is involved in imagining the customer, that is, developing the customer base.

This leads Gini/Marcoux to make the Schumpeterian point that business is an *entrepreneurial* activity, one that isn’t just a transaction-executing, but a transaction-seeking one.

Besides exchange transactions, business activity involves bargaining or negotiation. Businesspeople negotiate with consumers when they set (and change) prices, with suppliers when they buy inputs, and with employees when they determine compensation for labor.

Now, transaction-seeking, negotiation, and transaction-execution aren’t activities exclusive to business, the authors concede. Private charitable organizations, for example, also engage in these activities. So do people engaged in hobbies. I would add that from the perspective of Public Choice Theory (mentioned above), politics also involves these activities, as does family life (if economists like Gary Becker are right). But the authors note that what makes a business in the sense they intend it is that the organization engaging in these activities aims at being self-sustaining, that is, covering its costs by its business activities. That means that the exchanges must be profitable ones.

This is an admirably fresh way to define business, but it doesn’t seem to me quite to work. What is the difference between (say) a private non-profit hospital and a for-profit one? None under this definition—both aim at making a profit, at least at the level of sustaining themselves. They only differ in what

the owners may want to do with the profits. And even there, as the authors themselves note, for-profit business owners many not want money just for its own sake, but perhaps as a tool to accomplish social ends.

I suggest that to distinguish charities or other non-profit companies from ordinary for-profit businesses, there is no getting around mentioning the intentions of the owners. While the owners of a typical non-profit corporation want at least some of the individual transactions to show a profit—otherwise, unless the owners can cover the operating losses indefinitely (which is rare), the enterprise will collapse—the owners of a non-profit don't intend that it turn an overall profit. But the owners of a for-profit business intend that it not merely be self-sustaining, but turn an overall profit.

In Chapter 3, Gini/Marcoux take up the task of defining ethics. Again, they aim to put the focus on the question of what it is for a *person* to be ethical, rather than the *firm*.

They take a character or virtue ethics stance, giving a brief sketch of the concepts of character, Aristotle's notion of the Golden Mean, and integrity. The authors distinguish between what they call "act-based" versus "character-based" ethics, discussing in turn utilitarianism and Kantian ethics. Their sketch of utilitarianism is especially brief.

The authors hold that both utilitarianism and Kantianism share three basic features. Both ethical theories focus on actions and decisions, rather than persons. Both posit one ultimate value (i.e., happiness or rationality), and both aim to posit one or two basic principles that will tell us what we ought to do (either one principle of utility or two formulations of the Categorical Imperative). Gini/Marcoux justify their focus on character/virtue ethics because the moral character of an act reveals the character of the agent, and an act-based ethics encourages the false notion that an agent can be good even while doing bad things.

Yet this strikes me as problematic. To start, yes, utilitarians posit happiness as the one ultimate value—but then, so did Aristotle, the Ur-virtue-ethicist.⁵ Moreover, the claim that the moral character of an act is an "indication" of the moral character of a person is debatable: as the utilitarians point out, a person acting out of a good motive or character trait can do something wrong (e.g., spoil a child out of love), and someone can do what is morally right from immoral motives or character traits (e.g., cure AIDS out of a desire for fame).

Moreover, this quite misstates act-based ethics. A utilitarian, for example, need never say that an agent's motives or character are ethically irrelevant, only that they are irrelevant to assessing the moral rightness of the

⁵ One might reply that happiness for Aristotle was exercising virtue, while for the utilitarians, it was mere pleasure. But while that was true for Bentham, already in Mill you see a move to "pleasure" as including higher-level pleasures such as learning and appreciation of art. And by G. E. Moore, hedonism was completely conceptually decoupled from utilitarianism.

agent's *act*. Of course, the moral worth of the agent (i.e., the praiseworthiness or blameworthiness of his or her motives/character) is quite important in judging the *agent*.

Also troublesome is the authors' discussion of narcissism. Gini/Marcoux tell the reader, "One need not be a scholar of Thomas Hobbes' work or an admirer of Herbert Spencer's to recognize that we are by nature self-absorbed creatures. In the language of virtue ethics we are *habitually* self-centered and self-absorbed—in a word, narcissistic" (p. 44). The authors go on to discuss the narcissistic personality disorder, lack of moral imagination (due to lack of empathy and sympathy), and the callousness of the narcissist.

Now, I don't doubt that most white-collar criminals, both in private industry and in government, are narcissists indifferent to the rights and welfare of others. (In this, they don't differ from ordinary criminals.) But as the authors themselves already rightly noted, most businesspeople are neither immoral nor routinely bad actors.

The problem here, I would argue, is that in taking so thoroughly a virtue ethics perspective as the unproblematic starting point for their ethical inquiry, they set themselves on a path to disregarding the important and commonly constructive force that egoism plays in the economic system particularly and in human life generally. In fact, neither psychological nor ethical egoism is even mentioned in the text. You don't have to be Adam Smith (much less Ayn Rand) to suspect that talking at length about narcissism and not discussing reasonable egoism may blind the reader to how business succeeds in actually doing good things (producing, as economists put it, positive externalities).⁶

To put the point another way: If we are all "by nature" self-absorbed, might that be because psychological egoism has survival value?

One other problem with this virtue ethics approach is that it leads the student to think that it is or should be the primary responsibility of business to form moral character, to instill virtue, in people. This is seriously misleading, in my view. Certainly, the structure or "culture" of a business may enhance or diminish the moral virtue of the employees at the margin, so to say. For example, a sales company that compensated salespeople only for initial sales and did not penalize those salespeople for customer complaints, would likely make their sales force more aggressive over time—though, it must be added, it is even more likely that such a company would over time attract salespeople who were overly aggressive to begin with. But surely the role of forming virtuous and caring people most centrally belongs to the mediating structures

⁶ This may be due to Gini/Marcoux's particular brand of virtue ethics. It seems common among contemporary virtue ethicists to view overcoming self-interest as what virtue is all about. But in both ancient and medieval virtue ethics, prudence (i.e., the reasonable attention to self-interest) is not just a virtue, but a cardinal (basic) one. Tellingly, there is no entry for "prudence" in the index.

of society: family, religious organizations, school, social organizations, community groups, and friendship circles.

In Chapter 4, Gini/Marcoux take up the task of defining business ethics as a form of applied ethics. They note that many philosophers view applied ethics as taking an ethical theory (utilitarianism, Kantianism, natural-rights ethics, or whatever) and “applying” it to various situations.

The problem the authors note is that the search for a perfect ethical theory is centuries old—actually, I would note, it is *millennia* old—so it is unlikely that we will anytime soon have a universally acceptable ethical theory. Any “application” to a given business situation will just result in a recapitulation of the criticisms of the theory itself.

The authors then consider the approach taken by many ethicists to applied ethics, of constructing an ethical theory of corporate social responsibility, such as the stakeholder model (which seems to be the favorite model of most business ethics texts).

But as the authors note, this stakeholder model is no less contentious than are the various ethical theories themselves. They mention as a competitor Tom Donaldson’s and Tom Dunfell’s “integrated social contracts theory” (ISCT). Under this model, the explicit and tacit social contracts of business set the moral limits of business behavior. So while the stakeholder model and the ISCT both might agree that insider trading is unethical in America, they would disagree on the ethics of insider trading in New Zealand (where it is legal).

One could add here that there are a number of other models of corporate ethics as well. For example, Desjardins’s popular text discusses a number of other ethical models of business: the economic model (of Milton Friedman), the philanthropic model, the moral-minimum model (of Norman Bowie), and the strategic or sustainability model.⁷

Gini/Marcoux suggest a different tack, one that follows Mill’s approach in *Utilitarianism*. They suggest that ethical theory consists of fundamental or higher-level ethical principles that explain why lower-level principles are valid. So a moral “rule of thumb” or “secondary” moral principle like “Keep your promises” can be justified by all high-level principles. But the authors aver, “Notice that this common sense principle tells you *what* to do, not *why* you should do it. It’s not a principle of justification. Instead, it’s an *action-guiding* principle. It doesn’t argue; it just directs” (p. 55). Kant as well had a two-level structure to his ethical system, they add.

Why, then, do we need to have the high-level principles? We need them to “test and verify” (p. 56) the secondary ones.

Here Gini/Marcoux use an analogy from physics. The laws of motion (I assume that the authors have in mind Newton’s laws) make the simplifying assumption that there is no friction. This assumption allows us to derive

⁷ Joseph Desjardins, *An Introduction to Business Ethics*, 4th ed. (New York: McGraw-Hill, 2011); see chap. 3.

observational (astronomical) predictions that are highly accurate, because while friction does exist, it is negligible. But in “applied physics,” say, designing an automobile engine, friction must be accounted for. If you build an engine with no lubrication system because you assume there will be no friction, it will blow up.

Similarly, applied ethics is about finding action-guiding principles that are the best you can devise in the context of application, rather than the most consistent ethical theory. And the authors say that in business ethics, this means viewing people with whom one is doing business as both being a locus of moral worth and as responsible agents.

Gini/Marcoux’s view of applied ethics in general and business ethics in particular is certainly interesting, but it faces some issues.

First, it tells us that our focus should be on the secondary moral principles for business, because there is no agreed-upon high-level ethical theory. But why, then, do the authors begin by giving priority to virtue ethics?

Indeed, given that secondary moral principles often conflict in particular situations, perhaps we should go with a more modern ethical theory that explicitly recognizes that duties can conflict. I refer here to W. D. Ross’s oft-neglected theory, sometimes called multiple-rule deontology. There is in fact one book that does just this, namely, Robert Audi’s recent text.⁸

Another problem is that the authors’ account of business ethics as laying out the secondary ethical rules for the “practice” or “venue” of business is that business isn’t just a practice. It is more properly viewed as an *institution* in the sociological sense, like the institution of the family—a well-established welter of relationships and patterns of behavior that is a basic part of a culture. The analogy that drives Gini/Marcoux’s analysis—applied physics—is what I suspect misleads them.

In Chapter 5, Gini/Marcoux take up the notion of trust and truth as they apply in business. They argue that there are three ways to deal with others in business: courtesy, contracts, and trust. Courtesy (manners and etiquette) they note (with David Hume) is not ethics, though both involve socially established rules for dealing with others.

While courtesy plays a role in business (and hence business ethics), contracts are more important. Contracts involve promises exchanged between two people. The authors note in passing that since business contracts typically extend beyond one’s circle of family and friends, the existence of contract law helps to ensure that contracts will be adhered to by all parties.

But besides relying on courtesy and governmentally enforced contracts, business requires a general environment of mutual trust.

⁸ Robert Audi, *Business Ethics and Ethical Business* (Oxford: Oxford University Press, 2009). Actually, while Audi’s admirable book is based upon Ross’s moral theory, it includes a fudge: when ethical principles conflict, we turn to universalizability to resolve the conflict—in effect, we use Kant to bail out Ross in cases where the rules conflict (p. 42).

Yet defining this crucial concept of “trust” isn’t easy. Gini/Marcoux turn to the work of sociologist James S. Coleman, who considers trust the by-product of social capital, which is “those shared ideas, morals, values, beliefs and behaviors that make life easier and add value (capital) to our interactions with other members of our social network” (p. 70). All of this, alas, seems somewhat tautological. No doubt the authors are right when they claim that values such as truthfulness, reliability and responsibility help to support mutually beneficial cooperation, and they do note that they come from our experiences within our family, community, and religious and secular organizations—in short, to use a phrase that I used above, the mediating structures of society.

The authors add that trust and social capital form a reciprocally causal relationship. They also add the point made by Robert Solomon that the key economic function of trust is to reduce the transaction costs of doing business (as a quick aside, it would have been helpful if the authors had defined the crucial economics concept of “transaction cost” here).

Gini/Marcoux rightly point out that trust can also be dangerous, citing the examples of Charles Ponzi and Bernard Madoff. Both used the trust of many people in their networks of friends, family, and acquaintances to commit frauds. The authors should have added that both cases are examples of “affinity scams,” that is, frauds facilitated by exploiting the trust created by a common identity—such as same ethnicity, gender, religion, or whatever.

Gini/Marcoux finish the chapter by noting that honesty is the key to trust. Of course, this rules out false promises and fraudulently misrepresenting your products. But the authors note that there are business situations in which participants aren’t morally required to tell the truth, or at least the whole truth. An employee doesn’t have to reveal to a customer the company’s trade secrets. And in bargaining, neither side is required to tell the other his or her true “reservation price” (the minimum the seller will accept and still feel better off selling than not, or the maximum the buyer will pay and still feel better off buying than not).

We might think that the ethical thing for each side is to state his true reservation price and split the difference, but (here Gini/Marcoux follow Howard Raiffa’s analysis) this would tempt the participants to lie in such a way that the deal would never get off the ground, to the detriment of both sides.

The authors finish the discussion by defending the notion that it is morally permissible to lie to hide your true reservation price, as when I say to the buyer of my car that my wife won’t let me sell for less than \$13,000 (whereas in fact my wife said no such thing, or I have no wife at all). The authors conclude that it *is* morally defensible, because (borrowing a concept of common law) the lie is not material to the transaction. The buyer is not being deceived in a way that diminishes his ability to reach a rational choice on the purchase (as he would have been had I understated the mileage on the car, or covered up a known defect in it). In this I think they are spot on.

In all, however, I confess that I found this chapter to be one of the weakest in the book, and I think the weakness is due to the virtue ethics stance the authors take.

The first problem I see is that while it is true that trust undergirds community, and business always takes place in a community, this doesn't mean that business plays a major role in instilling or fostering virtue generally—or trust in particular—in people. As I suggested above, instilling virtue and shaping character are surely the job primarily of the mediating structures of society.

More importantly, I think Gini/Marcoux overstate the role that trust plays in business. Certainly, trust supports business between family members, friends, and acquaintances at least in a small community. If I am loaning money to my sister, say, I may well not ask for a written contract. (However, my sister had better be an honest woman, for cheating and dishonesty occur even in the closest families and friendship circles.)

But, in large societies, much more is needed than trust (and courtesy and contracts, for that matter). In saying that the three major factors structuring business activity are courtesy, contracts, and trust, the authors overlook what seems to me to be the major factor (or factors) controlling or governing business behavior, namely, what I shall term “the disciplinary matrix.”

Let's imagine what would happen if, say, I were the owner of a restaurant, and I have decided to prepare and serve food in unsanitary conditions. What would likely occur?

To begin with, as customers became sick, word would spread. Newspapers would write stories about the sickened, elaborated in, well, sickening detail. Websites such as Yelp would hammer my restaurant critically until, well, I yelped.

Quickly, organizations such as the Better Business Bureau (BBB) and consumer watchdog groups would start negatively rating my company.

As word spread that my food was making people sick, my customer base would rapidly flee to the many other restaurants the free market furnishes. I would be driven to the wall by my competitors.

Naturally, a host of inspectors would descend upon my establishment, writing me up for all kinds of citations, bringing not just fines, but potential criminal charges as well.

And the customers who became sick from the food would waste no time in suing me, and would undoubtedly be awarded both compensatory and punitive damages. Here, it is well worth noting, it wouldn't be *contract* law that would come after me, but the more pervasive *tort* law.

If one thinks about this simple case of bad business behavior, one sees that in any well-ordered advanced capitalistic system, there is a large matrix of mechanisms that serve to deter bad behavior and encourage good behavior in business by disciplining (i.e., sanctioning) the business engaging in bad behavior. Trust is the least of it.

In Chapter 6, Gini/Marcoux take up the topic of competition in business. They note that competition plays a vital role in human life, and the paradigm of competition is athletic competition. Athletic competition builds character—it instills such virtues as courage, temperance, self-respect, good temper, friendliness, and so on.

But the authors hasten to add that there is often bad behavior in sports. Here they give another Aristotelian golden-mean analysis: the virtuous sportsman is justly proud of a good performance, whether he wins or loses, whereas the sore loser is excessively vain, as is the swollen (i.e., boastful) winner.

Now, business is certainly competitive. The question is, however, whether it is analogous to athletic contests or games. Gini/Marcoux suggest some major differences. Most games are “zero-sum” (i.e., someone must win and someone must lose), whereas a number of companies can compete successfully in a given market niche and all make money (a “positive-sum game”). Competition in athletic games is limited to the field, while competition between companies continues constantly. Moreover, athletic games can never devastate people the way business can (as when a company dumps toxic waste in a community). And the competition between athletic teams is for a short period of time, with a set endpoint, whereas the competition between businesses can continue indefinitely.

Gini/Marcoux then ask whether business is like war. Here the authors give a brief review of Joseph Schumpeter’s theory of “creative destruction,” namely, that economic progress is driven by innovation, that innovation is typically produced by entrepreneurs, and that this produces the destruction of older, less efficient industries through replacement by newer, more productive ones.⁹

The authors argue that this destruction is utterly unlike war, because typically the old industry survives, but is just diminished by the newer one. Their example is of transportation by horse and buggy. While the automobile displaced the horse and buggy, people still use horses and buggies. They conclude that in business, competition is both normal and positive.

Again, I think that this chapter could have been stronger, and its weakness stems in part from the virtue ethics approach. Start with Gini/Marcoux’s treatment of Schumpeter’s theory of creative destruction. Their treatment downplays (if not trivializes) a process that Schumpeter himself viewed as having a tragic side. The auto industry really *did* eliminate horse-powered transportation—horses and buggies are now primarily a hobby. The effects upon hundreds of thousands of workers was profound and (at least in the short term) negative. This negative consequence of innovation needs to

⁹ Joseph Schumpeter, *Capitalism, Socialism, and Democracy* (New York: Harper and Brothers, 1942).

be frankly acknowledged. Yes, unlike battle (though perhaps not of all war),¹⁰ where there is only destruction of value, in innovation, this is destruction of value accompanied by creation of greater new value. But there is at least a short-term negative impact on some people. This recognition would allow the instructor to talk, say, about the use of safety-net programs in all modern market economies to mitigate the impact on the losing industry, and the dangers of moral hazard in those programs.¹¹

What's worse, the key idea—that competition is generally virtuous—needs to be clarified. For example, consider the phenomenon economists term “rent-seeking.” Reverting to the sports analogy, wouldn't we consider any attempt by one team to change the rules of the game to disfavor the opposing team to be poor sportsmanship? However, businesses often seek to prevail over competing firms not by providing a better or cheaper product, but by getting government agencies to impose regulations on their competitors.

In Chapter 7—one of the best chapters in their text—Gini/Marcoux take up the topic of partiality and loyalty. It is a very useful chapter, perhaps because it relies less on the virtue ethics approach. The authors rightly point out that the notion of impartiality (treating people equally, not being partial to some) is central to most ethical theories, certainly the major ones such as utilitarianism, Kantianism, and social-contract ethics.

But the notion of impartiality is tricky. We expect a referee in a sports event not to favor anyone or any team in the game, but we impartially agree that a parent should be partial to his or her child. The authors frame the key question nicely: “Is ethical business practice like being in a basketball game or like a mother raising a child?” (p. 103)

It can be both, of course, depending upon the specific business situation. We consider impartiality to be morally obligatory, for example, when the government awards a contract; the companies bidding for it have a right to expect fair consideration according to pre-established rules (such as lowest bidder wins). But this is an exceptional case.

Here the authors engage in an insightful analysis of Norman Bowie's view that business ethics should focus on impartiality.¹² Specifically, Bowie calls for “arms-length transactions” in business, so (for example), a manager

¹⁰ I have in mind here, for example, World War II, in which the Allies destroyed the fascist regimes (and much of the infrastructure) of Germany, Italy, and Japan, but later helped to install democratic governance and stable, prosperous economies.

¹¹ In this context, “moral hazard” would refer to the chance that government safety-net programs would tempt people into bad or counterproductive behavior. For example, extended unemployment benefits may lead some workers to delay looking for new work, making them for a period of time a drain on the taxpayers, and in the end less attractive to potential employers.

¹² Norman Bowie, *Business Ethics: A Kantian Perspective* (Malden, MA: Blackwell, 1990).

who gives special consideration to family or friends is behaving unethically, and may even be a violation of fiduciary duty.

Gini/Marcoux (employing an implicitly egoist perspective) reply that what appears to be “arms-length” negotiating is typically bargaining out of self-interest. That is, the negotiator is trying to get the best deal possible, and only makes those concessions necessary to get the other party to agree.

So if I am looking out for my self-interest (or that of my principals) in negotiating for a new roof for the factory, then I am not going to be partial. I’ll take the lowest bidder, though I might take advice from friends on who did a good job for them. But is this impartiality in the Kantian sense? It doesn’t seem so.

Furthermore, what would be wrong if the sole owner of a company hired a relative for a make-work position? Nothing, it would seem. If the owner falsely advertised for the job (stating that it is open to all qualified applicants), when in fact it was reserved for his relative, or if the person hiring his/her relative wasn’t the sole owner (or was only a high-level manager), that would be unethical, but otherwise, it isn’t. The owner is, in effect, spending part of his own profit in a way that reflects one of his preferences (viz., aiding his family).

So, as the authors note, the times when a person is duty-bound to “bargain at arm’s-length” are most often cases of a principal/agent (or “agency”) relationship. If a salesperson sells the company product to a friend at a lower price than is offered to other customers, that salesperson is not acting morally toward his employer—the salesperson is *disloyal*.

The authors conclude by noting that agency relations are pervasive in business, as are fiduciary duties—consider the obligations that pension-fund managers and full-service brokers owe their clients, as well as the obligation of the managers of a company to its owners (stockholders). They note that many business ethicists are suspicious of agent loyalties to principals, fearing that it may lead those agents to mistreat people who are not principals. To this they give the excellent reply that as the law recognizes, an agent’s duty to the principals does not negate all other ethical obligations. Ross couldn’t have put the point better.

Chapter 8 is on work-life balance. It tells us that work has value beyond just allowing us to afford life’s necessities, by defining our identities and shaping our characters. But the authors also hold that the main problem we face is that while work is central to our identity and creative flourishing, we are overworked.

The rest of the chapter essentially elaborates this view. Gini/Marcoux here raise the criticisms that excessive focus on work can cost us in human relationships, and that our workaholism is geared toward conspicuous consumption. Here they cite the view of Diane Fassel, who holds that workaholism is quite distinct from “the American/Protestant work ethic,” in that the former is self-absorbed and compulsive, while the latter is “about God’s calling to work, the dignity and duty of work, the value and purpose of work” (p. 123).

The conclusion is that we need more play time and time away from work. This strikes me as too vague to be of use. First, even given the attempt to distinguish evil “workaholism” from good “American/Protestant work ethic,” it is difficult to see how we can all inherently be narcissists (as the text earlier proclaimed) and workaholics at the same time.

Worse, the authors don’t take the time to talk about the different reasons people work. Consider, for example, a poor immigrant couple who own a small dry-cleaning business, and who have to be there twelve hours a day for seven days a week, just to cover their costs, pay their taxes, and put their kids through decent schools. For (presumably tenured) professors to tell them that they are self-absorbed and need to take time off seems beyond insensitive—it smacks of blaming the victims.

The authors should have done as Joseph Desjardins does in his text¹³ in considering various models of why people work, and then (perhaps from a Rossian perspective) discussed the various conflicts of duty to oneself and others.

Chapter 9 is on big business and the global marketplace. The chapter has some useful material, but the structure presents problems. Gini/Marcoux begin with the fair observation that just as it is a mistake for a business ethics text to view all business as big business (a mistake prevalent among existing texts), it would also be a mistake to overlook big business. But here they add that any big business started as a small one.

Now, if big business is just successful small business matured, and few of us will be executives at a big business, why devote special attention to it? Here the authors suggest that businesses like Wal-Mart, which employs 2.1 million people worldwide, and ExxonMobil, with revenues of \$358 billion, have a greater potential to do harm because of their scale and their global presences.

The authors then briefly discuss the stakeholder model (first articulated by Evan and Freeman).¹⁴ They suggest that this model is rather outdated in the modern American economy, where workers no longer work for life at one job, and there is a dizzying array of consumer choices.

As an aside: while I agree that the stakeholder model is inadequate, I think there are more compelling critiques of it than this. One most obvious problem of the model is that it treats as equals people who aren’t, in terms of risk. Owners risk loss of assets in a way that no other “stakeholders” do. That is, most new businesses fail. When a firm fails (goes bankrupt, say), any unpaid employees are early in the line of claimants to be paid off; so are

¹³ Desjardins, *An Introduction to Business Ethics*, chap. 5.

¹⁴ William Evan and R. Edward Freeman, “A Stakeholder Theory of the Modern Corporation: Kantian Capitalism,” in *Contemporary Issues in Business Ethics*, 4th ed., ed. Joseph R. Desjardins and John McCall (Belmont, CA: Wadsworth Publishing, 2005).

secured investors. Owners are always at the back of the line, and typically receive nothing.

Gini/Marcoux then talk about market failures, including negative externalities, and how they call for government regulation, but also call for virtuous businesspeople. Like every other business ethics text of which I am aware, this text never mentions government failure or the problems of regulation, such as regulatory capture and rent-seeking. Those insights only come when you do as economists do and *take egoism seriously*.

The authors then take up the issue of globalization. Showing economic common sense, a sense lacking in some other texts—they observe that since globalization has already occurred, we no longer need to ask whether it is good, but what the ethical implications are.

This, parenthetically, seems a bit quick. Sexually transmitted diseases have grown worldwide in the modern era, but we can still ask whether that is a good thing. Specifically, it would have been a valuable discussion to explore the degree to which global trade has grown. In the modern era, this is tied not with the collapse of communism, but with the establishment of international organizations that will enable and promote it (such as the General Agreement on Tariffs and Trade and the World Trade Organization). It would also be valuable to explore why economists are nearly unanimous in viewing it as a good thing.

Be that as it may, the authors conclude the chapter by noting that there are some ethical issues that arise in international business, such as whether one should follow the norms of one's own country, or norms prevailing in each country within which one does business. One typical answer is to invoke the norms of (say) the UN Global Compact, or some particular code (say, Richard De George's guidelines). As Gini/Marcoux note, these two approaches face the same three problems. First, they seem to ignore competitive reality: if my company refuses to bribe officials in a country where bribery is common, I will lose business to my competitors. Second, these approaches just recycle the question of which norms are correct. Third, both of these approaches impose our own Western-style morality on others.

The authors finish the chapter by briefly discussing the contentious case of "sweatshop" labor. They review Ian Maitland's arguments that sweatshops in fact are beneficial for a developing country: so-called sweatshops typically pay their workers much more than local companies; those shops have better working conditions than indigenous ones; they allow workers in that developing country to prove their competence; they raise local wages by competing for local talent; and they stimulate the local economy. Maitland's critics hold that despite these good effects, sweatshops are unethical, often arguing that a Kantian respect for the workers entails a living wage (though seldom specifying quantitatively what that means).

Conspicuously missing here (as is the case in most other texts) is a crucial distinction. You can make a strong argument when dealing with a *democratically governed* developing country that if the government allows low-wage factories, it is a trade-off that the people are making to take the

lower paying work rather than face unemployment. That is their choice, and a Kantian respect for autonomy would seem to suggest that we should honor that choice. But the argument is much harder to make when dealing with a *dictatorially governed* developing country. For in that case, the people have no chance to make the choice for themselves—the ruling clique makes it for them.

This chapter suffers from two flaws. First, it mixes together two topics that really should be given separate chapters. There are many big businesses that are not global, and many small businesses that are. (Try searching for “Greek olive oil” on your favorite search engine, and you will find a lot of small producers advertising their wares. Websites are easy to design and maintain the world over.)

A second flaw in this chapter is that the authors’ explanation of why big business merits special attention seems to me to be insufficient. I would point to two issues that are ubiquitous in big business, but typically absent in small business. To start, big businesses involve large, hierarchically organized groups of people, and the organizational behavior of the employees is thus more complex than it is in small businesses. Moreover, the greater the number of employees, the harder it is to deal with the agency problem efficiently. That is, in a large corporation, the owners/stockholders tend to have less power and information, while the managers have more of both, and so are more able to act in their own (rather than the stockholders’) interest.

The final chapter in the book is the weakest, and again the virtue ethics orientation seems to be the problem. Gini/Marcoux take up the topic of leadership in business. The authors hold that while our fascination with leadership is excessive, leadership is central to business and thus important ethically. In keeping with their virtue ethics perspective, they claim that workers take management and the culture of the firm as their ethical models. The authors do allow that this doesn’t mean workers are never responsible for the actions of a business, but that leadership matters.

The authors define leadership as “a power-and-value relationship, among leaders and followers/constituents who share a common vision and intend real changes that reflect their mutual purpose and goals” (p. 152). They try to define the key terms carefully. Power, for example, is defined as the ability to direct change. It can be used coercively but also non-coercively as well. They naively add that, ideally, people with power would wield it for the common good, not for personal gain.

However, they tell us little about what makes a good leader. They claim that it is good moral character, and cite the case of Richard Nixon, whose presidency failed because (they imply) he lacked character. Most important in character is moral courage—the courage to face dangers to put principles into effect.

But all of this is very unconvincing. First—to repeat—businesses can reinforce or weaken character, but our basic characters are formed much earlier in life than when we move into adult work.

Second, what evidence do the authors offer that moral character is typically present among effective leaders, other than citing the case of Nixon? Indeed, one can think of any number of recent effective presidents, for example, who don't seem to have been men of exceptional moral character—John Kennedy, Lyndon Johnson, and Bill Clinton come to mind here. Conversely, personal rectitude hardly translated into effective leadership for Jimmy Carter.

It seems more likely that competency in leadership usually has more to do with the skills and practical intelligence of the leader. In the case of a potential leader, it is skill in communication and political judgment. In a business leader, it is skill in communication and economic judgment, and a good deal of luck figures in as well.

Let me turn now to some general comments about the Gini/Marcoux text.

First, Gini/Marcoux work hard early to distinguish for-profit from non-profit companies, and they put their subsequent focus on for-profit enterprises. In this regard, they follow every other text I have ever examined.

But it is questionable whether this universally exclusive focus of business ethics texts on for-profit enterprises is justified. Specifically, I suspect that it reveals a bias against for-profits that leads to blindness concerning ethical issues in non-profits. An ideal business ethics text would have at least one chapter on ethical issues in non-profit businesses.

Second, the brevity of the text results in the omission of some interesting issues in business ethics that the authors' own perspective could have helped to analyze in an enlightening way. Consider this example. The authors rightly note that entrepreneurs don't just passively take orders from customers, but "imagine lifestyles that people may be attracted to, once the possibility is presented to them" (p. 24). They illustrate this briefly by citing the case of the personal computer, which had little early demand in the market. But entrepreneurs conceived (and continue to conceive to this day) of ways people could find the device useful, and created software to enable the realization of those hitherto potential applications. They could have amplified this and illustrated it more fully in a whole separate chapter.

And it would have been a useful chapter, indeed. For in some (if not most) business ethics texts¹⁵ one finds a critique of advertising in particular (and by extension, free-market economics in general) that goes back in recent American history to John Kenneth Galbraith's 1958 best-seller, *The Affluent Society*.¹⁶ (In fact, this critique has its roots in Karl Marx, and even earlier in Jean-Jacques Rousseau.) This critique attacks advertising for manipulating people into desiring and buying trivial or useless things, and engaging in "therapeutic shopping" (where consumers go to shopping malls and buy

¹⁵ See, e.g., Desjardins *An Introduction to Business Ethics*, pp. 183 and 201-16.

¹⁶ John Kenneth Galbraith, *The Affluent Society* (New York: Houghton Mifflin, 1958).

things just to feel better, often regretting it later). This then is said to lead to “affluenza,” the alleged social malady affecting economically advanced countries, a malady that includes spiritual emptiness and intellectual shallowness caused by pervasive advertising for things people don’t really need.

The point that Gini/Marcoux could have explored (and defended) is that entrepreneurs are generally creating markets in the positive sense of imagining new ways that existing products and services (as well as imagining new products and services) can meet fundamental pre-existing consumer desires, as opposed to creating shallow new desires.

For example, consider recent advances in cell phone technology. People—young people in particular—love talking to and showing pictures of each other. A grim Galbraith may intone that the desire to own these silly picture phones was implanted in those consumers’ empty heads by manipulative advertising, and a rigid Rousseau may judge the young people using these phones as silly and shallow for wasting their time networking in this way.

But this behavior is neither the result of unnatural desire nor is it psychologically shallow. On the contrary, wanting to communicate and bond with your circle of friends is a deep, innate desire of human beings. It is how we maintain our social cohesion, a key feature in our flourishing as a species. An ideal business ethics text would directly address the Rousseau/Galbraith line of attack on business in general and advertising in particular.

Third, the authors focus on individuals and their behavior in business. I certainly think that is a good counterpoint to the tendency of most texts to focus just on business behavior. But we shouldn’t overlook the fact that people in groups often collectively behave differently from the way they behave individually. A corporation—which is recognized in American law as a legally separate person—has goals that will usually affect the thinking and behavior of the individuals in it. An ideal business ethics text would discuss issues surrounding corporate culture and how it affects individual behavior.

Fourth, I think that Gini/Marcoux’s text doesn’t convey the degree to which business—in America or any other country—is an externally rule-governed institution. Even less does the text survey some of the legal structure that governs American business. It would have been helpful to have a brief chapter surveying the sources of American law (statutory, regulatory, and common), the concept of a limited-liability corporation, and the tax law differences between for-profit and non-profit enterprises. It is difficult to discuss ethical issues in product safety, for example, without such a background. An ideal business ethics text would include a brief survey of the laws that structure American business, and use that material in discussions of ethical issues.

Finally, more troubling is Gini/Marcoux’s view of applied ethics. They view applied ethics as being analogous to applied physics. However, I think that the analogy is inherently flawed, and this helps to explain some of the flaws in the text I discussed above.

Start with the analogue, applied physics. One doesn't "apply" the Newtonian laws of motion in building a car engine, but to predicting and explaining the motion of large bodies (planets, say, or cannon shells). Let's consider a more accurate case of applied physics. Hydraulics (i.e., fluid mechanics) is a well-established branch—a theory, in the sense of a detailed set of laws and concepts that are empirically well-established in a domain—of physics whose domain is the behavior of fluids in motion. To "apply it" is to take the web of those laws, principles, and concepts, which together are true (or highly approximately true) in its domain, and use it to explain phenomena or to guide the construction of various devices, as when a biophysicist uses fluid mechanics to explain the motion of blood in an animal or a mechanical engineer uses the theory to design a piping system for a power plant.

But if you look at the ethical theories that philosophers have considered the most compelling—which I would list as ethical egoism, utilitarianism, natural-rights ethics, Kantianism, virtue ethics, and Rossian ethical theory—none of them seems to be true, or even highly approximately true, of the "domain" of accepted moral judgments. Worse, it is not even clear there *is* such a domain of universally accepted moral judgments; that is, moral relativism remains an issue in moral theory generally.

I suggest that an ideal business ethics text would take the view that each of these theories has some merit, that is, none is so deeply mistaken that it deserves to be skipped entirely. This is even true of ethical egoism, a view most business ethics (in fact, most ethics texts) dismiss out of hand before trying to discuss issues arising in for-profit business—an institution the essence of which involves mutually beneficial exchanges conducted in a way that increases the wealth of the owners.

Instead—again, avowedly, in my view—an ideal business text would view all of these theories as "thinking caps," that is, conceptual lenses which help us to focus on different aspects of a complex institution (business, the family, medical practice, technology, or whatever). Focusing on business, each of the ethical theories has a role to play.¹⁷ Egoism helps us to see that seeking your own benefit is to be expected in business, and is the whole point of for-profit business (and is clearly involved in non-profits and government as well). That is, psychological egoism helps us to understand the agency problem, moral hazard, public choice theory, regulatory capture, rent-seeking, and many other economic concepts so crucial to business ethics generally.

Utilitarianism allows us to ask of different rules we might design to constrain and structure business, which leads to the best results. We need this perspective (as did Adam Smith) to understand why the free market has proven so generally beneficial. But the natural-rights perspective adds a corrective that individual rights trump collective good.

¹⁷ Indeed, one of the useful things about Gini/Marcoux's text is that despite its obvious preference for the presently regnant virtue ethics, which weakens the discussion of some issues, in the stronger chapters the authors implicitly invoke the egoist, Kantian, utilitarian, and even Rossian ones.

The Kantian perspective allows us to inquire into consistency and dignity of the people in business. The virtue ethics perspective helps us to examine the effects of a business practice on the character of the participants. And the Rossian perspective helps us to analyze conflicts among duties for participants in business.

Another problem with Gini/Marcoux's analogy between "applied ethics" and applied physics is that it overlooks a key thesis from philosophy of science, to wit, the Duhem/Quine Thesis. This thesis holds that a scientific hypothesis cannot be empirically tested in isolation from other auxiliary ("background") assumptions. This was first recognized explicitly by historian of science Pierre Duhem, and featured prominently in W. V. O. Quine's epistemology.¹⁸ Something like this thesis holds in applying high-level ethical theories to render particular moral judgments.

My point here is that even if there were a "correct" (or "highly approximately true") ethical theory, it wouldn't by itself entail any "secondary" moral principles, much less answer particular issues in business ethics (such as whether employees should be given a minimum wage). Ethical theories only entail prescriptions via background assumptions, *which are often themselves hypotheses from legal studies, economics, history, psychology, or other disciplines.*

An ideal business ethics text would frankly acknowledge that high-level ethical theories only suggest ethical judgments against background assumptions, and should where possible explicitly indicate those assumptions.

In short, while the text under review has a number of fine features that other business ethics texts lack, it unfortunately is not quite an ideal one.

¹⁸ Duhem's thesis is nicely covered in Roger Ariew's entry on Duhem in the *Stanford Encyclopedia of Philosophy*, accessed online at: <http://plato.stanford.edu/entries/duhem/>. Quine's views on the matter appear in his "Two Dogmas of Empiricism," *The Philosophical Review* 60 (1951), pp. 20-43.

Book Reviews

Marcus, Eric. *Rational Causation*. Cambridge, MA: Harvard University Press, 2012.

We customarily explain people's behavior by appeal to their capacity to act for reasons. For example, Peter's picking up his umbrella before leaving home is explained by his belief that it is raining along with his intention to keep dry, which both play a role in an inference that brings about the action of picking up the umbrella. One of the main concerns of philosophy of mind has been to describe rational explanations of this sort in a way compatible with our scientific worldview, in particular with respect to how psychological states could be part of the physical causal order. The orthodox view on this matter—which Marcus calls “psychologism”—is that mental states can be causes of behavior in virtue of being realized in some sense by physical states of the brain.

In his ambitious and provocative book *Rational Causation*, Eric Marcus challenges this orthodox view. He denies that mental states have to be realized by physical states, and supports his claim by developing a kind of mental causation that is different from the “efficient” causation standardly described in scientific explanations. He calls it “rational causation,” which consists, briefly, in the manifestation of a mental ability self-consciously to represent rational inferences holding between propositions (and sometimes actions). His view ends up being the antithesis of psychologism, and is broadly anti-physicalist.

The first two chapters of *Rational Causation* are devoted to introducing Marcus's account of rational explanations, for the case of explaining belief (e.g., “believes *q* because of *p*”) and action (e.g., “does *X* because of *p*”). He claims that believing and acting for a reason consist in the exercise of a rational ability, which he characterizes in terms of a disposition. This allows him to account for the normative dimension of rational explanations, given that dispositions do not always manifest themselves as they are supposed to, and in this way can be assessed as successful or not. Marcus defines believing-for-a-reason as the disposition to acquire knowledge from known facts, and acting-for-a-reason as the disposition to perform certain action because something else is being done.

As the previous paragraph suggests, reasoning abilities are defined in terms of their successful cases, namely, those in which the world happens to be like the fact or action represented by the inference's premise. This is the case, for example, when the reasoning “it's raining outside, so the streets are wet,” successfully leads to the true conclusion that “the streets are wet” due to the fact that it is raining outside. On the other hand, if it turns out that it is not

raining, the reasoning would be unsuccessful since it would not lead to knowledge. On the basis that unsuccessful cases are always dependent on successful ones, Marcus contends that the ability to reason “is purely factual at its core” (p. 46) in the sense that rational explanations that cite the world (i.e., facts or actions) are more fundamental than explanations that just cite the mind (i.e., beliefs, intentions, etc.). This idea that exercises of reasoning are essentially world-citing, is used by Marcus for weakening psychologism, which typically takes mind-citing explanations as central.

Another attack on psychologism targets the third-person character of its explanations. Marcus claims that exercises of the ability to reason are self-conscious in the sense that a person can always self-attribute her reasons for believing or acting. Moreover, he sees as a requirement for being a reasoner the subject’s capacity to (consciously) express what is the rational basis of her beliefs or acts. Given that this self-attribution is supposed to be justified by first-person authority, it does not need to appeal to observable behavior or further evidence. According to Marcus, this implies that rational explanations are essentially tied to a first-person point of view, to the extent that “appeal to the third-person in rational explanation, properly understood, implicitly makes reference to the first-person” (p. 64). This alleged primacy of the first-person character of rational explanation is put forward by Marcus as an argument against psychologism, which normally assumes a third-personal approach to explanation as paradigmatic.

In chapter 3, Marcus claims that the capacity to consciously self-attribute our reasons for believing or acting is also something that sets us apart from other animals. He concedes to (non-human) animals the ability to respond to reasons, but insofar as they are unable to engage in self-conscious reflection over them, they cannot be said to believe or do things for reasons. According to Marcus, this is due to animals’ lack of the (meta-cognitive) ability to take attitudes toward their perceptual contents, which also renders them incapable of conceptual thought. Even though this view is supposed to encompass most animals, he does not rule out the possibility of there being non-human animal species that possess the ability to take attitudes over articulate perceptual contents, and thus reach what we (provisionally) regard as the distinctively human ability to reason.

In chapter 4, Marcus discusses his notion of rational causation. With respect to Donald Davidson’s views, Marcus submits that reasons can be causes of the actions they rationalize, and that those reasons are not governed by natural laws. But he takes issue with Davidson’s assumption that the notion of causation at stake in rational explanations has to be the same as the one used by the physical sciences (which Marcus calls “efficient causation”). On the contrary, Marcus contends that rational explanations make use of a different kind of cause, one that in no way depends on the efficient kind of causation or the postulation of natural laws. They describe rational causes, which Marcus defines as the exercise of rational abilities involved in believing (or acting) on the basis of something else being believed (or done). And as mentioned above, they correspond to self-conscious exercise of those abilities,

to the extent that the “rational-causal tie between S’s believing that p and S’s believing that q is just as much a matter of S’s perspective as the beliefs themselves, as it consists in S’s representing an inferential connection between q and p” (p. 170).

Given Marcus’s admittedly *sui generis* notion of rational causation, clarification of its metaphysical nature is in order. He undergoes this task in the last two chapters (6 and 7), where he again criticizes psychologism, this time challenging its assumption that mental causes are somehow identical to physical causes (in the brain). First, he argues that mental states cannot be token identical to physical states given that states are not particulars, that is, instances of a particular that has principles of identity and individuation. When it comes to mental events, even though Marcus recognizes them as particulars, he contends that there cannot be any sort of identity between mental and physical events because each is the manifestation of a different kind of causation: rational and efficient causation, respectively. Returning to our previous example, the act of picking up an umbrella would be explained in terms of rational causes, which would be distinct from the physical causes used to explain the bodily movements involved in this behavior. A consequence of this two-fold approach to causation is that Marcus’s proposal becomes broadly anti-physicalist, where mental properties are “neither identical to nor realized by physical properties” (p. 252). However, he remarks that his view is not dualistic insofar as it respects “basic global supervenience,” according to which “any world which is a minimal duplicate of our world is a duplicate simpliciter” (p. 253).

By formulating an alternative account of causation Marcus avoids problems traditionally associated with views that attempt to naturalize mental causes and events. However, his attempt to explain behavior by appeal to mental events that are not realized in physical events of the brain is deeply unsatisfactory, for they raise the same concerns as those raised by a Cartesian conception of the mind: if mental events are not part of the physical causal order, where do they come from? If mental and physical events exert different kinds of causation, how do both interact to generate behavior? These questions are left unanswered, and Marcus’s appeal to basic global supervenience does not help much to clarify how mental events relate to physical events.

Another worry about Marcus’s view is methodological. He singles out rational causes by appeal to our conscious experience of them, or at least our capacity to consciously report them as reasons for our doings. But it has been largely questioned whether conscious introspection is a reliable source of evidence about the mind, or whether a fruitful research program can be built on its basis. According to most cognitive scientists, conscious reports are, at best, partial accounts of what goes on inside our heads. Indeed, it is customary in cognitive science to postulate mental causes of behavior that happen well below conscious awareness, and it is at least controversial to rule them out—in a principled way—as part of the reasons that explain behavior.

Overall, *Rational Causation* is a very well written book that develops an unorthodox account of mental causation, offering a fresh perspective on the nature of psychological explanation. At times, the discussion gets rather technical and assumes considerable background on the reader's part. It might be tough going for non-philosophical readers, but philosophers familiar with current issues in philosophy of mind and psychology should find the book rewarding. *Rational Causation* provides an informed and original discussion of many of the most important issues in the field, and manages to work out a global account of the nature of the mind and psychological explanation. Even the reader who does not agree with the main theses of the book will find many challenging arguments in it that deserve serious consideration.

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Swindal, James. *Action and Existence: The Case for Agent Causation*. New York: Palgrave Macmillan, 2012.

In *Action and Existence: The Case for Agent Causation*, James Swindal develops and defends a detailed, well-informed, and therapeutic argument valuable to anyone with serious interests in pragmatism, action, and agency. Specifically, Swindal has a solid grasp of the history and logic of current debates at the intersection of “analytic” and “neo-pragmatic” philosophy. On the one hand, subsequent to reading Swindal’s engagement with the problems of pragmatism, a reader should be in a better position to engage thinkers such as Jurgen Habermas, Robert Brandom, Nicholas Rescher, Joseph Margolis, Cheryl Misak, Cornell West, Hans Joas, and Richard Rorty. As such, Swindal’s “Introduction” and “Chapter 1” would work quite well in both undergraduate and graduate courses where an overview of the contemporary scene of pragmatism and action would be relevant. On the other hand, by focusing on the “existential” aspects of action, beyond the analytic and (neo)pragmatic literature, Swindal’s book uniquely relates to the literature regarding “agent causation.” Swindal’s “primary thesis is that agents act responsibly only by their proper situation of the domains of both the desires for ends and their beliefs about means to the ends” (p. 12). Hence, “a complete description and explanation of action requires the analysis of existential determinations consistent with the experiences of agents as actors” (p. 94).

In order to appreciate the important contribution of Swindal’s book to the contemporary debate, it helps to have a sense of what is at stake in the debate. In his *Contingency, Irony, and Solidarity*, Rorty claims that “there is no way to bring self-creation together with justice at the level of theory.”¹ Furthermore, it follows for Rorty from the “contingency of language” that “there is no way to step outside the various vocabularies we have employed and find a meta-vocabulary which somehow takes account of *all possible* vocabularies, all ways of judging and feeling.”² Hence, Rorty defines his “ironist” as having “doubts about the final vocabulary she currently uses,” and because “her present vocabulary” cannot “dissolve these doubts,” Rorty—though, of course, ironically—suggests that no vocabulary can put one “in touch with a power not herself.”³ Whereas Rorty’s notion of vocabulary is

¹ Richard Rorty, *Contingency, Irony, and Solidarity* (Cambridge: Cambridge University Press, 1989), p. xiv.

² *Ibid.*, p. xvi.

³ *Ibid.*, p. 73.

already an interpretation of Immanuel Kant by substituting language for a conceptual schema in experience,⁴ in terms of this debate, normativity is substituted for vocabularies.

The issue central to Swindal's debate and the question of what to do with the tradition of pragmatism that we have inherited⁵ concerns how socially to reconcile different norm-governing schema across agents. If there is no meta-normative schema by which to determine the correctness of each individual agent's relation to norms, then how can one decide which competing norms should govern action? Notice that this perplexity involves "self-creation" at the level of the individual agent and "justice" at the social level of interacting agents. Swindal elsewhere locates the debate by noting: "Some philosophers have developed comprehensive interactive models that purport to exhibit the various normative constraints that agents need to adopt in order to achieve what otherwise would be an unattainable and unsustainable social order."⁶ Furthermore, he describes the participation of Habermas and Brandom in this debate, noting that "social philosophers as of late have developed holistic models of socially developed and sustained normative systems."⁷ Critically, then, Swindal identifies a "problem" with the approaches, despite internal differences between Habermas and Brandom; according to Swindal, "their reliance on forms of *deontic* constraint to solve coordination dilemmas cannot sufficiently account for the role of agent-centered purposive action in such normative systems."⁸ This pertains directly to Rorty's perplexity regarding action, since "[d]eontic constraints are determinations of consistency or inconsistency that can be applied to semantic and inferential expressions of decisions to act."⁹

Swindal's contribution to the debate, then, looks beyond deontic constraints that can be applied to decisions regarding action to the "existential determinations consistent with the experiences of agents as actors" (p. 94). As such, Swindal's proposal goes further than Habermas or Brandom toward

⁴ Richard Rorty, *The Consequences of Pragmatism* (Minneapolis, MN: Minnesota University Press, 1982), p. 4.

⁵ Cf. Arthur Lovejoy, "The Thirteen Pragmatisms," in Arthur Lovejoy, *Thirteen Pragmatisms and Other Essays* (Baltimore, MD: John Hopkins University Press, 1963), pp. 1-29.

⁶ James Swindal, "Norms and Causes: Loosing the Bonds of Deontic Constraint," *Social Epistemology Review and Reply Collective* 2, no. 1 (2012), p. 117.

⁷ *Ibid.*

⁸ *Ibid.*, p. 118.

⁹ *Ibid.*

bringing “self-creation together with justice.” Moreover, Swindal’s “existential” approach differs from Habermas’s and Brandom’s, “which hold[s] that a non-normative analysis of action is neither desirable nor in fact possible” (p. 74). Swindal’s model may be thought of as occupying “a middle ground between a pure naturalism (where instinct dominates) and a pure regularism, or ‘normativism’ (where reason dominates).”¹⁰ Whereas Donald Davidson suggests that “we have discovered no analysis of [the relation between a person and an event] that does not appeal to the concept of intention,”¹¹ Swindal’s account suggests that “an inner conflict” does *not* occur “between the intentional states competing to prevail and thus determine an action.”¹² Rather, the inner conflict occurs “as a permanent tension arising from the concise spatial and temporal situation of each agent action relative to a history, both past and anticipated of action outcomes.”¹³

Beyond presenting a viable alternative to the approaches of Habermas and Brandom, then, Swindal successfully illustrates the manner in which the existential approach through an understanding of agent causation can solve what Rorty took to be the central problem of the contemporary debate regarding *our* inheritance of pragmatism and democracy. The following summary and analysis of Swindal’s *Action and Existence* should be seen in part as providing support for this claim.

An interesting contrast between social theorists and post-analytic philosophers can be seen in the way pragmatism is emphasized. As post-analytic philosophers such as Brandom celebrate the extent to which they see pragmatism as freeing them from the constraints of truth, social theorists such as Joas celebrate pragmatism’s affirmation of the creativity inherent in experience. Joas’s focus on Charles Sanders Peirce’s notion of abduction illustrates that “[o]nly because we assume there to be more than mere chance involved in the creative act of forming hypotheses do we give the scientist credit for it.”¹⁴ Yet, this insight is not lost in Swindal’s book. For example, he notes that the “impetus for this study was the purported failure of recent analytic and neo-pragmatic views to provide sufficient grounds for action description and explanation” (p. 163).

¹⁰ Ibid., p. 117.

¹¹ Donald Davidson, *Essays on Actions and Events* (Oxford: Clarendon Press, 2001), p. 61.

¹² James Swindal, “Norms and Causes: Loosing the Bonds of Deontic Constraint,” p. 132.

¹³ Ibid.

¹⁴ Hans Joas, *The Creativity of Action*, trans. J. Gaines and P. Keast (Chicago, IL: University of Chicago Press, 1996), p. 134.

In his Introduction, Swindal provides the three “models” which “frame” his analysis. These are the “Epistemic,” “Pragmatic,” and “Metaphysical.” There are three kinds of epistemic accounts: the Cartesian, the Hegelian, and the Existential. Pragmatic accounts consist of the “causal strategy,” which Swindal associates with W. V. O. Quine; “the experimental strategy,” which in its “satisficing” form he associates with Rorty; and the “discursive strategy,” which he associates with Hegel, Wittgenstein, Habermas, and Brandom, among others (p. 6).¹⁵ In regard to the metaphysics of action, citing a tradition associated with Plato, Aristotle, and Aquinas among others, Swindal notes that action is “understood as a species of movement” (p. 9). It follows, then, that “[a]ctions are observable effects that emerge from, but are not reducible to, a set of internal states (thoughts and desires) of an actor possessing the metaphysical status to act” (p. 9). Lastly, invoking the *Nicomachean Ethics*, Swindal affirms the presence and causal efficacy of “character.” Character is “the result of nature and habituation”; “Our characters become a medium through which perceptions appear to us, even our perceptions of practical ends” (p. 10).

In Chapter 1, Swindal explains what he means by “the *normative fallacy*”: “The fallacy is to presuppose that all action, to be intelligible, must be rule bound, and then to assert that whatever way actions are intelligible excludes the possibility of actions that defy categorization in a set of rules” (p. 10). Not only are both Habermas and Brandom guilty of the normative fallacy, but the entire “Pittsburgh School” of philosophy is in danger of being guilty of it.¹⁶ Swindal ultimately concludes “that without a sufficient analysis of intentional action, from a first person perspective, a pragmatic theory alone cannot make a coherent link between belief, meaning, or truth, on the one hand, and action, on the other” (p. 11).

In Chapter 2, Swindal provides his understanding of action as an “existential unity,” along with some of his “methodological presuppositions,” and justification for his “contention” that “intentional analysis of action can be done only from a regressive, or reconstructive, vantage point” (p. 11). This latter insight regarding the regressive nature of intentional analysis combined with his notion of the “normative fallacy” constitute two of the best contributions from Swindal’s book to the above-noted contemporary debate and discourses regarding the intersection between post-analytic philosophy and neo-pragmatism.

Chapter 3 discusses the history of action theory from the “Aristotelian-scholastic view” through the “modern tradition” and German Idealism. Importantly, Swindal explains, “Potency, for Aristotle, is reduced to

¹⁵ Cf. Michael Byron, *Satisficing and Maximizing* (Cambridge: Cambridge University Press, 2004).

¹⁶ Cf. Chauncey Maher, *The Pittsburgh School of Philosophy* (New York: Routledge, 2012).

act by an agent acting relative to an end,” and “Externally viewed, actions are of two types: *poiesis*, or making, which adds a new durable artifact to the world; and *praxis*, or doing, which adds a new deed or speech to the political realm” (p. 46). Chapter 4 combines this history with a discussion of the “very possibility of a criteria definition of action” (p. 11). Here Swindal moves through “functionalist views of action” exemplified in the “post war period” by Wittgenstein (whose “view that actions were to be understood, not as fulfilling the mandates of a biological or social system, but as the following of rules immanent to an intersubjective web of meanings”) to “the emergence of analytic theories of action” and the post-analytic “semantic reconstruction of action” (p. 81). Swindal, then, criticizes each of the views of action in turn, producing a “working definition” of an action: “actions are existential unities reconstructable as bodily movements caused by an agent in light of an intended end” (p. 105).

In Chapter 5, Swindal examines “how actions are explained” (p. 105). Whereas the “definition provides *criteria* on the basis of which an action can be picked out,” “the explanation gives the *conditions* on the basis of which one can say *why* the action happened” (p. 105). Moreover, in this way Swindal clarifies that “[s]ome philosophers speak of the *justification* of actions, by which actions are understood as moral” (p. 105). Hence, Swindal reveals, “On my view, actions are explained by the agent’s inference that *because of the agent’s action an intended state of affairs exists here and now*” (p. 105). Recalling, then, his criticism of the regressive nature of intentional analysis, he notes, “*the explanation of action is coextensive with the reconstruction of the inferences involved in the agent’s deliberation and performance of the action*” (pp. 105-6).

Chapters 6 and 7 constitute the discussion of the existential approach to action. Whereas Chapter 6 pertains to action as a species of motion, Chapter 7 examines action as emerging from (but not reducible to) a set of internal states and in regard to the causal efficacy of character as a coupling of nature and habit. In other words, recalling Swindal’s Introduction, these last two chapters of the book work the existential view of action through the metaphysics of action. Swindal concludes “that *human actions*, as distinct from behaviors and habits, are *momentous*: they are motivated only by *existential* (metaphysical) *considerations that cannot be accounted for by epistemic or pragmatic considerations* of beliefs and desires alone” (p. 11). Hence, “[a]gent causation is thus the existential explanans of action” (p. 164).

I take Swindal’s book to have achieved its purpose in that it provides methodological, historical, and textual support to advocate for the existential understanding of action as an alternative approach to post-analytic and neo-pragmatist positions in the debate focused on reconciling individual freedom with social justice; however, there are still some critical points and questions worth reviewing.

In developing his “working definition” of action, Swindal invokes Davidson’s analysis of action into the basic elements of “belief, desire, and intention,” noting that “[i]f you *believe* that a friend can take a criticism,” then

if your friend is offended, “we tend to think that you are nonetheless not to be reprimanded for the action [since] . . . no offense was *intended*” (p. 93). From here Swindal begins discussing Kant in what seems like a manner that supplements Davidson’s analysis. However, since Swindal had just completed a “critical analysis of functionalist, *analytic*, and semantic models,” it is not immediately clear how Davidson’s three analytic elements link with Kant’s “four analytically distinct perspectives” (p. 93). Swindal notes a “rough” correspondence, but a bit more discussion here would be welcome.

Swindal might have provided more specificity in his discussion of non-being and memory at the end of this book.¹⁷ Swindal’s argument seems sufficient by way of Aristotle; however, his discussion of Kant’s thoughts on non-existence could be less general. For example, consider the following footnote:

Technically, then, the logical term ‘non-being’ is not of concern here. On the other hand, *the transcendental term* ‘not-being,’ *is*, at least for Kant. . . . My use of ‘non-existence’ opposes ‘existence’ *not transcendentially*, but metaphysically [emphasis added]. The possible non-existence of an existent is constitutive of reality. (p. 185)

The idea here is that looking to the agent’s memory is a way of noticing what an agent brings to a situation that otherwise cannot be accounted for in terms of the present event-causal physical instantiation of objects in the environment.¹⁸ Agents can improvise. Events in a causally determined physical world seem to experience difficulty improvising. Hence, the agent’s improvisational creative relation to its environment may be accounted for by the memory also known as its character, and this refers to agent causation, since the agent, *via* its memory character, is most important in the series of causes resulting in an environmental improvisation.¹⁹ Such an argument is important for Swindal because, once established, all attempts to reduce action to rule following or a network of event causes are blocked.

Furthermore, Swindal does not specify what kind of memory is at work regarding the non-existence of the future to-be-instantiated-object. He seems to waver between regarding the status of such a memory as singular or

¹⁷ Cf. Frank Scalabrino, “Non-Being & Memory” (PhD diss., Duquesne University, 2011).

¹⁸ Cf. Frank Scalabrino, “Mnemo-psychography: The Origin of Mind and the Problem of Biological Memory Storage,” in *Origins of Mind*, ed. L. Swan (New York: Springer, 2012), pp. 327-39.

¹⁹ Cf. Frank Scalabrino, “From a phenomenology of the reciprocal nature of habits and values to an understanding of the intersubjective ground of normative social reality,” *Phenomenology and Mind* 6 (2014), pp. 156-67.

multiple.²⁰ We can remedy this quickly here, though, by merely pointing out that the memory in question is what contemporary memory research refers to as “implicit” and “procedural.”²¹ There is not enough space here to explore the manner in which this extends Swindal’s Aristotelian-Existential argument. The assumption to avoid is that memory would not be of the agent-causal system if it were not explicit. Such an assumption unnecessarily presupposes experiential criteria from which ubiquitous rule-following and discursivity may follow for action.²²

Swindal suggests that Brandom “provides a non reductive and non circular account of the factual and normative aspects of action formation assessment” (pp. 27-28). However, this deserves a second look.²³ For example, on the one hand, Brandom asserts, “I think one can understand facts as true claims, acknowledge that claiming is not intelligible apart from vocabularies, and still insist that there were true claims, and hence facts, before there were vocabularies.”²⁴ On the other hand, beginning a section in his *Perspectives on Pragmatism* titled “Social Pragmatism about Knowledge,” Brandom asserts, “If this is right, then we are not, as Rorty claims, precluded from talking about facts making our claimings true. We can only understand the notion of a fact by telling a story that makes reference to vocabularies.”²⁵ He goes on to clarify, “though notice . . . we can also only understand the notion of a vocabulary as part of a story that includes facts. But this does not entail that there were no facts before there were vocabularies.”²⁶

There are a few minor textual issues which a reader might find confusing. In his Introduction, Swindal announces that he will be explaining

²⁰ James Swindal, “Norms and Causes: Loosing the Bonds of Deontic Constraint,” p. 132 n. 60.

²¹ Cf. Frank Scalabrino, *Non-Being & Memory*.

²² Cf. Frank Scalabrino, “From a phenomenology of the reciprocal nature of habits and values to an understanding of the intersubjective ground of normative social reality.”

²³ Cf. Robert Brandom, *Perspectives on Pragmatism: Classical, Recent, and Contemporary* (Cambridge, MA: Harvard University Press, 2011), pp. 125-27; Robert Brandom, *Reason in Philosophy: Animating Ideas* (Cambridge, MA: The Belknap Press, 2009); Frank Scalabrino, “Tales of the Mighty Tautologists? Do Normative Functionalists reduce the differentiating function of non-discursive habit in experience to *post hoc* logical possibility?” *Social Epistemology Review and Reply Collective* 2, no. 1 (2012), pp. 83-97.

²⁴ Brandom, *Perspectives on Pragmatism*, p. 125.

²⁵ *Ibid.*

²⁶ *Ibid.*, p. 127.

what he calls the “pragmatic fallacy” (p. 10), though in the Table of Contents and rest of the book he refers to this as the “normative fallacy” (pp. 16 and 24-25). Note 47 in Chapter 2 refers to a book that is not listed in the Bibliography. Various three-fold divisions follow one another such that they might imply a mapping on to one another; however, there are at least two places where they do not map on to one another. This may slow a reader’s flow. For example, he has a listing in one place of “models of action,” that is, the event-causal, functionalist, and teleological models (p. 94). These follow directly on the heels of the functionalist, analytic, and semantic views of action. However, the event-causal and teleological here refer to the “analytic” (cf. p. 78). Also, the Introduction is divided by the epistemic, pragmatic, and metaphysical accounts of action, and each of these accounts is further divided by three. Without an explicit disclaimer from Swindal, I spent time looking for what I took to be a pattern intentionally instantiated here. However, in concluding his Introduction (p. 12) and in the concluding chapter of the book, the existential seems to have shifted from one “strategy” of the epistemic accounts—alternative to the Cartesian and Hegelian—to be, perhaps, equated with the metaphysical itself. His movement between “strategy” and “model” (pp. 3-4) might also contribute to confusion here. Lastly, I take “devolves” (p. 12) to mean “unfolds,” and not to have any derogatory connotation, since it pertains to the very account for which he is advocating.

There are other minor non-textual issues to consider. First, though Swindal places Quine in his “causal” pragmatist designation and Brandom in the “discursive,” to what extent is Brandom gesturing toward a reduction of agent to event causation—the hallmark of the “causal” designation? Second, to what extent does Swindal see any overlap between his notion of the existential determinations of action and Rorty’s anti-representationalism, that is, an account “which does not view knowledge as a matter of getting reality right, but rather as a matter of *acquiring habits of action* [emphasis added] for coping with reality”?²⁷ Third, Swindal begins and ends his book with reference to Homer’s *Odyssey*. The allusion to Theodor Adorno and Max Horkheimer is clear; for example, discussing Odysseus, they note, “The word must have direct power over *fact*; expression and *intention* penetrate one another The word is emphasized in order to change the *actuality* [emphasis added].”²⁸ So, though Adorno and Horkheimer may fall outside the scope of the goal of his book, perhaps a discussion of their relation to discursive pragmatism might fill in the reference to Homer. Fourth, Joas seems to hold a wider typology of action than that provided here,²⁹ and he also

²⁷ Richard Rorty, *Objectivity, Relativism, and Truth: Philosophical Papers Vol. I* (Cambridge: Cambridge University Press, 1991), p. 1.

²⁸ Max Horkheimer and Theodor Adorno, *Dialectic of Enlightenment*, trans. J. Cumming (New York: Continuum, 1993).

²⁹ Hans Joas, *Pragmatism and Social Theory* (Chicago, IL: University of Chicago

seems to be critical of a singularly means-ends analysis of action. Lastly, placing Heidegger in the discursive pragmatist lot might require some justification.

However, these points do not detract from the overall success of Swindal's project. Swindal's book is worth the time to read, and could be used to supplement a number of different courses in interesting ways, such as courses on agent causation, the history of pragmatism, post-analytic methodology, or the history of action theory, among others.

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Gotthelf, Allan, and James B. Lennox, eds. *Metaethics, Egoism, and Virtue: Studies in Ayn Rand's Normative Theory*. Pittsburgh, PA: University of Pittsburgh Press, 2011.

Ayn Rand now counts as a figure in the history of philosophy, and there is ongoing interest in bringing her ideas into conversation with academic philosophy. The collection under review includes a number of conversations amongst philosophers who are interested in Rand not merely as a matter of antiquarian interest, but as a source of ongoing philosophical inspiration. The title reflects a focus on metaethical issues in Rand's own thought, and (potentially) in engagement with contemporary metaethics. Its aim seems to be ambiguous between allowing those committed to Objectivism to work through differences among themselves, and making her thought accessible (and persuasive) to philosophers outside the fold. As one of the latter, I am perhaps not well situated to comment on the success of the volume in the first of these aims. While I am sympathetic with Rand's work as social criticism, whether there are new avenues for addressing contemporary metaethical issues to be found in her work remains to be seen, more because that conversation doesn't quite seem to be fully under way than because Rand's thought has nothing to offer. The impression this collection produces is that there is lots of fertile territory left to be explored.

The volume begins with a discussion between Darryl Wright and Allan Gotthelf concerning what we might call the foundations of practical reason. How do we come to have reason to do some things rather than others, on Rand's view? Wright's Randian account maintains that all reasons to act are in virtue of an "ultimate end" (p. 3). What are we to say about this end, and the rationality of having it? Rand disdains the Humean view that ends are determined by passions. Instead, "we desire what we value," and values depend on the judgments of one's mind (p. 5). Rand also dismisses the idea that values are rational in virtue of being of either "intrinsic" value or (per Kant) some sort of constitutive feature of rational agency (p. 6). This is because such conceptions of value seem to divorce value from benefit (though we might wonder what benefit is, if not some form of value). Rand's idea is that values are grounded in teleology: in the goals and purposes of living organisms. Life is the ultimate value.

It appears that Objectivism faces a kind of dilemma here, familiar from Plato's *Euthyphro*. Rand's view of value begins with a choice to live: Wright says humans face a "basic alternative" of whether to continue or discontinue their lives (p. 24). From that choice come all their reasons for acting. But do we have reason to make that choice? Or do we have reasons only in virtue of having made it? Is our choice a response to value (perhaps to the value of life) that is there independently of our choice? Or does our choice

to live bring value into being, where otherwise there would be none?

Wright and Gotthelf agree that Rand rejects the first of these alternatives as “intrinsicism.” Gotthelf’s essay is a response to an earlier article by Douglas Rasmussen in which he makes the case that only the first alternative would avoid making that basic choice “arbitrary”—an “irrational or arrational commitment” (quoted p. 34). Gotthelf maintains that Rasmussen’s position is inconsistent with several Objectivist doctrines, and that resisting it by (in effect) taking the second horn of our dilemma does not commit one to thinking that the choice of life is “optional” or “arbitrary.” Wright too is committed to resisting Rasmussen’s interpretation, though he aspires to offer a “third alternative” (p. 30). But it is not clear how Gotthelf can avoid the conclusion that choosing to live, as we make that choice, is arbitrary, and it is also not clear that there really is a third way on offer.

Why is the basic choice not “arbitrary” (p. 43)? Gotthelf answers this question retrospectively. Once life is chosen, we endorse it in a way that gives us “all the reason in the world” to see that choice as non-arbitrary. However, at the moment of choice, it does seem to be arbitrary. It is neither causally nor “morally” necessitated. (It is not clear whether on Objectivism there might be something further to being rationally necessitated.) If the choice is truly “not justified by anything prior” (p. 43), then it would indeed seem to be arbitrary in a crucial sense. This is so even if (as Gotthelf argues) it is not “optional.” Here is a missed opportunity to explore the possibilities of voluntarism, a point of tangency with contemporary metaethical thought. Engagement with, for example, the voluntarism in Christine Korsgaard’s neo-Kantian metaethics could be enlightening.¹

Nor does Wright’s “third alternative” fare better. Wright rejects Rasmussen’s interpretation as indistinguishable from intrinsicism (p. 30). How is his view supposed to differ both from intrinsicism and from the voluntarism on offer from Gotthelf? The “third way” appears to rest on Wright’s claim that there are “non-deliberative grounds” for the basic choice (pp. 28 and 32), but it’s not clear what this might mean. The example he draws from Rand’s *The Virtue of Selfishness* is that of experiencing life as a value (p. 28). But this seems to fall on the “discovery” side of the *Euthyphro* dilemma: that life has value is what explains why we are able to experience it that way. It would appear to have that value prior to and independent of choice. Wright is plainly not happy with that implication, as he writes of one “choosing to live while already engaged in that process.” This, he says, amounts to a “ratification” of a “commitment to a value” that “one has already to some extent embraced in a less reflective way” (p. 32). But at this point we are far from the idea of “basic choice” or a “basic alternative.” We are already living lives with some degree anyway of organic success, so the choice in question does not seem to be one of existence or the lack of it, but rather what

¹ See, e.g., Christine Korsgaard, *Sources of Normativity* (Cambridge, MA: Cambridge University Press, 1996), esp. Korsgaard’s exchange with G. A. Cohen in that volume.

form that existence should take. That's a perfectly intelligible idea: in fact, it is the very idea animating ancient Greek ethics, from Socrates forward,² and it brings with it its own Euthyphro-like problems.³ But Wright does not admit that this third way really takes us beyond a basic choice to live, to a decision about how to live.

The second set of essays is an exchange between Irfan Khawaja and Paul Bloomfield over the distinctiveness of Objectivist ethics and moral epistemology. Khawaja positions his essay as addressing the “foundations of ethics.” One problem with approaching the topic in this way is that questions about such foundations might be any of a variety of questions: perhaps something like questions about normative foundations, or “grounds,” or the like, of the sort H. A. Prichard notoriously addressed.⁴ Or they might be epistemic foundations: grounds for moral belief. However, it is not agreed by all hands that our relationship with morality is one of belief, as opposed to other kinds of attitudes. (Expressivists, for example, resist the idea that belief is what morality is about.) Finally, “foundations” might invoke some sort of hybrid question, in which we are trying to make sense of our moral beliefs and experience, at least in part in hopes of shaping our future actions. Perhaps Rand's question, “Why does a man need a code of values?” (quoted p. 61) might naturally be given this interpretation. These are really different projects; answers to one may well not work as answers for the others, but Khawaja treats the epistemic question as a “master” question. Thus his offer of a perceptual model of epistemic foundations (p. 63) fails to engage lots of questions about “foundations” that moral theorists want to ask.⁵

But understanding Rand's question of why we need ethics outruns Khawaja's approach to the topic in other ways. If we are asking “why” questions, we are asking for reasons. If we are in the business of exchanging reasons, we are already engaged in a normative practice; we are already considerably beyond the point at which a “basic choice” of survival or its opposite is at stake (as Wright points out). And the fact that we will die if we do not undertake action to live is simply a natural fact. It is, as Derek Parfit

² See Julia Annas, *The Morality of Happiness* (New York: Oxford University Press, 1993), esp. Chap. 1.

³ I discuss some of these dilemmas in Mark LeBar, *The Value of Living Well* (New York: Oxford University Press, 2013), Chap. 11.

⁴ H. A. Prichard, “Does Moral Philosophy Rest on a Mistake?” *Mind* 21 (1912), pp. 21-37.

⁵ How perception fits with a “concept-based” view of Objectivism (p. 65) is another question. We don't perceive norms for concept-formation, but I leave aside this question.

would put it,⁶ normatively significant, but not in itself normative—at least it is not obvious that or how it is itself normative. If there is in Objectivism an explanation for how such undoubted causal facts themselves constitute norms, that would indeed be a useful idea to bring to the conversation. But simply pointing out the causal upshots of our conduct isn't enough; that will help only to see causal implications for commitments we have already undertaken.

In his response essay, Paul Bloomfield (speaking from the perspective of analytic metaethics) notices these elided methodological and substantive questions in Khawaja's account (p. 78). However, he makes a positive argument that there are continuities between Rand's metaethics and a number of other strains in contemporary metaethics. This is particularly true of the eudaimonist tradition, into which (he says) Rand's normative views "fit just fine" (p. 83). For reasons I have indicated, and others,⁷ I am somewhat more skeptical on that point than is Bloomfield; it is a further question whether in the end the aim of Khawaja's work (and that of other contributors) is fit or something more like reformation.

The third pair of essays addresses the nature of Rand's egoism, and in particular its relationship to virtue. Christine Swanton argues that that relationship can be illuminated by considering the same relationship in Friedrich Nietzsche. The prompt for her discussion is Tara Smith's account of Rand as a virtue theorist.⁸ A crucial question is what sort of reason-giving force the interests of others have for the virtuous. It is possible to have a version of "virtuous egoism" on which one's own interests come to repose (in part) in the interests of others, and that opens the space for those interests to count within a straightforwardly egoistic view. Does Rand countenance this possibility? To answer this, we must understand the relationship between value and virtue. Is virtue capable of bestowing value (so to speak) on its own? Or may we understand virtue only as in the service of value independently understood and constituted? Swanton suggests that there is a case for the first claim, that (like Nietzsche) Rand can maintain that it is in one's interests to cultivate a wide conception of those whose interests we have a stake in (pp. 98-99). Since this means we can have reason to benefit others through virtuous action, we might be justified in ascribing to Rand a conception even of virtuous altruism (p. 91).

In response, Darryl Wright agrees that to get at Rand's egoism it is crucial to understand the value of other people, and along with it the notion of "sacrifice" that her account can countenance. Objectivism does not

⁶ Derek Parfit, "Reasons and Motivation," *Proceedings of the Aristotelian Society*, Supplementary Vol. 71 (1997), p. 124.

⁷ I make a number of these points in my "Book Review of Tara Smith's *Viable Values*," *The Journal of Value Inquiry* 35 (2001), pp. 575-79.

⁸ Tara Smith, *Ayn Rand's Normative Ethics: The Virtuous Egoist* (New York: Cambridge University Press, 2006).

countenance a “strong” conception of sacrifice (one which involves acting against an agent’s own rational hierarchy of values; p. 104). But a “weak” sense of sacrifice (acting against an irrational hierarchy of values) could make sense, since there would be some sort of rational justification for giving up one’s values for those with improper values and judgment (p. 105). Wright also concurs that virtue is not purely in the service of values—it may sometimes justify action in its own right (p. 109). However, Wright denies that there is any substantial notion of altruism which can rightly be attributed to Rand.

The last six essays in the volume are in effect a symposium on Tara Smith’s 2006 book on Rand and virtue. Helen Cullyer follows Swanton in putting pressure on Rand’s egoism as Smith understands it. As Smith has it, on Rand’s view we are “predominantly contractual traders” (p. 120), but Cullyer argues that this is implausible as an account of our social nature. If instead we recognize the “multiplicity of social relationships” that we see contributing to our flourishing, we end up with a very different notion of self-interest from the “rational maximizer” one might expect to emerge from Objectivism (p. 123). Cullyer even suggests that Smith’s understanding of Rand induces a notion of respect for rights as a “common interest,” an “impersonal good” (p. 122). Whether or not this is a helpful conception of rights (I believe it is not), at this point the “virtue” in “virtuous egoism” would seemingly have led us a long way from the Objectivist root.

Indeed, this is precisely the point at which Smith pushes back in her response, arguing that Cullyer’s reading takes as oppositional the “common” interest and my own. Instead, self-interest has a crucial kind of priority to the common interest: “this particular ‘our,’ I come to realize, is the best way of promoting ‘my’” (p. 127). Smith also rejects the idea that rights are a matter of impersonal good, rather than instrumentalities toward advancement of self-interest.

Christine Swanton’s discussion piece returns to the issue of the relationships between virtue, value, and sacrifice. In particular, she argues, we must take account of the work of virtue in determining what forms of sacrifice Rand does, and does not, countenance, and we must also recognize virtue’s not merely instrumental contribution to value (p. 135). It is not mere survival that is the basic value of Objectivism, but survival in a mode proper to human beings. That introduces an essentially normative element into Rand’s thought, and that normative role is filled out by virtue. But (in an echo of her earlier argument) she maintains that the other-regarding dimension of virtue on Objectivism is ultimately too narrow.

Smith’s reply is that value must have priority, and that “virtue depends on value” (p. 145). Virtues are what they are solely in virtue of their service to an agent’s objective interests. This instrumental view of virtue sustains the priority of value, but it seems to have an oddly contingent result. Instrumental relationships are causal and probabilistic. It would seem that one is merely not playing the odds correctly by failing to be virtuous. If the likes of Wesley Mouch, the consummate parasite of *Atlas Shrugged*, can survive

and thrive without Objectivist virtue, what is the argument against parasitism? If the reply is that, while he is surviving organically, he is failing to thrive in the way proper to humans, that would seem to return us directly to Swanton's concern that we must first identify what normative content constrains survival, rather than expecting that content to be supplied by survival or self-interest.⁹

Finally, Lester Hunt presses on Smith's characterization of virtue in Objectivism in a different way, arguing that it much more closely resembles Aristotle's conception of virtue as a matter of character. Part of the point of Hunt's critique is that it is easy to overemphasize what we might call occurrent control, versus a kind of diachronic control, over what we do. While it is true that, as Smith argues, "feelings are not under a person's direct control" (quoted on p. 155), what we are capable of at any given time is to a significant extent the product of our past choices (p. 156). That permits us to have a broader conception of what it is that we may be credited or blamed for.

In reply, Smith pushes back on degree of control: "But it is not the case that a person chooses all his beliefs and values as a mature, fully informed and rationally capable adult, such that any 'wayward' emotions he experiences are proof of moral failings" (p. 160). Her argument against virtue as a trait of character, it seems, depends on the claim that Objectivist ideals are aesthetic, as well as moral. However, this is no kind of objection to an Aristotelian conception of virtue, which is aesthetic as well as moral. *To kalon*, which is the object of action for Aristotle's virtuous person, is "the fine or noble"—fully aesthetic and fully ethical. So in the end I am not sure what disagreement there is here.

Overall, this volume takes up a wide variety of metaethical issues that are important both for those who look to Rand for inspiration and those who do not. One can hope the conversation continues, for mutual benefit.

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⁹ I make a similar point in LeBar, "Book Review of Tara Smith's *Viable Values*."

Eagleton, Terry. *Why Marx Was Right*. New Haven: Yale University Press, 2011.

The world is divided into two parts—the one that hears Marxism with discord, and the one that still wishes to romance the idea. We can find these two factions not just in the West, but also in the non-Western world, where Marxism has made its influence felt. Marxism is now viewed with utter coldness, and is treated as a metaphor for violence. One witnesses a wide variety of allegations against Marx(ism) for which neither Karl Marx nor Marxism can really be held responsible. The disparagement of Marx is always accompanied by strong claims about the “triumph of capitalist democracy.” It is to be noted that it is no easy task to propose how the world ought to progress, and while progressing, what it needs to take account of. Critics have given several explanations as to why Marxism is an outmoded doctrine, though they are myopic in nature. Is it that Marx’s ideas are off the target, no longer suitable to our times? Many scholars in the past opined that there is a good sense of anachronism in his thought. Is that still the case? How do we interpret and evaluate the nature of the world we live in in the advanced globalized world?

These questions require a cautious but ruthless critical sense. Terry Eagleton’s *Why Marx Was Right* very elaborately delineates all of the possible objections against Marx and Marxism. At the beginning and the end of the book, Eagleton asks two striking questions: Can Marxism now be safely buried? (p. x) And was ever a thinker so travestied? (p. 239) His analysis traverses an interesting path between these two questions, offering several arguments that tell us unashamedly that there is still much sense in Marx, that he was right on many fronts.

First, Eagleton takes on the allegation that “Marxism is finished, has no relevance in the post-industrial society” (p. 1). In this claim, we can see the self-righteous attitude of post-industrial capitalism, suggesting that the Western capitalist framework has resolved all of the dilemmas of inequality and problems of justice created by the excesses of wealth and power. “All-is-well” is the principle on which capitalism functions. Eagleton rightly mentions that the only reason for critics’ discrediting of Marxism is its political impotence. Certainly, Marxism is not *off the agenda*. On the other hand, the more capitalism growls about the irrelevance and demise of Marx(ism), the more such cavils make Marxism relevant. This relevance is due to the deplorable consequences of capitalism: Eagleton rightly mentions Mike Davis and Tristram Hunt’s reference to the pathological conditions in which people live in many parts of the world, under the self-proclaimed

capitalist triumph (emphasis added).¹ Eagleton rightly asks, “What if it is not Marxism that is outdated but capitalism itself?” (p. 9) Asserting that Marx was right, we have to ask how Marxism manifests itself in the socio-political structures of grossly unequal societies.

The second allegation is that Marxism is good only in theory, and in reality has resulted in violence, tyranny, and mass murder on an inconceivable scale (p. 11). There is half-truth in this allegation. However, it is not just Stalinism, Maoism, and other socialist pathologies that bear the burden of violence in the twentieth century. For instance, the violence of cold war and post-cold war politics took place because of *both* capitalist and communist actions and policies. That capitalism’s crimes are not as organized as socialist crimes does not wash its hands of sin. The crimes of capitalism are and have been an on-going affair, and in many ways worse than those of socialism. Eagleton gets it right in stating that the wealth capitalism claims to have brought in is at the cost of the woeful lives that the masses of people have lived and are living (p. 15). What has the wealth of capitalism created? And for whom is it created? These questions need not be purely ethical but discreetly evaluative. How should scarce resources be managed for the benefit of all? With several kinds of inequalities that capitalism supports (in the name of progress and development), Eagleton’s concern is very genuine, that socialism proved impossible where it was most necessary (p. 20). But how does one judge the successful manifestation of an idea in society? Both capitalists and socialists ought to do some soul-searching in understanding their respective theoretical foundations and their practical application. However, Eagleton’s defense of market socialism is not convincing in the sense that he has yet to prove that these three—private property, class, and exploitation—are done away with by the advent of market socialism (p. 24).

Is Marxism deterministic in the strict sense of the term? This last allegation discussed is that Marxism is a form of determinism, stripping us of our freedom and individuality (p. 30). Eagleton here offers a lengthy discussion of Marx’s dictum that “[t]he history of all previously existing societies is the history of class struggle.” Marx was mainly concerned with the evolution of productive forces over a period of time, and the manner in which people share the surplus (the primary concern of the class-struggle). This is well understood only when one understands the dynamics of the relationship between the forces of production and the relations of production. Which prevails over the other? Is there any dialectic involved? Marx talks of change, resulting from the conflict between the forces and relations of production from one era to another. But why does not the conflict end in one phase? Or had Marx dreamt of sowing the seeds of a total resolution to class conflict under

¹ See Terry Eagleton, “Was Marx Right?” *Commonweal*, March 28, 2001, accessed online at: <https://www.commonwealmagazine.org/was-marx-right>, citing Mike Davis, *Planet of Slums* (London: Verso, 2007), and Tristram Hunt, “War of the Words,” *The Guardian*, May 8, 2009, accessed online at: <http://www.theguardian.com/books/2009/may/09/engels-condition-of-working-class>.

socialism, attaining completion in communism? Eagleton asks an appropriate question here: “[H]ow can we know that a specific set of social relations will be useful for revolution?” (p. 42) It is incumbent on us to ask what kind of changes in social relations occurs owing to the expansion of productive forces. Asking this question would mean that there is no necessity in the dominance of productive forces over social relations (p. 44).

If Marxism is deterministic, its determinism arises from the excesses of capitalism itself. These unendurable excesses, by history’s internal logic (of one stage paving way for the other) make socialism inevitable. In this sense, Marx rightly passes the buck onto individuals—what they do as free men and women becomes more central to our understanding of the human condition. Inevitability in Marxism certainly has some normative appeal. “Socialism is inevitable” can also be interpreted as saying that socialism ought to take over the mischiefs of capitalism. Avoiding randomization and adopting the deterministic principle may sound as if Marx is talking about the iron laws of history. But these laws are not strictly deterministic because they are not teleological (p. 57). Marx’s determinism does not operate on the law of necessity, but as successive steps of the human condition. Here, transformation is also a moral issue. It is ethical in the sense that it tries to understand the relationship between material wealth and moral health. Eagleton asks another brilliant question: “How long would socialism have to survive, and how vigorously would it need to flourish, to justify in retrospect to the sufferings of class history?” (p. 61). This question reflects our apprehension that socialism promises too much, promises backed only by the yet bigger promise of overthrowing capitalism.

Is this bigger promise totally utopian in nature? Eagleton addresses critics’ allegation that Marxism is utopian, and that it believes in the possibility of a perfect society, without hardship, violence, suffering, or conflict (p. 64). This criticism indicates utter unreasonability on the part of such critics. Eagleton is right in reiterating and defending the point that Marx was never desirous or hopeful of a perfectly conflict-free society. He aptly asserts that it is capitalism that trades in such a future, if one looks back into its historical growth (p. 64). If there is a better world to be attained, Marx is right to claim that that better world is a world of material interests only. In this sense, emancipatory politics needs to have a renewed understanding. Breaking away from the present also amounts to a certain break-up with the past. Which characteristics of the past will be passed on to the new society? Marx expresses his concern for this in his *Critique of the Gotha Program*. Breaking away from the present may also mean that the present is subject to extreme sacrifices to build a promising tomorrow. This forethought for the future is not to be confused with the futuristic fantasies central to liberalism, but are well-grounded in the prosaic workings of the present (p. 76).

Is there then a way to avoid the brute principle of liberalism? (p. 86) In the pursuit of socialism, flourishing in common is the goal. This also involves the exercise of freedom of men and women in various ways. This is the reason why human beings are treated not only as “species beings,” but also

as “material beings” (as needy, sensuous, and physiological beings [p. 131]). So too the future is based on material conditions. But how does this change from the present to the future occur? For Marx, says Eagleton, it took centuries for capitalism to get rid of feudalism (p. 93). Similarly, it may take even longer for the fall of capitalism, when its influence shatters under the weight of widespread discontent. It may take more time due to capitalism’s several modes of self-perpetuation.

Eagleton proceeds by mentioning the fifth allegation, that Marxism is nothing but mere economic determinism. Marxism gives priority to economics but does not make it absolutely deterministic. Critics point out that there are many other determinant factors as important or more important than economics. They claim that Marxism is indifferent to these pluralistic, hierarchically organized factors; they intend to strengthen their critique of Marx to the effect that Marxism leaves no place for individualism. Eagleton counters these accusations with two important points: First, it is mere oversimplification to reduce Marxism to economic determinism. Second, production is not just the making of machines and turbines (p. 116). Marx seems to have been concerned with the aesthetics of production and took production to be an art form (Marx’s view is that human beings are productive creatures [p. 138]). Production has to be carried out for its own sake, for human enjoyment (p. 124).

The preceding point answers the sixth allegation against Marx, namely, that his materialist obsessions have created human atrocities. In fact, this priority of the material enables the working class to expel the dreary blight of capitalism. For only through an alternate mode of material production can one overcome the ill fate under capitalism. This emphasis on materiality confers value on the body, refuting idealist versions of the mind/body dichotomy. Reason on this view becomes consciousness placed in the *material* condition of the organism possessing it. Besides treating economic activity as a thing-in-itself, human beings should be able to shape a narrative out of them. A very significant point needs to be mentioned here: We see that there is an emphasis on “flourishing in common” in a way that “reconciles individual and society.” Marx’s emphasis on materiality implies a certain space for others—everyone can make a living out of the limited resources available to all of us.

The seventh allegation against Marx is that he is too obsessed with class-consciousness. Post-industrial and post-capitalist thinkers find Marx’s class-centric orientation futile. Their worry is that contrary to Marxism there are others besides the Marxian working class who toil and whom Marxism ignores. Furthermore, critics claim that women are totally under-represented within Marxism. Eagleton rebuts the latter point by observing that from the time of Marx to the era of the Third World, woman has been a symbol of the proletariat (p. 169). There may well be a point in expanding the scope of the working class, including people involved in the service and information sectors. Even then such an explanation may not serve the purpose. For Marx, the proletariat is not just *a* class of workers, but a class bestowed with the

power of revolutionary, solidaristic fervor. This characteristic is missing in those classes that emerged after the apparently widespread recognition of the “triumph of capitalism,” namely, the capacity to fight exploitation. The drawback of this broader “working class” is its inability to recognize that it is being exploited, and its inability to find fault with capitalist democracy. Eagleton is right to say that revolution is impossible from those sections of society where some people, such as capitalists, are contented with their conditions (p. 193).

Breaking away from the present, seeking change in the social relations of production, demands real action on the part of those who desire that change. This way, we have seen, the action in question is not mere intellectual dialogue. But critics attack Marxism stating that it advocates violence and espouses the principle that “the end justifies the means” (p. 179). Eagleton discusses the claim that there are also peaceful revolutions (velvet revolutions) (p. 180). If revolution takes place peacefully, then how revolutionary could it be? Eagleton mentions two interesting points here. First, he rightly opines that political changes occurring by a slight push will not have an impact. Second, he aptly mentions Walter Benjamin’s understanding that revolution means applying emergency brakes to a speeding train (p. 187). Here one can compare and contrast the “kind” of impacts both peaceful and violent revolutions have brought. However, Eagleton’s point that successful revolutions are those which end up by erasing all traces of themselves (p. 181) is not convincing. As mentioned above, there are cases where socialist revolutions brought terror and violence. Confining oneself to this allegation shows the prejudicial attitude of the critics.

Furthermore, critics suggest that violence-laden socialism results in a despotic state that violates individual freedom (p. 196). Marx’s concern should be grasped properly. Ultimately, who gets the favor of power structures in the society? It is needless to restate how the state under capitalism favors the rich with token recognition of the poor or the downtrodden. Eagleton alerts the reader, stating that “state socialism” itself is an ambiguous concept. However, this does not resolve our perplexities altogether. The state under socialism may be repressive for the reason that all private property needs to be abolished, and as Marx says the state collapses under communism (p. 208). Even if we admit this for a moment, however, it is plausible enough to think that “administrative bodies” will turn repressive as much as, or even more than, the state. Here, we are reminded of critics’ allegation that Marx(ism) has a somewhat weak sense of politics and power (with respect to political impotence and political quietism). Eagleton’s analysis is a balancing act here. Marx’s treatment of power as a thing-in-itself, he argues, has both positive and negative dimensions. Its positive aspect is that as power-in-itself is not to be treated as an instrument of domination. On the other hand, it is negative because of its luxuriating nature for its own sake.

The point discussed above somehow reflects critics’ feeling that there are perspectives other than Marxism that have understood power structures properly. The final allegation discussed by Eagleton is that many

radical movements have emerged outside Marxism, and whatever political left remains takes account of the post-industrial, post-class world (p. 211). Critics assert that questions about sexuality, feminist politics, and consumption are some of the significant worries that Marxism overlooks. But Marx suggests that all suffering can ultimately be resolved through class struggle. Going by this argument, it is implausible on the part of critics to say that the scope of Marxism is too narrow. Eagleton rightly informs readers that Marxism has inspired three of the greatest political struggles of the modern age: resistance to colonialism, emancipation of women, and the fight against fascism (p. 216). What is the nature of these struggles? Have they embraced whatever good was reminiscent in those things which they opposed? Eagleton mentions two important points of postmodernism that lack validity: one is that Marxism is Eurocentric, and the other is that Marxism is “biologistic” (p. 232). Though much of the emancipatory rhetoric is Eurocentric, the urge for emancipation always has universal appeal. Second, the reciprocal relationship between Self and Nature is not necessarily biological reductionism. Eagleton rightly mentions that Marx’s inclusion of human society into natural history genuinely calls for human dignity and welfare.

On the whole, Eagleton has adequately addressed all of the allegations of significance to both Marx and Marxism. From the discussions above we can strongly assert that there is no need to bury Marx(ism), no matter what critics say. Eagleton’s attempt is commendable in this regard. Critics’ claims that Marxism has less or no relevance in the post-industrial and post-capitalist world are a mere counterfeit. If capitalism is a righteous doctrine, then it has to explain why there is so much suffering in the world it has created. It cannot escape with the claim that capitalism is not, but socialism is, responsible for it, or by asserting that suffering is the fate of the people. Eagleton’s arguments point out that people in the age of the assumed triumph of global capitalism should be alert to the possibility of seduction by liberal-capitalist fantasies. A genuine question emerges here: Does capitalism protect individual freedom in the real sense? Whatever problems critics say that the Marxist framework fails to address, are present in capitalist societies as well. Retaining the relevance and significance of Marx enables us to have deeper reflection on what exactly human freedom is. For all of the problems we face today, mere piecemeal and peaceful movements will not erase what needs to be erased. For that we need large-scale integration of revolutionary concerns into a single revolt, as Marx intended. We need, as Marx thought, a class of classes (proletariat).

Nevertheless, Eagleton’s defense of Marxism should not make Marxism into an absolute idea. Eagleton’s book would have been improved by elaboration on three points. (1) It is obvious that Marx’s understanding of human nature is totally different from liberalism. By contrast with liberalism, Marx attributes a hardcore moral sensibility to the working class. Can we sustain that? (2) In Marx’s determinism, inevitability also speaks as desirability, which ultimately makes communism the desired human condition. Eagleton could have thrown more light on the idea of *closure* in

Marx. What if history fails and inevitability goes off the track? (3) While talking about transformation, Eagleton might usefully have elaborated on Marx's scheme of the state's collapse into an "administrative body." There are several instances in which this collapse does not appear to have happened, creating socialist states as sponsors of real terror. Eagleton doesn't say enough to dispel the relevant fears.

It is always difficult to write a book on Marx, especially in the current climate of opinion. But Eagleton's book is enchantingly lucid, informative, and an eye-opener. It offers clarifications that would help not only those sympathetic to Marx and Marxism, but also to those unsympathetic to both. Above all, the book comes at the right time in history—when so many are clouded by the fantasy of global capitalist triumph.

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Younkins, Edward W. *Flourishing and Happiness in a Free Society: Toward a Synthesis of Aristotelianism, Austrian Economics, and Ayn Rand's Objectivism*. Lanham, MD: University Press of America, 2011.

Edward W. Younkins's book, *Flourishing and Happiness in a Free Society*, does an excellent job at integrating key insights from various philosophic and economic traditions to formulate a consistent moral framework for society. The book is best suited for those familiar with philosophy and inclined to support a minimal state. While Younkins does not write for the general public, he does a great job of educating readers who have the intellectual power to tackle difficult topics but lack prior exposure to the details of the material he discusses.

The book is repetitive at times, which may bother those well-schooled in the arguments he covers, but this is a strength of his writing. Because Younkins is always careful to define terms and restate his argument, the book is easy to understand in a single reading. Even those knowledgeable in the free-market literature will walk away from his book with a deeper appreciation for the theories that helped to shape their world view.

That being said, his argument does cover a significant amount of work, as any proper integration should. In order adequately to grasp Younkins's reasoning, it is necessary to retrace the outline of his argument. In what follows, I provide a distillation and interpretation of that argument, and conclude with praise for Younkins's unwavering defense of free markets based on ethics rather than economic utility calculations.

Two powerful schools of thought in the individual liberty tradition are the Austrian school and Ayn Rand's Objectivism. Often, they are deemed incompatible since Austrians emphasize the subjectivity of value, while Rand argues for its objectivity. Younkins shows that upon further examination, it is clear that Austrian economics and Objectivism are not just compatible but inextricably linked. This integration leads to a stronger understanding of natural law, human flourishing, and natural rights. These three concepts all build upon one another and are able to form the moral foundation for a free society.

Ludwig von Mises provides a solid basis for economics through his theory of human action—namely, through his *a priori* and universal principle that humans act purposefully. From this fundamental axiom, it is possible to deduce general principles of economic behavior, but impossible to infer the concrete consequences or details of particular human actions (p. 31).

Mises's economics does not study what is in *objects*, as the natural sciences do, but instead studies what is in *subjects*. Economists qua economists do not approve or denounce individuals' ends. They do nothing more than ask whether the means chosen are appropriate to those ends. Mises's subjectivist approach takes personal values as given and assumes that individuals have different motivations and prefer different things; buying and selling takes place precisely because people value things differently. Since each human constantly values and acts purposefully, all human actions can be viewed as volitional attempts to create more satisfactory states (pp. 38-39).

Murray Rothbard argues that Mises's law of human action can be viewed as a law of reality instead of as a law of thought. In other words, he justifies the action axiom as a law that is empirical rather than *a priori*. It is empirical in the sense that it is self-evidently true once stated, consistent with human experience, and not empirically falsifiable. Initially, the concept of action is inductively derived from perceptual data. The whole systematic structure of economic theory can then be deduced from that notion (p. 22).

Aristotle and Ayn Rand are both naturalistic realists who affirm reality, reason, and the strictly this-worldly value of human life. Rand's Objectivism, echoing the insights of Aristotelian logic, is founded on the axioms of existence, identity, and consciousness. As with the Austrian axiom of action, Objectivism holds that the denial of its axioms is illogical because their denial entails their affirmation: to attack the axiom is in that act to affirm it. For Rand, concepts or essences are epistemological, which means that they are contextual and relational. This differs from the metaphysical view of concepts often ascribed to Aristotle. Essences, for Rand, are epistemological products of classification processes that reflect the best knowledge a person possesses about particular entities. They are ideas or concepts about some part of reality, but do not themselves exist in reality. Forming these abstractions and discovering the nature of real things existing in the world requires the use of mental effort—it is not automatic (pp. 45-46).

Rand agrees with the Austrian economists that the concept of value is only meaningful in relationship to some valuing consciousness. However, she goes further and extends her analysis beyond economic to moral value. Her ethics of egoism is derived from man's nature as a rational being and as an end in himself. What is good is an evaluation made by one's consciousness, informed by the facts of reality, which guides the agent's pursuit of flourishing. Obtaining objective knowledge of both facts and values is possible since concepts are produced by a person's consciousness in accordance with reality (p. 47).

Austrian claims of value-subjectivity and Objectivist claims of value-objectivity are compatible because they involve different levels of analysis. The Austrian's value-subjectivity complements Rand's sense of objectivity because human flourishing on an objective level transcends subjective value preferences (p. 137). Austrians emphasize value-neutrality in the context of economic inquiries about efficiency—whether agents are choosing the right means to attain values taken as given. On the other hand, Objectivist

philosophy is concerned with the moral evaluation of the underlying values themselves. The Objectivist metaphysics and epistemology also turn out to be consistent with the Rothbardian—that is, empirical, or *a posteriori*—interpretation of Mises’s action axiom.

While Younkins acknowledges that Mises’s view of economics is a value-free science concerning instrumental (means-end) rationality, he also argues that, “although the world of praxeological economics, as a science, may be value-free, the human world is not value-free” (p. 50). On the Objectivist view, value is conditional upon the antecedent phenomenon of life, and value’s objectivity derives from those specific actions that tend to promote human life or flourishing. Human action, the subject of both economics and morality, can be seen as the common denominator and critical link between economic and moral principles. When objects or actions help a person to reach his particular form of well-being, those objects or actions are objectively good. In other words, value is a relational quality dependent on the subject, object, and context or situation involved (p. 49).

Austrian economics is suited for evaluating situations with respect to appraising means but not ends. However, Misesian praxeology and its value-free economics is not enough to establish a moral argument for a free society. Instead, the truth of a systematic, reality-based, ethical system must be demonstrated. Younkins argues that natural law provides groundwork for such a theory; both Objectivism and the Aristotelian idea of human flourishing are based on natural-law-type ideas.

Natural moral law derives from the nature of humans and the world. Discoverable through the use of reason, it is applicable to all persons. Its basis on the nature of the entity to which it relates provides its objectivity. Human nature comes from rational agents with free and self-determinative wills who are capable of deliberation and choice. Humans’ distinctiveness from other living species is their ability to initiate and maintain conceptual levels of awareness (pp. 111-12). As a result, they can make choices about right and wrong, and this leads to the requirement of a sphere of authority others must respect. Natural law theory provides grounds for establishing what government’s proper role is and subjects government itself to morality. The moral force behind a constitution is the idea of higher laws restricting governments’ operations (p. 118).

Natural law opposes the ideas of conventionalism and positivism to the effect that the principles of morality are relative, subjective, and changeable. Instead, it provides universal criteria by which positive laws can be judged since, through natural law, a standard or measure is offered for assessing whether something (e.g., a human being) is functioning well or not (p. 115). Natural law provides the groundwork for an Aristotelian concept of human flourishing and links moral commitments to objective facts about the world.

Aristotle holds the position, based on philosophical realism, that *eudaimonia* (or human flourishing) is the natural end of individual human actors. Younkens follows Henry Veatch's reading of Aristotle and emphasizes this end's inclusivity, which means that good is objective, but not identical, for everyone (p. 107).¹ An individual's pursuit of flourishing is driven by reason, and reason requires consistent practice of the virtues. As neo-Aristotelian scholars Douglas Rasmussen and Douglas Den Uyl argue, such a "virtue ethics" is agent-relative, meaning contextual and relational. Individuals need correctly to understand, desire, and strive to attain objective values in trying to live flourishing lives.² Virtuous activity is a part of an individual's good; it is guided by reason in identifying, deliberating upon, and choosing one's ends and means.

Aristotle also states that *eudaimonia* is achieved through purposeful, rational conduct. Human flourishing is always particularized and there are inextricable connections between virtue and self-interest, meaning that individuals are, ontologically, the primary beings. Thus, Aristotle's *eudaimonia* is formally self-perfectionist since normative reasons for individuals choosing particular actions stem from their pursuit of flourishing. Rand clearly belongs to the Aristotelian tradition.

Neo-Aristotelian, self-perfectionist approaches to ethics provide a better understanding of natural rights that leads to foundations of a morally defensible state. A primary question of political philosophy is, "How is it possible to have an ethical basis for a diverse society that will not require that one form of human well-being be preferred to another?" This attempt to avoid moral cannibalism may be termed *the problem of integrated diversity*. The solution to the problem is found in a necessary condition for, and operating condition of, human flourishing. That characteristic is *self-direction*, and without it no other instances of individualized flourishing can take form. This requires the political order's primary focus to be securing the possibility of self-direction.

Natural rights are concerned with regulating conditions for human flourishing. They are not directly concerned with promoting the attainment of human flourishing. This is because, as political principles, they are uniform and establish general rules of social interaction (p. 127). The naturally justified state is concerned only with outward conduct rather than virtuousness of inner states of being. In other words, the state's concern is with protecting rights, not promoting morality.

¹ Henry B. Veatch, *Rational Man: A Modern Interpretation of Aristotelian Ethics* (Indianapolis, IN: Liberty Fund, 2003).

² Douglas B. Rasmussen and Douglas J. Den Uyl, *Norms of Liberty: A Perfectionist Basis for Non-Perfectionist Politics* (University Park, PA: Pennsylvania State University Press, 2005).

The natural negative right to liberty favors no particular form of human flourishing while concurrently providing contexts within which diverse forms of human flourishing can be pursued. Rights are not principles about how people should live their lives; they are restrictions on an individual's actions while pursuing his or her own good. Self-directedness is universally necessary and central to all manifestations of human flourishing. The natural right to liberty gains moral significance since it is a social and political condition necessary for the ultimate moral standard in Aristotelian ethics (pp. 119-20).

Rights are required for moral activity since coerced action is not initiated by the agent and, thus, can never constitute a moral good. This means that “the right to liberty guarantees politically only the possibility of self-directedness which, in turn, maintains the possibility of personal flourishing” (p. 95). Unfortunately, since natural rights do not enforce themselves, securing them is the political and legal order's principal task.

A political structure protecting individual negative rights answers the problem of integrated diversity by providing necessary prerequisites for the possibility of self-direction, which opens the possibility that human flourishing can occur on individual levels within social settings. Universal human characteristics of rationality and free will require self-direction and apply to everyone equally. Because law is properly limited to what is universal, the state should concern itself only with protecting self-direction. Mutual non-interference, which is required by the negative rights doctrine, is necessary for both free and virtuous societies (p. 70). Individuals must be accorded secure moral spaces within which they can exercise self-direction and pursue human flourishing. This leads to the requirement that people deal as traders giving value for value through free voluntary exchange to their mutual benefit.

In particular, the free market process—based on private property, security of contract, and mutual consent—reflects both social cooperation and voluntarism in human affairs by accommodating people seeking to improve their circumstances by trading goods or services in non-coercive settings. The free economy inspires people to seek out others who differ from them, treat differences as opportunities, and garner mutual gains through cooperative interaction.

Freedom for people to act in their own self-interest is the fountainhead for a diversity of ideas, innovations, and experiments that lead to discoveries of new products, services, and other means of production. As Friedrich Hayek shows, innovation requires widely dispersed knowledge that exists with respect to the unique circumstances, conditions, and preferences of individuals. Such knowledge is only useful if people are free to act upon it (p. 139).³

³ Friedrich Hayek, “The Use of Knowledge in Society,” in Friedrich Hayek, *Individualism and Economic Order* (Chicago, IL: University of Chicago Press, 1948), pp. 77-91.

Any coercive interference—legal or illegal—with free market exchanges involves curtailing the freedom of human choice and action. State intervention diverts production from freely undertaken projects to those which require regulation and control (p. 43). People guided by rationality and self-interest cannot consume something before it has been produced and cannot produce without rationality. Production varies directly with the level of freedom people possess.

Capitalism is founded on the necessary conditions for personal flourishing. As Younkings says, “limited government is consistent with the nature of man and the world, recognizes the variety and diversity of man and his talents, and gives that diversity opportunity for full expression” (p. 69). People should have maximum freedom to select their own way of life barring encroachment upon the freedom of others to make their life choices. In short, capitalism is the political expression of the human condition.

I find Younkings’s argument compelling and agree that the Austrian and Objectivist schools complement one another. Their integration provides an outlook that informs our understanding of natural law, human flourishing, and natural rights. This produces a new paradigm from which a truly moral society can be built. What is certain from this insight is that individuals must be respected for the rational agents they are. The finer details of this society will have to be left to later research projects, but I believe Younkings has shown that the framework of this system is minimal government and free markets.

More scholars who advocate for liberty will have to brave the intellectual battle and tackle the specifically philosophical basis for their beliefs. Unfortunately, many arguments in support of a free society rely solely on empirical studies or watered-down utilitarianism. Those arguments may seem to fare well, but if those who favor a laissez-faire social order are winning the statistical battle, why has respect for individual liberty not increased? I contend that Younkings would agree that the issue comes down to a failure to address the *moral* concerns of individuals. I agree with Younkings that these concerns can only be addressed by building a moral rather than purely instrumental or economic case for the foundations of a liberal society. Arguments in favor of liberty need to value liberty as an end, not solely as a means for economic utility. People seek moral sanctions for their actions, and if there are not strong arguments in favor of liberty, it will not be accepted as a value.

Younkings ends with a call to action:

We must have a fierce commitment to reality and work individually and in concert with others in order to battle apathy and affection for the state, capture people’s imaginations, convince and convert people to the freedom philosophy, defeat statism, and reestablish freedom as the foundation for our political and economic systems. (p. 164)

By showing the inextricable relation between the Austrian school of economics and a consistent, fully formed ethical system, Younkins has moved the debate for a morally defensible free society in the right direction. Additionally, he has provided the moral ammunition to heed his call to action.

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O'Toole, Randal. *American Nightmare: How Government Undermines The Dream of Homeownership*. Washington D.C.: The Cato Institute, 2012.

There are many theories about what triggered the collapse of housing markets in 2008 and the resulting financial and economic fallout. Thomas L. Hogan discusses the most prominent of these in his book review of Jeffrey Friedman's 2010 edited collection *What Caused the Financial Crisis*.¹

In brief, the facts are as follows: the Federal Reserve Bank's easy money policy spawned the subprime mortgage market and consumer euphoria that led to excessive speculation in the housing market. The idea of bundling higher-risk and lower-risk mortgages as investment securities (collateralized debt obligations, or CDOs) and the credit ratings agencies' initially rosy assessments of these instruments encouraged poorly regulated (or overregulated, depending on your view) banks to hold lots of these supposedly safe investments. When credit ratings agencies downgraded CDOs after they proved to be money-losers for investors in 2008, the mixture of low capital-reserve requirements for banks, and the banks' exposure to what turned into junk bonds, left banks scrambling to find collateral to back up loans, leading to a panic on Wall Street and ultimately creating a recession-inducing contraction in the global financial industry, along with the widespread deflation of housing prices and the rise in foreclosures.

These factors have (rightly) claimed much of the attention of scholars and academics. Indeed, there is an ongoing debate over how these forces worked to produce the crisis, and new research indicates that the Fed's easy monetary policy can only explain one-third of the housing crisis. The causes and consequences of the housing and financial crisis are not a settled case.

In addition, others have pointed to the role that various federal agencies and programs have played in the past few decades in encouraging homeownership among the middle class (via the home-mortgage interest-rate deduction), and among higher-risk homebuyers (through the Community Reinvestment Act). These inducements to purchase houses ended up increasing moral hazard in the mortgage market and passed on the financial risks to individuals and society when buyers ended up "underwater" or in default.

¹ Thomas L. Hogan, "Book Review of Jeffrey Friedman, ed., *What Caused the Financial Crisis*," *Reason Papers* 32, no. 2 (October 2012), pp. 222-28. See also Jeffrey Friedman, ed., *What Caused the Financial Crisis* (Philadelphia: University of Pennsylvania Press, 2010).

All of these theories focus largely on the demand side of the housing equation to explain the bubble and its deflation in 2008. They get at the question of what drove consumers and investors to put more of their dollars into housing in the years preceding the crash. Asset bubbles are the result of the interaction of both changes in demand and supply. Randal O’Toole, senior fellow at the Cato Institute, is adamant that the true cause of the housing bubble—technically, many regional bubbles—has been sidestepped with an excessive focus on the drivers of housing demand. His theory: the bubble and the fallout in financial markets would not have happened if it were not for the biggest factor affecting housing supply—state and local growth-management laws that limit housing development: “[W]ithout the policies limiting homeownership, no housing bubble and no financial crisis would have occurred” (p. 4).

American Nightmare makes a vigorous case to the effect that growth management laws are squarely to blame for the housing bubble and the factors that aggravated it. The crux of O’Toole’s analysis is that growth management laws, by limiting where builders can construct homes, have pumped up housing prices in scores of regional housing markets in the U.S. in various waves since the 1960s. Restrictions on building are the cause of bubbling housing markets in California, Florida, Maryland, Nevada,² and Rhode Island. O’Toole is right to focus on the supply-drivers of the housing bubble, and his basic economic insight on how housing supply interacts with housing demand to affect prices is correct as well.

Where housing supply is constrained (due to some factor), it is said to be “inelastic.” That means that a small increase in the demand for housing leads to a large increase in its price. When the bubble bursts, prices fall below what they would have been absent the bubble. And the effects of these constraints on housing supply can create big swings in prices. If the argument were to end here, O’Toole would stand on solid theoretical ground. He bases his claim on empirical work done by economists Edward Glaeser and Joseph Gyourko, who find in a 2002 paper that “government regulation is responsible for high housing costs where they exist.”³ Their study is careful to note that this does not mean that the nation faces an affordable housing crisis, but that in certain areas—New York City and California—“housing prices diverge substantially from the costs of new construction.”⁴ Though not discussed in *American Nightmare*, Glaeser, Gyourko, and Albert Saiz find in a 2008 paper

² O’Toole notes that Nevada’s housing market is constrained by the large amount of federal land that is unavailable for development, as opposed to state and local growth management laws.

³ Edward L. Glaeser and Joseph Gyourko, “The Impact of Zoning on Housing Affordability,” Working Paper 8835, National Bureau of Economic Research, 2002, p. 21.

⁴ *Ibid.*

that in addition to growth-management laws, the limits of natural topography also create inelastic supply in housing. They conclude that these natural constraints are a powerful supply-side factor contributing to volatility in housing prices.⁵

The supply side matters in determining housing prices, and, in fact, may matter a lot. O'Toole also cites economist Raven Saks's 2005 study, which finds that supply constraints have a bigger effect than an equal shock to the demand side and account for a greater share of the price increase during the boom.⁶ The supply side may help to explain the irrational exuberance of consumers and realtors during the mid-2000s, who may have been fueled by the belief that housing can only appreciate in value.

But there is some nuance at work in the academic literature as well. Glaeser et al. also find that markets with highly elastic supply (i.e., with fewer obstacles to building) also experienced price booms during the periods they studied. And it is unclear whether elastic areas experience an even more severe price crash than inelastic areas after the bubble bursts. The reason: fewer building obstacles mean that "places with more elastic housing build more homes in response to the bubble."⁷ The extra homes create a glut in supply, which reduces prices when the bubble is over. But the exact effect of those extra homes on prices is ambiguous. In other words, markets with fewer building restrictions than in places with inelastic housing can also suffer the consequences of a bubble, though the effects in question tend to be shorter in duration.

Unfortunately, in its drive to reduce the housing crisis to a single and simple cause, *American Nightmare* ends up taking a turn for the worse. O'Toole over-extends his supply-side analysis and ends up erring in the opposite direction of those who focus exclusively on a single demand-side theory to explain the entire crisis. O'Toole not only places the forces that affect housing demand in the analytical background, but goes a step further, transforming them into a *consequence* of growth-management laws. In making his case against growth-management laws, O'Toole's supply-side analysis effectively tries to prove too much. He correctly states throughout the book that an asset bubble is built by the interaction of both supply and demand forces. In Chapter 12, "The Housing Bubble," he writes that "strong economic fundamentals, . . . combined with low interest rates and looser lending

⁵ Edward L. Glaeser, Joseph Gyourko and Albert Saiz, "Housing Supply and Housing Bubbles," NBER Working Paper Series, Working Paper 14193, National Bureau of Economic Research, July 2008.

⁶ Raven E. Saks, "Job Creation and Housing Construction: Constraints on Metropolitan Area Employment Growth," Federal Reserve Board of Governors, September 22, 2005.

⁷ Glaeser, Gyourko, and Saiz, "Housing Supply and Housing Bubbles," p. 14.

practices, did push up prices but played less of a role in price increases than growth-management planning” (p. 187).

But then O’Toole asserts that state and local growth-management restrictions explain the very existence and evolution of the housing bubble. All other explanations on the demand side are treated as either incidental, symptomatic, or a consequence of state and local land-use regulations.

In Chapter 13, which takes its title from the book, O’Toole explains “What the Crisis Wasn’t”: “Other factors that have often been cited as the ‘cause’ of the collapse may have contributed to the bubble, but they were not the cause, and preventing them would not have prevented the bubble or much of the pain that resulted when markets collapsed” (p. 218). Specifically, O’Toole states that the bubble was not caused by low-income borrowers, “greedy bankers,” excessive bonuses, deregulation, low interest rates, or too-big-to-fail-banks. He writes, “not only did growth management cause the bubble, but once this bubble began, very few things could have been done to prevent the crisis” (p. 207).

Early in the same chapter, O’Toole zeros in on three different culprits: “The 2008 financial crisis has often been described as complex because there were so many different participants But the real issue of the crisis boils down to three different factors: state and local growth-management planning, the bond-ratings agencies, and banking reserve requirements” (p. 208).

Not only is O’Toole convinced that all explanations of the housing bubble to date are either implausible or unpersuasive, but he engages in a series of counterfactual speculations to argue that were it not for forty-plus years of growth-management laws, many of the federal policies devised to help people buy homes would either not have been created or their effects would have been benign. For example:

- Congress and the Clinton Administration would not have ordered Fannie Mae and Freddie Mac to start buying large amounts of loans to low- and moderate-income buyers. (p. 217)
- If regulation-induced inelastic housing supplies had not caused prices to rapidly increase when the Fed reduced interest rates in 2001, speculators disappointed with the stock market would have been induced to invest in real estate in growth-managed states. (p. 217)
- If housing prices did not collapse with a small contraction in demand, as they did in growth-management states, then large numbers of people would have defaulted on their mortgages and Wall Street’s bond market would not have collapsed. (p. 218)
- If the passage of growth-managed laws in so many states in the 1980s had not completely changed the rules of the housing market,

then the ratings company would not have erred in so many of their bond ratings. (p. 218)

Despite what is ultimately a strained economic analysis of the bubble, *American Nightmare* compensates by providing much insight into the history and development of American housing policy. Indeed, one of O'Toole's gifts is his ability to take what would otherwise be dull material and weave a textured narrative. The first several chapters of *American Nightmare* are a highly readable policy history documenting the rise of government interventions into housing markets as influenced by the often conflicting visions of interest groups and activists. These chapters have several merits worth noting. O'Toole covers much ground in the evolution of housing policy. He marks these different historical phases and the emerging geographic boundaries in terms of economic shifts, migration patterns, policy interventions, and the ever-present undercurrent of class warfare in American social history.

Beginning with the colonial Agrarian period when less than 1 percent of Americans owned their homes, O'Toole notes the rapid institutional changes that occurred in the nineteenth-century Urban era, increasing homeownership for the working classes to the beginnings of the Suburban period in the 1920s. This history continues with an analysis of the various New Deal and post-war federal experiments with housing policy and home finance. These are the decades that spawned many of the contemporary agencies, programs, and subsidies that remain in place today. It is a valuable read for anyone trying to get an overview of American housing policy during the period of the New Deal/Urban Renewal/Great Society experiments.

These early chapters highlight another merit of O'Toole's work, namely, his drive to understand human motives and the incentives behind the policy experiments, market innovations, and migration patterns of ordinary Americans. He has a view of social change worth considering. Through his lens, suburban and urban geographic boundaries can also be understood in terms of a subtle—and at times overtly racist—strain of class warfare in American society: the tension between the middle class desire to be protected from the working classes and the aspiration of the working classes to own their own homes. He produces some interesting evidence.

In late-nineteenth-century America, ethnic groups had higher rates of urban homeownership than did the middle class. A house is a "poor man's bank" in addition to being a home. It is a store of wealth that allows him (or her) to operate a business. In contrast, the middle class favored renting during this period. They had other places to invest their money and wanted to hedge against the neighborhood suddenly changing. Leasing provides mobility.

The middle class, as a general rule, had more options. Some factors that increased homeownership and drove urbanites into new suburbs included the expansion in credit tools, increasingly scarce land in the cities, the automobile, and new manufacturing technologies that required more space for factories. Jobs moved with people. As the middle class moved from urban-renting to

suburban-homeownership, they sought to protect their home values. Entrepreneurial builders provided the means for their customers—protective covenants and deed restrictions that limit what people could do with their land. These private agreements cost nothing to the developer and could be tailored to the buyer. (If you want to raise chickens in your backyard, buy a house with a deed or covenant that permits it.)

However, deeds only applied to new developments. Existing neighborhoods relied on zoning—a local government tool, prone to political manipulation. Zoning, at first a means of protecting property values and placing sewer lines, was “transmogrified” by legal decisions and other forces (p. 131). By the 1960s zoning was another arrow in the quiver of political activists and urban planners seeking to impose economic development or a particular aesthetic vision on neighborhoods. O’Toole promotes private zoning and protective covenants as a policy fix to the abuse of public zoning. But it should be noted that the effect of covenants on home values may be ambiguous. Covenants, like zoning, limit what can be developed. Tastes change. And it may be that a protective covenant locks into place a particular usage of property that is not valued by buyers. The expiration of a covenant may actually increase the value of a parcel of land.

Activists, intellectuals, and social reformers play an interesting role in O’Toole’s analysis. They are, broadly speaking, “the elite” and their cry may be summed up as, “helping to ensure the poor have decent housing so they don’t move next door” (p. 50). But O’Toole is careful to distinguish among them. There are the “housers” who seek to improve living conditions for the working class. Their efforts begin with the Progressive-era tenement reforms inspired by the writings and photojournalism of Jacob Riis of New York City’s slums. The more unlikeable of the lot in *American Nightmare* are the “utopians” and intellectuals who view suburbia as emblematic of any number of American social, cultural, or aesthetic defects. Here O’Toole singles out the influence of the architect Le Corbusier on the failed futuristic urbanism of the 1960s and 1970s that led city planners to construct bleak high-rise cellblock cement towers. He also has little use for detached social critiques of suburbia, including Robert Putnam’s *Bowling Alone* and Kenneth Jackson’s *Crabgrass Frontier*.⁸

O’Toole’s insights into American social and policy history at times recall the theory developed by Sanford Ikeda in his book *The Dynamics of the Mixed Economy*.⁹ One strong theme that emerges from *American Nightmare* seems to exemplify Ikeda’s theory: A policy intervention can often lead to an

⁸ Robert Putnam, *Bowling Alone: The Collapse and Revival of American Community* (New York: Simon & Schuster, 2000); Kenneth Jackson, *Crabgrass Frontier: The Suburbanization of the United States* (New York: Oxford University Press, 1985).

⁹ Sanford Ikeda, *The Dynamics of the Mixed Economy: Toward a Theory of Interventionism* (London: Routledge, 1997).

outcome that differs from the original intent of the policy. This leads the government later to undertake a “corrective” action to fix the effects of the first, leading to greater distortions. This can go on for awhile, until the effects are yet more distorted, provoking a crisis at which point policymakers must make a radical move: toward greater or drastically less intervention. It would seem that the response to the housing crisis to date has been toward greater intervention in the form of financial and lending regulations, and bank and homeowner bailouts.

American Nightmare has identified just such a complex problem. The conflicting goals of elites to limit urban sprawl with local land-use laws, while providing access to affordable housing via federal subsidies and regulations, are identified by O’Toole as two clashing forces of governmental interference. Where it succeeds, *American Nightmare* is a spirited policy critique of the impossibility of central planning and the role human behavior and ideology play in shaping the contours of American neighborhoods.

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Morgenson, Gretchen, and Joshua Rosner. *Reckless Endangerment: How Outsized Ambition, Greed, and Corruption Led to Economic Armageddon*. New York: Times Books, 2011.

1. Introduction

Reckless Endangerment is a noteworthy journalistic account of the causes of the U.S. credit crisis of 2008 and the deep recession that followed. The overall narrative follows the common understanding of the crisis's origins. The recession of 2008-2010 was precipitated by the bursting of a bubble in the U.S. real estate market. The bubble was driven by low interest rates and a booming mortgage market with high growth in adjustable-rate and no-money-down lending to financially risky borrowers (especially "sub-prime" borrowers). When the bubble burst, hundreds of billions of dollars in mortgages proved worthless, and the financial system in the U.S. and Europe nearly collapsed. *Reckless Endangerment* relates these events in a personalized, moralized fashion. It tells stories and names names, putting faces on the causes of the disaster.

The story begins in the 1990s, focusing on the CEO of Fannie Mae in those years, Jim Johnson. Fannie Mae and its sister institution Freddie Mac were nominally private entities set up by the federal government to promote homeownership by buying mortgages and selling mortgage-backed securities. The companies benefited from lax regulation and the ability to borrow money at lower rates than any other private company. Their borrowing power was due to the implicit guarantee that government would cover their debts (a guarantee that was proved to exist when the U.S. Treasury took them over in September, 2008).

Johnson made Fannie Mae into a political juggernaut and lucrative profit center, entering into a partnership with the Clinton Administration to promote increased homeownership through lowered lending standards. All of this was done in the name of expanded access to mortgages for the poor and for minorities. Fannie Mae built up a fake grassroots movement in favor of expanded mortgage access, and it could trot out examples of houses built and bought and protests organized any time its privileges came into question.

Achieving the goal of expanded homeownership beyond the already high levels of the early 1990s required making sure that people who hadn't received mortgages in the past could get them. The dogma of the time was that this merely required sensitivity and overcoming racism and other prejudices. But the truth of the matter was that most people who couldn't get mortgages couldn't get them because they couldn't raise the needed down payment or because they lacked the income needed to afford the mortgage

payments. They were, in other words, bad risks. They weren't prime mortgage candidates; they were sub-prime.

So Johnson and his successor Franklin Raines led a concerted push to lower the evidentiary and income requirements for getting a loan: they called it "Alternative Qualifying." And the Clinton Administration chipped in with ever-rising requirements for the financing of "affordable housing." By the time Andrew Cuomo was Secretary of Housing and Urban Development (HUD) in the late 1990s, he was requiring that 50% of all mortgages be made to low-to-moderate-income borrowers.

The stage was set: lending standards were degraded and Fannie Mae and Freddie Mac led Wall Street into ever-expanded lending to the riskiest borrowers. It was in this context, after the dot-com bubble burst in 2000, that the Greenspan Fed drove the core interest rates down to 1% from their long-term range of 5-6%. With money practically being given away, and housing the only safe investment that was still rising in value, the U.S. was primed for an orgy of lending to anyone and everyone buying houses. From there, it was only a matter of time before the real estate bubble burst and overstretched borrowers began defaulting *en masse*.

2. Heroes and Villains

Reckless Endangerment is a journalistic history, not a scholarly one. It is written in lively, valorized language. What's at stake is emphasized in every chapter and on virtually every page. The basic structure of the book is to move chronologically from the early 1990s through 2008. Each chapter offers a story or stories focused mostly on particular businesses and politicians, with general remarks on overall trends for context. Citations are not provided. The brief notes on sources indicate that the book arose out of a trove of interviews that the two authors had collected while covering business affairs for a decade or more.

A typical chapter centers on shenanigans at Fannie Mae, sub-prime lenders, Washington, or Wall Street, made more dramatic by some episode of criticism that makes us think that, with better will or a more responsible culture, the crisis might have been averted. Unsung analysts are the heroes of the piece. As we move from the halls of the U.S. Congress to Georgia politics, to sub-prime lending in California and elsewhere, we are invited to sympathize with the struggles of what seem to be the authors' favorite sources. In evidentiary terms, the strongest sections of the book show through speech and action what the main figures were doing, and leave the reader to judge the meaning. The weakest sections in terms of evidence center on sympathetic figures (the sources) as witnesses, interpreters of events, and judges of character.

For instance, Chapter 9 focuses on an effort to impose severe restrictions on "predatory lending" in Georgia. The chapter's hero is William J. Brennan, Jr., a director of the Atlanta Legal Aid Society and an architect of Georgia's "fair lending law," which passed in 2002 and was defanged in 2003. Brennan attends a sub-prime lending conference, and we are told "It was clear

to Brennan that the conference attendees were watching Georgia's attack on predatory lending with fear and loathing. . . . Brennan knew then and there that he and his colleagues had a fight on their hands" (p. 146). We are supposed to accept Brennan's interpretation, even though he is far from being a dispassionate observer.

From page to page, the book has an episodic, David-versus-Goliath narrative structure, but leaves many questions unanswered about the overall state of the market and the real causes of its problems. Similarly, because most chapters center on a nefarious central company, we get a tour through the most scandalous firms, ones that usually went bust later, including Novastar Financial and Countrywide Financial. But it is less clear what was typical of the industry or what the soundest companies were doing.

3. Complexity Over-Simplified

Another price of the episodic hero-villain drama and the valorized narrative is that the authors breeze over complex issues that deserve a fuller treatment. This is not a demand for a different book, but rather a wish that the book as conceived were more judicious.

For instance, the Georgia fair lending law was undone in 2003 by the refusal of the rating agencies Fitch and Standard & Poors to rate mortgage securities originating in Georgia (this in turn would ensure that the supply of mortgage financing in Georgia would collapse for both prime and sub-prime mortgages, since lenders typically re-sold their mortgages and needed agency ratings to do so). Over pages 147-51, Morgenson and Rosner paint this event as a nasty conspiracy of shifty lenders to keep the party going. But the law stirred such protest in the finance industry because it held buyers of a mortgage liable for acts committed by the original mortgage lender. This was not a liability any other market required, nor was it typical of any other commodity or stock. It is at least not obvious that such a strict collective liability rule ought to exist. Its nature and implications deserve more discussion than Morgenson and Rosner provide.

The book renders the actions and causes of the crisis into clear, plain language, as in all good journalism. But there are places where the broader context is summarized in an amazingly cavalier fashion. For example, on pp. 274-76, Morgenson and Rosner discuss the rise of interest-only loans and negative amortization loans (the latter are loans which have a payment schedule of under-payments whose shortfall is added to the balance due). Now, loans of both types are ill-advised except in exceptional circumstances. If the borrower must stretch to make payments on a loan of these kinds, he or she is unlikely ever to pay down the principal and retire the debt. That these two loan types rose from being 6% of loans in 2003 to 29% of mortgages by 2005 was a sure sign of the irresponsible lending and borrowing at the height of the bubble (when much of the borrowing public assumed that property values would simply rise and rise, lifting them out of their debt holes). That's the clear part.

But Morgenson and Rosner go on to write:

By creating these loans, . . . Wall Street's bankers had done something entirely new and nefarious. They had allowed institutions extending credit to consumers in the form of a second mortgage or home equity line of credit to share in the collateral backing all the loans without asking for permission from lenders who were there first and thought they were the sole creditors. (p. 276)

Now this is very unclear, and from what I can tell, is basically false in its presumptions. Generally, the law holds that the first lien on a property by date has priority in a bankruptcy or foreclosure.¹ Generally, borrowers have never needed to get permission from other lien-holders before taking on new debt. It's just that most housing lenders won't lend without the security of being in first position on the lien. Furthermore, Wall Street is based in contracts: to upend the basic priority of lenders would require changing property law nationwide. That's not (yet) within the power of Goldman Sachs. What then are Morgenson and Rosner talking about? The reader shouldn't have to ask.

4. What Should Have Been Done?

Reckless Endangerment is a strongly normative book based on some clear counterfactual conclusions. For instance, if the Clinton Administration, Congress, and Johnson and Raines at Fannie Mae had not pushed throughout the 1990s to bowdlerize lending standards and incentivize lending to the riskiest borrowers, a sounder and saner mortgage market would have entered the new millennium. If Congress had fully privatized Fannie Mae and Freddie Mac, much harm could have been avoided, too.

More broadly, there is much anecdotal evidence here, including some data, that one could read comfortably from a libertarian, free-market perspective. Certainly, the book is a portrait of a politicized market gone wrong.

Nevertheless, the authors plainly mean instead to double-down on the premises of the welfare state. Chapter after chapter laments the toothlessness and fecklessness of the regulators. The (legally mandated) ratings agencies that declared dubious mortgage securities "AAA" are chastised for their blind, go-along-get-along attitude. Morgenson and Rosner imply that if only the regulators had wisely regulated, and Congress had wisely overseen, and the rating agencies had acted for the sake of the public trust, then everything would have been better. The trouble is, nothing in the book gives us much reason to think wisdom would arise in these quarters nor that these agents would have much reason to be wise.

The authors' idea of the poorly run company depends on a conception of the well-run company. But this is never directly described.

¹ See, e.g., <http://www.nolo.com/legal-encyclopedia/what-happens-liens-second-mortgages-foreclosure.html>.

Often, the well-run firm lurks in the background of the case studies in financial malfeasance. Fannie Mae in the 1980s is cited as well-run and responsible, before Johnson ran it off the rails. While Angelo Mozilo was the brash front-man of sub-prime titan Countrywide Financial, Morgenson and Rosner note that from 1968 to 2000 Mozilo had a partner in leading the firm, David Loeb (pp. 188-90). We are told that Loeb kept Mozilo's worst excesses under control and monitored risk levels carefully. Over this period, the firm grew and succeeded though many national financial ups and downs. That would seem to have represented a sound model for Countrywide. But what was that model? More could have been said.

Who actually has an interest in responsible lending? The authors seem to assume it is society or the taxpayers who ought to care, from the motive of altruism. But in truth, the people with the most at stake, directly and personally, day in and day out, would have been the shareholders and the borrowers.

Shareholders benefit from the long-term health of the companies they own: they are the ones wiped out first in a bankruptcy. They are the ones who most need reliable rating information from analysts and transparent accounting from the firm's management. But in *Reckless Endangerment*, shareholders are a passive set of victims. Perhaps they deserve decent earnings from their investments, but there is no lesson for them in the book's many exhortations. This is a pity, because if market capitalism is going to improve and learn better how to marry innovation to prudence, shareholders will have to demand improved management and better information.

Morgenson and Rosner likewise paint borrowers as the victims of predatory lenders. They trot out several anecdotes of hapless borrowers who were shafted by crummy deals and dishonest salesmanship. But to anyone who thinks of borrowers as moral agents, these anecdotes leave more questions than answers. One set piece (pp. 208-10) focuses on an Atlanta retiree named Patricia Jordan who, we are told, somehow went from a 9% adjustable-rate loan on a property that was worth \$30,000 in 1983, to an adjustable-rate loan over 10% owing \$124,000 in 2004. The authors focus on the deceptive marketing that Jordan recounts (she thought she was signing a fixed-rate mortgage when she took on the new debt). But huge questions pass by without comment: probably \$100,000 or more of the new loan was unrelated to the original debt on Jordan's home. What was that money for? And Jordan was taking on a huge new debt, compared to her limited income. Why didn't she get some advice before signing the contract? These are the basic questions any borrower should be able to answer. The book doesn't give any evidence that Jordan asked them.

Predatory lending (which consists in selling high-priced loans to unsophisticated borrowers) is surely a problem, but any trade has two parties. The authors seem to forget that no one is forced to take on a loan, not even by high-pressure sales tactics. We need to hold borrowers and consumers more generally morally responsible for their actions. And books like *Reckless Endangerment* need to offer them clearer moral counsel. In our credit-driven

society, where many borrow to spend without saving for the future, it is each of us as consumers who gains from having principles of prudence and long-range planning.

Reckless Endangerment is a lively read. It is a trove of anecdotes of malfeasance and mania. But despite its strong moral tone, it does a worse job than it could have in making clear what the better alternative would have been.

William Thomas
The Atlas Society

Palmer, Tom G., ed. *After the Welfare State*. Ottawa, IL: Jameson Books/Students for Liberty, 2012.

After the Welfare State (ATWS) is a collection of essays edited by Tom Palmer, and distributed by Students for Liberty (SFL) to its network members. The book is meant, in a small package of 136 pages, to present the classical liberal view of the welfare state in a comprehensive manner to educated individuals who are just getting into libertarianism. It is mostly an effective primer for further exploration into libertarian political philosophy, accessible to those not well-versed in the subject, but deep enough to sink one's teeth into.

SFL's strategy with *ATWS*, and with the rest of its publications, is to hand it out to any students who are sufficiently interested in liberty to stop at a table occupied by SFL advertisements and grab a free book. The vast majority of the students who get this book won't read it, but a free book is still free and worth picking up for that reason alone. The hope is that some percentage of the aggregate will crack the book open at some point and take a quick look inside at all of the crazy libertarian talk about corporate money and the elimination of the minimum wage. If they like what they read, the hope is that they will show up to a few on-campus libertarian club events, and maybe even join the ranks.

Given this strategy, *ATWS* is not designed like a traditional book or collection of essays. It has to walk a tightrope: on the one hand, it has to be intellectually deep enough work to intrigue politically interested college students into further exploration of the ideas; on the other hand, it has to be flashy enough to entice a student to sit down and read past the first paragraph. The result is a bit scattered and uneven, but still worth reading, and basically succeeds in walking the tightrope.

ATWS is broken up into four sections. The first is "Mutual Plunder and Unsustainable Promises," which leads off with an essay by Palmer on the current status of the welfare states in Europe and the U.S., and follows up with a pair of essays discussing the development of the welfare state in Italy and Greece. Next is "The History of the Welfare State and What It Displaced," consisting of an essay on the first welfare state in Germany and two essays on mutual-aid societies. The third section is "The Welfare State, the Financial Crisis, and the Debt Crisis," with an essay on the inherent financial insolvency of the welfare state, and an essay detailing an example of its bad effects during the 2000s' housing bubble. Finally, "Poverty, Morality, and Liberty" summarizes the classical liberal argument against the welfare state.

The first section is the most fun to read since it is full of flashy details and statistics that can be used against one's statist opponents in any

argument on government efficiency. Palmer and the other authors use mind-boggling figures to show just how absurdly bloated and mismanaged the modern welfare state is today, with the U.S. taxpayer on the hook for somewhere between \$60 and \$120 trillion in unfunded liabilities. The essays on Italy and Greece tell the stories that libertarians love to hear about the colossal destruction unleashed by state intervention there.

Palmer's essay on Bismarck's Germany in the second section continues the fun, and stands out as one of the best essays in the book. Here Palmer recounts the rarely told story of how Bismarck, the conservative master manipulator, introduced the welfare state in order to induce the German masses into conformity, cultivating their dependence on the state. Such an essay is sure to shock newcomers who may never previously have heard anything adverse about the welfare state or the intentions of its founders.

Unfortunately, the book really slows down for the next forty-five pages across two essays, both of them about pre-welfare-state, mutual-aid societies. Mutual-aid societies are an essentially unknown institution that existed in pre-welfare state societies, and which provided relief voluntarily through insurance agencies and cooperative organizations. Granting the general importance of the topic, I don't think that one-third of the book needed to be devoted to fleshing out the nitty-gritty details of how these organizations operated. I, for one, wasn't particularly interested in the minute inner workings of mutual-aid societies' election procedures or their organizational culture, whether from a historical standpoint or for polemical purposes. One short essay to give an overview on the subject would have sufficed; unfortunately, the two essays on mutual-aid societies slow the book's momentum for a third of its length.

The last two sections are much better. One stand-out is an essay by Johan Norberg on the utter rottenness of Fannie Mae and Freddie Mac, two government-sponsored institutions managed, financed, and endorsed solely by dishonest individuals who knew they were peddling snake oil for short-term gain at long-term expense. Palmer's final essay on the nature of poverty from a classical liberal perspective would be especially valuable for newcomers, but I think it should have been placed at the front of the book, to serve as a primer for the rest of the material. Admittedly, the statistics on the modern welfare state in Palmer's essay were an extremely useful hook, but a few highlights from that section could have been brought up in a short introduction.

As with SFL's mission statement, the book's authors adhere to a broad understanding of libertarianism and classical liberalism. There is no mention in the book of Austrian economics, anarchy, Objectivism, or any other sub-categories of libertarianism. This is good policy for a primer; there is no need to alienate newcomers by focusing excessively on in-fighting. To account for the diversity of libertarian opinions on the welfare state, Palmer does note that libertarians have marginally different fixes for the problems the

welfare state claims to solve, but ultimately, all classical liberals agree on the nature of the problem.

Experienced libertarians with a full understanding of the nature of the welfare state and its history probably won't get much from *ATWS*, except perhaps the usual aggravation which comes from hearing about the horrors of "Progressivism." Newcomers to the ideas will, however, profit from a book that is both a good read and likely to inspire a desire for further exploration of libertarian ideas.

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Afterword

Randian Egoism: Time to Get High

Irfan Khawaja
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On the first page of his book *On Ayn Rand*, the late Allan Gotthelf writes:

It is high time that academic philosophers accept the responsibility of understanding, thoroughly and with full, professional expertise, this highly original thinker and the scope and content of her often groundbreaking thought.¹

This seems a fairly reasonable demand, even if it happens to be one more often ignored in the breach than in the observance.

One common breach is the practice, in anthologies intended for philosophy students, of including a critique of Ayn Rand without a corresponding text of hers to read. The pedagogical assumption here seems to be that it's crucial for students to see Rand attacked in print, but not nearly as important to read what she wrote. The more general methodological assumption seems to be that one needn't read an author to be in a position to read and accept a critique of her views. What matters is the spectacle of an attack on the object of the critique, not critical engagement with claims actually made by her. The Objectivist habit of attacking Immanuel Kant without reading him is well-known, and justly criticized, but somehow, the same habit, applied to Rand, is still thought acceptable. At any rate, the ubiquity of the technique hasn't stopped academic critics of Rand from suggesting that *they* are the real philosophers while Rand and her sympathizers are amateurs or crackpots.² Given this, it's worth subjecting the

¹ Allan Gotthelf, *On Ayn Rand* (Belmont, CA: Wadsworth, 2000), p. 1.

² For typical examples, see, e.g., Robert Nozick, "On the Randian Argument," in *Socratic Puzzles* (Cambridge, MA: Harvard University Press, 1999), pp. 249-64; Mary Midgely, *Can't We Make Moral Judgements?* (New York: St. Martin's, 1991), pp. 98, 119-22, 153, and 160; James Rachels, *The Elements of Moral Philosophy*, 3rd ed. (New York: McGraw-Hill College, 1999), p. 86; Corey Robin, *The Reactionary Mind:*

methodological and editorial principles of the “real philosophers” to some scrutiny. Academic philosophers take a certain pride in the “rigor” of academic philosophy as currently practiced. Does that rigor—we might ask—extend to the discussion of Ayn Rand?

A full answer to that question would fill the pages of a good-sized book. For present purposes, consider just one representative example, the anthologies and textbooks marketed in the fall 2013 Oxford University Press Higher Education Group’s “Books for Courses” catalogue. What strikes the prospective textbook consumer—or ought to—is the notable vacuity of academic discussions of Ayn Rand in the textbooks advertised there. And in this case, “vacuity” turns out not to be a sarcastic metaphor, but the literal truth.

Turn to page 3 of the catalogue, and you’ll find Louis Pojman and Lewis Vaughn’s *Philosophy: The Quest for Truth*, whose section VI is devoted to ethics.³ Under section VI.B, there are three readings on egoism, as follows:

- Plato, Why Should I Be Moral? Gyges’s Ring and Socrates’ Dilemma⁴
- Louis P. Pojman, Egoism and Altruism: A Critique of Ayn Rand
- Joel Feinberg, Psychological Egoism

Why a critique *of* Ayn Rand, but no reading *by* Ayn Rand? That doesn’t look much like a “quest for truth.” It looks like a quest for indoctrination.

Conservatism from Edmund Burke to Sarah Palin (Oxford: Oxford University Press, 2011), chap. 3; Jason Brennan, *Libertarianism: What Everyone Needs to Know* (New York: Oxford University Press, 2012), p. 21; Carlin Romano, *America the Philosophical* (New York: Knopf, 2012), pp. 359-66.

For a good critique of Nozick, see Douglas Den Uyl and Douglas Rasmussen, “Nozick on the Randian Argument,” in *Reading Nozick: Essays on Anarchy, State, and Utopia*, ed. Jeffrey Paul (Lanham, MD: Rowman and Littlefield, 1981), chap. 12; for a good critique of Midgely, see Robert Campbell, “When Avoiding Scholarship Is the Academic Thing to Do: Mary Midgely’s Misinterpretation of Ayn Rand,” *Reason Papers* 21 (1996), pp. 53-60; for a good critique of Romano, see Stephen Hicks, “*America the Philosophical*: Carlin Romano on Ayn Rand,” *Reason Papers* 34, no. 2 (October 2012), pp. 245-47.

³ Louis Pojman and Lewis Vaughn, *Philosophy: The Quest for Truth* (New York: Oxford University Press, 2013).

⁴ Despite the often exorbitant prices of their textbooks, Oxford University Press’s textbooks often seem dotted with editorial inconsistencies that persist, edition after edition. Is there a grammatical explanation for why the possessive Gyges gets an added ‘s,’ but the possessive Socrates does not?

On page 6 of the catalogue, we find Lewis Vaughn's *Great Philosophical Arguments: An Introduction to Philosophy*.⁵ Chapter 6 is on Ethics, and section 21 is "Argument Against Ethical Egoism." Here are the selections:

- Thomas Hobbes, *Leviathan*
- Louis P. Pojman, *A Critique of Ethical Egoism*
- Joel Feinberg, *Psychological Egoism*

The formula looks familiar. The ostensible aim is to cover ethical egoism. Apparently, though, there's no need to consider arguments *for* egoism before asking students to consider arguments *against* it, since the underlying aim is not precisely to discuss, but to discredit the doctrine from the outset. To that end, Vaughn opens with a classic text designed to introduce students to Hobbes's explicitly predatory conception of egoism,⁶ priming the student to regard human self-interest as constituted by innate propensities to dominate others and commandeer their lives and property. The excerpt from Hobbes sets the stage for Pojman's critique of Rand, which depicts Rand's conception of self-interest (inaccurately, and without significant textual analysis either of Hobbes or of Rand) as though it were somehow continuous with Hobbes's. The reader is vaguely left to believe that the "Hobbes-Rand" view has somehow been refuted. We then cap off the section by attacking psychological egoism via Feinberg's essay, despite its total disengagement with Hobbes's arguments, and its total irrelevance either to Rand or to ethical egoism. The result is an essentially incoherent attempt to cover ethical egoism, one practically calculated to leave the student with a vague sense of revulsion for and confusion about the doctrine, but with no way of figuring out what it actually says.

A similar analysis applies, *mutatis mutandis*, to the use of Plato's *Republic* in the preceding textbook. The argument "for" ethical egoism is conflated with an argument for predation, and comes from Plato's character Thrasymachus. The Thrasymachean conception of egoism is then to be conflated with whatever Rand was supposed to have said about it, with no indication of what she in fact did say. Ultimately, it doesn't really seem to matter what Rand said. What matters is that the student should internalize the inference from egoism to the pursuit of self-interest, and from the pursuit of self-interest to the desire for predation. The latter inference, derived from the

⁵ Lewis Vaughn, *Great Philosophical Arguments: An Introduction to Philosophy* (New York: Oxford University Press, 2011).

⁶ An added complication: Hobbes's *Leviathan* is, if anything, a defense of psychological, not ethical egoism. So the textbook's section on "ethical egoism" consists of three readings, two of them off-topic.

authority of Thrasymachus and/or Hobbes, is to function as an axiom from which all other inferences are to be made on the subject.

The absence of Randian texts from textbooks like the preceding absolves the reader of the need to ask questions like the following:

1. Why does Socrates accept the challenge of offering an egoistic defense of justice in the *Republic* on what seem (and have often taken by scholars to be) egoistic terms?⁷ Why would Socrates have regarded success at that project as success in the first place? What, incidentally, is going on in *Republic IX*, and how does it connect with *Republic I*? How, in general, does Socrates's ethical project in the *Republic* connect with Rand's?
2. Is predatory egoism the *only* species of egoism? What other species might there be? Does it make logical sense to regard predatory and non-predatory forms of egoism as species of a common genus?
3. To what extent do Rand's and (say) Hobbes's egoisms overlap? To what extent don't they? Does it ultimately make sense to regard Rand's egoism as a species or instance of Hobbes's, or is it a conception of a fundamentally different kind?
4. What, in fact, did Rand *say* about egoism in her own words? A look at the relevant texts suggests that she said things that don't cohere very easily with a predatory conception of egoism. For example:

⁷ Philosophers have, for the better part of a century, taken Socrates to be offering an egoistic defense of justice in the *Republic*, objecting often enough to its egoistic character. This egoistic interpretation of Plato's *Republic* goes back at least as far as Sidgwick's discussion in *The Methods of Ethics*, as well as to Prichard's famous discussion in "Does Moral Philosophy Rest on a Mistake?" (See Henry Sidgwick, *The Methods of Ethics* [Indianapolis, IN: Hackett, 1981], II.5.4, pp. 170-72, and H. A. Prichard, *Moral Writings*, ed. Jim MacAdam [Oxford: Clarendon Press, 2002], chap. 2.) For more recent discussions, see Philippa Foot, "Moral Beliefs," in Philippa Foot, *Virtues and Vices and Other Essays in Moral Philosophy* (Oxford: Clarendon Press, 2002), chap. 8, and Bernard Boxill, "How Injustice Pays," *Philosophy and Public Affairs* 9, no. 4 (Summer 1980), pp. 359-71.

For more narrowly scholarly discussion of Socratic egoism, see Terence Irwin, *Plato's Moral Theory* (Oxford: Clarendon Press, 1977), pp. 53-55, 117, 189-91, 210-12, 243-48, 250-51, and 254-59; Julia Annas, *An Introduction to Plato's Republic* (Oxford: Clarendon Press, 1980), pp. 315-20; C. D. C. Reeve, *Philosopher-Kings: The Argument of Plato's Republic* (Princeton, NJ: Princeton University Press, 1988), pp. 269-70; and Richard Kraut, "The Defense of Justice in Plato's *Republic*," in *Plato's Republic: Critical Essays*, ed. Richard Kraut (Lanham, MD: Rowman and Littlefield, 1997), pp. 197-222.

Despite the size of the literature on the egoistic character of Plato's argument, introductory textbooks persist in claiming that Socrates's rejection of Thrasymachus's argument entails a rejection of egoism *tout court*.

- that moral virtue is “the means to and realization of” moral value⁸;
- that the pursuit of moral value leads to a harmony of interests among virtuously egoistic agents⁹;
- that honesty, integrity, and justice are all moral virtues, and all in one’s egoistic interest¹⁰;
- that honesty forbids deception of self or others¹¹;
- that integrity requires that we take responsibility for the consequences of our actions¹²;
- that justice demands respect for rights, and proscribes first uses of force¹³;
- that justice requires us to treat others as ends, and never merely as means to our ends¹⁴;
- that justice requires us to treat others as “independent equals” in “free, voluntary, unforced, [and] uncoerced exchange”¹⁵;
- that justice demands that we “seek only what we earn by our own efforts, rather than switching to others the burden of our failures”¹⁶;
- that justice demands promise-keeping and forbids promise-breaking¹⁷;
- that hedonistic and preference-satisfactionist accounts of well-being are false¹⁸;

⁸ Ayn Rand, “The Objectivist Ethics,” in Ayn Rand, *The Virtue of Selfishness* (New York: Signet, 1961), p. 27.

⁹ Ayn Rand, “The ‘Conflicts’ of Men’s Interest,” in Rand, *The Virtue of Selfishness*, pp. 57-65.

¹⁰ Rand, “The Objectivist Ethics,” p. 28.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid., p. 36.

¹⁴ Ibid., p. 30.

¹⁵ Ibid., p. 35.

¹⁶ Ibid.

¹⁷ Ayn Rand, “Causality Versus Duty,” in Ayn Rand, *Philosophy: Who Needs It*, Centennial ed. (New York: New American Library, 1982), p. 136.

¹⁸ Rand, “The Objectivist Ethics,” pp. 31-34.

- that one should volunteer to help strangers in an emergency.¹⁹

It follows that either Rand was inconsistent about predation, or she was offering a consistent but fundamentally non-predatory ethic. One would think that competent teachers would give their students the task of figuring out which disjunct of the preceding disjunction actually obtains, and emphasize that the task in question requires *reading* the relevant texts.²⁰

5. Suppose, purely *ex hypothesi*, that Rand was right to think that the interests of rational agents harmonize when those agents are acting rationally.²¹ Setting aside the truth or *prima facie* plausibility of this claim, how would its truth change the nature of the debate about egoism, or about ethics generally? In other words, what does the thesis assert, presuppose, or entail?

¹⁹ Rand, “The Ethics of Emergencies,” in Rand, *The Virtue of Selfishness*, pp. 50-56.

²⁰ Pojman insists that according to Rand, “where it is in our interest to harm another person, it is our duty to do so” (Louis Pojman, *Ethics: Discovering Right and Wrong*, 4th ed. [Belmont, CA: Wadsworth, 2002], p. 92). Again, according to Pojman, Rand advises us “to love ourselves first even if it means hurting others” (*Ethics: Discovering Right and Wrong*, p. 82). And again: “Ayn Rand’s famous defense of the virtue of selfishness . . . holds that everyone ought to do what will maximize one’s own expected personal utility or bring about one’s own happiness, even when it means harming other people” (Louis Pojman, *The Moral Life: An Introductory Reader in Ethics and Literature* [Oxford: Oxford University Press, 2000], p. 540).

Pojman seems to have generated this interpretation of Rand from whole cloth. In fact, justified self-defense aside, what Rand thought distinctive about her conception of self-interest was that its pursuit *didn’t* require harm to others: “The idea that man’s self-interest can be served only by a non-sacrificial relationship with others has never occurred to those humanitarian apostles of unselfishness, who proclaim their desire to achieve the brotherhood of men” (“The Objectivist Ethics,” p. 34). In any case, Rand’s ethics is not a maximizing conception, and makes no use of the idea of expected utility.

²¹ Rand, “The ‘Conflicts’ of Men’s Interests,” in Rand, *The Virtue of Selfishness*.

In a discussion of egoism that doesn’t explicitly mention Rand, Richard Burnor and Yvonne Raley describe egoism as a “prejudicial” view on the grounds that it defines “the good and the right prejudicially—in terms of what produces desirable consequences for certain individuals but not for others” (Richard Burnor and Yvonne Raley, *Ethical Choices: An Introduction to Moral Philosophy with Cases* [Oxford: Oxford University Press, 2011], p. 94). But since no moral agent can, in each action, produce desirable consequences for every possible beneficiary—remote, proximate, present, future, plant, animal, human—every theory is “prejudicial” in this way, so that the objection loses its force. In describing egoism as “prejudicial,” Burnor and Raley themselves seem to be prejudging the issue of egoism’s compatibility with moral impartiality, overlooking the possibility that an egoist might take it to be in his self-interest to be objective or impartial in moral judgment, as Rand explicitly did (see, among others, essays 8 and 9 in Rand, *The Virtue of Selfishness*).

If introductory philosophy students aren't asking questions like these while thinking about Ayn Rand's ethical views, they aren't really thinking about her views at all. And if textbook editors don't induce students to ask these questions—and they usually don't—they aren't inducing students to do any thinking.

Moving to page 9 of the catalogue, we encounter Louis Pojman and James Fieser's *Introduction to Philosophy: Classical and Contemporary Readings*, fourth edition.²² Section VI is "Moral Philosophy." Section VI.B is "Morality and Self-Interest." Here are the readings:

- Plato, Gyges's Ring, or Is the Good Good for You?
- James Rachels, Ethical Egoism
- J. L. Mackie, The Law of the Jungle: Moral Alternatives and Principles of Evolution

It's the same variation on the same cookbook formula: classic text, followed by critique of Rand, followed by a discussion of psychological egoism—in this case, a sympathetic but highly indirect discussion via evolutionary psychology. As usual, the Rachels reading is included as an explicit critique of Rand, and as usual, the textbook contains no reading by Rand. Apparently, the introductory philosophy student need not read Rand to evaluate the cogency of Rachels's critique; he or she need only take for granted that whatever Rachels the Respectable Philosopher said about Rand must be true. Evidently, one can't expect a selection by Rand in a 704 page textbook containing a critique of Rand, and sold at the selfless price of \$89.95.

Turning to page 23 of the Oxford catalogue, we get to Steven Cahn's *Exploring Ethics: An Introductory Anthology*.²³ Part I consists of "Challenges to Morality," and reading 9 is James Rachels, "Egoism and Moral Scepticism," another explicit critique of Rand. No, there's no reading by Rand in this book, either. One wouldn't want to take the book's title too literally.

Could the problem be that Rand's texts are (or have at times been) unavailable for inclusion in anthologies? Rand's writings are, after all, controlled by the executors of Rand's estate, and the executors of her estate—like the executors of many literary estates—often make idiosyncratically proprietary decisions about what writings they will release for publication on a given occasion, to whom, and on what conditions. Perhaps they simply refused to make Rand's texts available for publication, or perhaps the

²² Louis Pojman and James Fieser, *Introduction to Philosophy: Classical and Contemporary Readings*, 4th ed. (New York: Oxford University Press, 2007).

²³ Steven Cahn, *Exploring Ethics: An Introductory Anthology*, 3rd ed. (New York: Oxford University Press, 2013).

conditions they imposed on editors were too steep to have justified inclusion in a given anthology.²⁴

Fair enough, but if so, it seems to me that an editor would be obliged to forgo discussion of Rand altogether. There's no shortage of ethical views to include in an anthology, and no editorial imperative that demands that Rand's views must be discussed in every anthology, or in any given one. As a general principle, if an editor can't get decent coverage of a given topic in an anthology, he or she ought to have the integrity not to try to cover the topic at all. An editor who defaults on this obligation in an anthology supposedly devoted to ethics is doing something morally problematic. The irony here is that the problematic thing he or she is doing is depicted by analogy in Rand's novel, *The Fountainhead*. My suggestion to an editor tempted to compromise his or her editorial integrity in order to sell more ethics textbooks would be to read that novel with attention to the characters in it who sacrifice moral to monetary value, a topic on which Rand was a great deal more insightful than is generally acknowledged. Yes, textbook companies have to make money, but to paraphrase a famous philosopher, man does not live by royalty checks alone.

In any case, it's highly doubtful that Rand's texts are *currently* unavailable for inclusion in anthologies. If anything, the executors of Rand's estate—and the bureaucratic apparatus surrounding the Ayn Rand Institute and its various affiliates and front organizations—seem overly eager for academic respectability, willing to stretch (or shrink) the truth in any number of directions in order to attract the academic attention they so eagerly crave.²⁵

The Oxford catalogue itself seems to confirm the supposition that Rand's texts are at least nowadays available enough.²⁶ Justin McBrayer and

²⁴ Pojman, for instance, complains in the 2000 edition of *The Moral Life*, p. 540: "It should be noted that the Ayn Rand Institute refused permission to reprint portions from Rand's work." And yet three years earlier, Christina Hoff Sommers and Fred Sommers's *Vice and Virtue in Everyday Life* had included an excerpt from Rand's *The Virtue of Selfishness* (along with Pojman's and Rachels's critiques of it). See Christina Hoff Sommers and Fred Sommers, *Vice and Virtue in Everyday Life: Introductory Readings in Ethics*, 4th ed. (Fort Worth, TX: Harcourt Brace College Publishers, 1997), pp. 492-95. Ultimately, the evidence is too opaque to justify anything but speculations.

²⁵ I've documented this in a series of blog posts at the website of the (now-defunct) Institute for Objectivist Studies, accessed online at: <http://instituteforobjectiviststudies.wordpress.com>. Search for any or all of the following: "Allan Gotthelf," "Anthem Foundation," "Ayn Rand Institute," "David Kelley," "Don Watkins," "Geoffrey Sayre-McCord," "Harry Binswanger," "John McCaskey," "Leonard Peikoff," "libertarianism," "Peter Schwartz."

²⁶ Other examples: the tenth edition of Joel Feinberg and Russell Shafer-Landau's *Reason and Responsibility* (Belmont, CA: Wadsworth, 1998) included Rand's "The Ethics of Emergencies," but more recent editions of the textbook, e.g., the fifteenth (2013), do not. Similarly, the fourth edition of Mark Timmons's *Conduct and Character* included Rand, along with Rachels's critique (Mark Timmons, *Conduct and*

Peter Markie's *Introducing Ethics* contains a selection by Ayn Rand, "The Virtue of Selfishness," followed (of course) by Rachels's critique of it.²⁷ The fifth edition of Pojman's *The Moral Life: An Introductory Reader in Ethics and Literature* has "Ayn Rand, In Defense of Ethical Egoism," followed for good measure, by Pojman's and Rachels's critiques.²⁸ Why both? The tag-team effort seems to bespeak a kind of editorial anxiety: having allowed Rand to make a *pro forma* appearance in the book, the editor seems to fear the possibility that the naive reader might end up agreeing with her. To forestall that possibility, such readers are offered two critiques in response to Rand's single essay. It's interesting to speculate what inferences would be drawn about an anthology that did just the reverse, reprinting one essay of Rand's, followed by a critique of her views, followed by a final selection that gave Rand's views the last word in the debate. Would such an anthology open itself up to charges of being biased in favor of Rand? I don't know the answer, because, despite twenty years in the profession, I've never seen such an anthology and don't expect to.

It's interesting that editors who anthologize Rand typically insist on excerpting Rand's views on *egoism* (or somewhat less typically, on capitalism), and rarely on anything else. The reader might be forgiven for not having inferred that she wrote on other topics, but she did. She had interesting (and provocative, though occasionally fatuous) things to say about many things—the ethics of emergencies,²⁹ moral compromise, moral judgment,

Character: Readings in Moral Theory [Belmont, CA: Wadsworth, 2002], pp. 20-24), but the most recent fifth (2006) and sixth (2011) editions do not. Competent textbook treatments of Rand include Nina Rosenstand's *The Moral of the Story: An Introduction to Ethics*, 5th ed. (New York: McGraw Hill, 2006), and Judith Boss's *Analyzing Moral Issues* (New York: McGraw Hill Humanities, 2012).

²⁷ Justin McBrayer and Peter Markie, *Introducing Ethics: A Critical Thinking Approach with Readings* (New York: Oxford University Press, 2013).

²⁸ Louis Pojman and Lewis Vaughn, *The Moral Life: An Introductory Reader in Ethics and Literature*, 5th ed. (New York: Oxford University Press, 2013).

²⁹ A Philosopher's Index search for the term "emergency" that I did in February 2014 yielded 385 entries. The chronologically first entry on the list is Robert Murphy, "A Suicidal Emergency," *Journal of Existentialism* 2 (Fall 1961), pp. 133-46, which discusses a topic much narrower than emergencies per se. The chronologically second entry on the list is Rand's 1963 essay "The Ethics of Emergencies"—the first entry on the list to discuss the concept of an emergency in entirely general terms, and the first to discuss in equally general terms the idea of an ethics appropriate to emergencies. To find a philosophical discussion of emergencies or emergency ethics of equal generality, we have to jump forward more than a decade to Larry Wright's "Emergency Behavior," *Inquiry: An Interdisciplinary Journal of Philosophy* 17, nos. 1-4 (1974), pp. 43-47.

Beginning in the 1970s, there is increasing emphasis in the philosophical literature on ethical dilemmas that arise in emergency rooms, and with the publication

integrity, racism, envy, the ethics of discourse, behaviorism, and censorship, all of them topics ripe for inclusion in an anthology containing a “diverse” collection of views on ethics. Granted, doing so might well necessitate commissioning an appropriately large selection of extremely critical essays attacking her claims, but perhaps that’s the price one pays for anthologies that improve on current offerings.

Perhaps we should re-formulate Gotthelf’s demand quoted at the outset of this article to make it sound a bit more prosaic, less ardently homiletic, and less hagiographical. How’s this?

It is high time that those academic philosophers who insist on criticizing Rand accept the responsibility of reading and understanding her writings before doing so, and cultivate the same attitude, toward Rand and others, in their students and readers.

Is it really such an unreasonable demand, at least phrased in this modest way? By contrast with Gotthelf’s own formulation, the preceding one doesn’t imply that everyone *has* to be interested in Ayn Rand, any more than everyone *has* to be interested in Martin Heidegger, Jean-Paul Sartre, Hannah Arendt, Ludwig Wittgenstein, or Murray Rothbard. It does seem, however, that if you insist on *critiquing* someone, be it Rand or Heidegger, etc., you should be sufficiently interested in her writings to pay attention to what she’s actually saying in them. You shouldn’t be engaging in a merely notional confrontation with those views—where “notional” is a euphemism for a self-conscious dialogue of the deaf.³⁰ Doing so simply models a dogmatist’s habits of inquiry and discourse, habits that in Rand’s case have become enshrined as intellectual virtues. I realize that old habits are hard to break, especially ones that have acquired the luster of professional respectability, but it’s worth remembering that there is luster in fool’s gold.

Rand opens *The Virtue of Selfishness* with the notorious claim that, despite its offensiveness to some, she uses the word “selfish” to denote

of the first edition of Michael Walzer’s *Just and Unjust Wars* (New York: Basic Books, 1977), the literature proliferates with discussion of what Walzer refers to as “Supreme Emergency” in contexts of warfare. But Rand aside, there are no general discussions of the concept of emergency (or the ethics of emergencies) until the publication of an unrelated pair of papers in 1989: Julius Moravcsik’s “Between Reference and Meaning,” *Midwest Studies in Philosophy* 14 (1989), pp. 68-83, and Terry Nardin’s “Realism and Redistribution,” *The Journal of Value Inquiry* 23 (1989), pp. 209-25. I tentatively conclude, then, that Rand seems to have been the first philosopher to have thematized the idea of an “ethics of emergencies” in late-twentieth-century moral philosophy.

³⁰ The phrase “notional confrontation” is Bernard Williams’s, from his *Ethics and the Limits of Philosophy* (Cambridge, MA: Harvard University Press, 1985), pp. 160-63.

virtuous qualities of conduct “for the reason that makes you afraid of it.”³¹ The claim is often misconstrued to mean that Rand wants the reader to be afraid of egoists and egoism. It’s also wrongly taken to mean that most people fear their own mercenary desires, lacking the courage to express them in overt action, so that an ethos of selfishness is intended to embolden such people, giving them free rein for the expression of power-lust or greed.

In fact, Rand means just the reverse of both claims. Her point is that if the reader’s reflexive reaction to the word “selfishness” is fear—and twenty years’ worth of teaching and conversation induce me to think that it often is—her book is the antidote to that fear, intended to induce the reader to confront the reasons behind it. If the fear really is reflexive, the reasons for it will be buried beneath irrational defense mechanisms, and a confrontation with the book’s claims will provide a salutary exercise in self-confrontation and self-discovery. In fact, her point is that it’s the conventional conception of egoism that presupposes a fear-ridden, mercenary outlook on life, one that her “new concept of egoism” is intended to replace.

Personally, that isn’t the way I would have opened a book on egoism (or anything else), and it isn’t the way I think a book on the subject (or any subject) ought to begin. One can’t complain (as Rand does, in the same book) about the illegitimacy of “arguments from intimidation,”³² and then begin a book *with* an argument from intimidation. That’s to make a transparent show of flouting one’s own ethical advice in a book that is often rather militant and shrill in offering such advice.

Still, she has a point. Much of the fear of egoism really *is* reflexive, and is based on hand-waving armchair “intuitions” about what the (English)

³¹ Rand, *The Virtue of Selfishness*, p. vii.

For an example of the fear to which Rand alludes, see Rosalind Hursthouse’s comment in her *On Virtue Ethics*: “My conclusion, in this chapter, is that [virtue ethics] offers a distinctively unfamiliar version of the view that morality is a form of enlightened self-interest, a version so unfamiliar that probably, as things are at the moment, that is a dangerously misleading way to describe it” (*On Virtue Ethics* [Oxford: Oxford University Press, 2001], p. 190). Hursthouse’s view implies that even if “enlightened self-interest” were the truth about morality, its truth would be too dangerous to discuss in public. It’s not clear whether, on Hursthouse’s view, the truth about morality will ever be discussable within the foreseeable future.

Interestingly, Hursthouse’s claim here flatly contradicts what she says elsewhere about moral knowledge: “But the sort of wisdom that the fully virtuous person has is not supposed to be recondite: it does not call for fancy philosophical sophistication, and it does not depend upon, let alone wait upon, the discoveries of academic philosophers” (Rosalind Hursthouse, “Virtue Theory and Abortion,” in *Virtue Ethics*, ed. Roger Crisp and Michael Slote [Oxford: Oxford University Press, 1997], p. 228). Apparently, enlightened self-interest is an ad hoc exception to this rule.

³² Ayn Rand, “The Argument from Intimidation,” in Rand, *Virtue of Selfishness*, chap. 19.

words “egoism,” “self-interest,” and “selfishness” are supposed to mean, as well as what those (supposed) meanings are supposed to entail about moral truth. Gotthelf’s comment on this issue is apt:

One consequence of [Rand’s originality] is the need to understand her in her own terms. Readers must take her words in context, and understand her definitions and her reasons for them. One mustn’t assume that she means by some words just what those words would mean if one said them oneself, or if some other philosopher did.

The most familiar example is her conception of *selfishness*. The ordinary connotation, of someone blindly insensitive to the existence or rights of others, who would ‘trample over others’ if he thought he could ‘get away with it’, bespeaks, in her view, an incredibly distorted sense of what is actually in a human being’s interest The traditional usage reflects both a moral antagonism toward the pursuit of self-interest and a corrupt view of what is in a person’s interest—and so leaves us, Ayn Rand observed, without a neutral term for a passionate, rational commitment to one’s own self-interest. But it is a fact that some of a person’s actions will be in his interest and others not, and it is crucial to conceptualize that fact. And so she retains the term, and rejects the common connotation, titling her collection of essays on ethics *The Virtue of Selfishness: A New Concept of Egoism*.³³

Fears about egoism wouldn’t be so bad if there were good reasons for them, but to qualify as fears of *Randian* egoism (as opposed to Thrasymachean, Hobbesian, or Nietzschean egoisms), such fears would somehow have to be rooted in Rand’s writings. That, in turn, presupposes mastery of those writings—an achievement rarer, in my experience, than the brash claims made about them.

I am not saying *a priori* that there can be no reasons for rejecting Rand’s claims. I am simply pointing out that if there are such reasons, there should be no reluctance to anthologize Rand’s writings in textbooks that go out of their way to criticize Rand’s views. After all, if we really have reason to fear Rand’s views, let’s read them, and be afraid—very afraid. But it makes no sense to refuse to read them—or subtly induce students not to read them—and then to cower in fear of (or recoil in disgust at) texts that one hasn’t read.³⁴ Or rather, it makes a certain kind of sense, but only in the context of an abject sort of intellectual bad faith.

³³ Gotthelf, *On Ayn Rand*, p. 10.

³⁴ Once again, Hursthouse provides the perfect example:

We can interpret Thrasymachus, and more obviously Nietzsche and Ayn Rand as saying that, rather like hive bees, human beings fall by nature, into

The remedy, I suppose, is relatively obvious, and I leave it to the reader to figure it out. But who will tell the textbook editors?³⁵

two distinct groups, the weak and the strong (or the especially clever or talented or ‘chosen by destiny’), whose members must be evaluated differently, as worker bees and the drones or queens are.
(*On Virtue Ethics*, p. 253)

Contrary to Hursthouse, this is not an “obvious” interpretation of Rand; it’s the kind of interpretation one might produce if one hadn’t read a word Rand had written. Tellingly, no work by Rand (or for that matter, Nietzsche) appears in the bibliography of *On Virtue Ethics*.

³⁵ A shorter version of this essay was published as a blog post at the website of the (second) Institute for Objectivist Studies. Thanks to Marsha Enright, Merlin Jetton, Roderick Long, and David Riesbeck for helpful discussion.

